

# HANDBOOK

## A COMPARATIVE ANALYSIS

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

*The African Union (AU) Convention on Preventing and Combating Corruption, and*

*The United Nations (UN) Convention Against Corruption*

### 1. INTRODUCTION

It is important that the SADC Protocol against Corruption (the SADC Protocol), the African Union Convention on Preventing and Combating Corruption (the AU Convention), and the United Nations Convention on Corruption (the UN Convention) assume more than a symbolic value in the shortest possible time. For this to happen, SADC Member States should bring their laws into line with the requirements set in those instruments. This will contribute significantly towards the harmonisation of anti-corruption legislation in the SADC region and simplify mutual assistance mechanisms. This comparative analysis will hopefully serve as a small contribution towards the enhancement of effective anti-corruption measures in the SADC region. The region has illustrated its political will to address corruption by adopting and signing the SADC Protocol. The difficult task of implementing the SADC Protocol as well as the AU and UN Conventions, now constitutes a major challenge for the SADC Secretariat and each and every SADC Member State.

## 2. ENTRY INTO FORCE OF THE THREE ANTI-CORRUPTION INSTRUMENTS

### 2.1 SADC Protocol against Corruption

2.1.1 All 14 SADC Heads of State and Government signed the SADC Protocol against Corruption in Malawi on 14 August 2001.

2.1.2 Article 17 of the SADC Protocol provides that the Protocol shall be ratified by the Signatory States in accordance with their constitutional or other procedures.

2.1.3 In terms of Article 18(1) the Protocol shall enter into force 30 days after the deposit of the instruments of ratification by two thirds of the Member States. Furthermore, in respect of a Member State ratifying or acceding to the Protocol after the deposit of the ninth instrument of ratification, Article 18(2) provides that the Protocol shall enter into force in respect of that Member State, 30 days after the date of deposit of its instrument of ratification or accession.

2.1.4 As at the beginning of October 2004 the following SADC Member States had ratified or acceded to the Protocol:

No.	Country	Signature	Ratified, Accession
1	Angola	14.08.2001	
2	Botswana	14.08.2001	
3	DRC	14.08.2001	
4	Lesotho	14.08.2001	29.07.2003
5	Malawi	14.08.2001	27.09.2002
6	Mauritius	14.08.2001	04.01.2002
7	Mozambique	14.08.2001	
8	Namibia	14.08.2001	
9	South Africa	14.08.2001	15.05.2003
10	Swaziland	14.08.2001	
11	Tanzania	14.08.2001	20.08.2003
12	Zambia	14.08.2001	08.07.2003
13	Zimbabwe	14.08.2001	08.10.2004

## 2.2 AU Convention on Preventing and Combating Corruption

2.2.1 The AU Convention on Preventing and Combating Corruption was adopted by the Assembly of the AU on 11 July 2003 in Maputo, Mozambique.

2.2.2 In terms of Article 23(1) the Convention is open for signature, ratification or accession by the Member States of the African Union. Article 23(2) provides that the Convention shall enter into force 30 days after the date of the deposit of the fifteenth instrument of ratification or accession. In terms of Article 23(3), and in respect of each State Party ratifying or acceding to the Convention after the date of the deposit of the fifteenth Instrument of Ratification, the Convention shall enter into force 30 days after the date of the deposit by that State of its instrument of ratification or accession (Article 23(3)).

2.2.3 As at the beginning of October 2004 the following Member States of the SADC region had ratified or acceded to the AU Convention on the Preventing and Combating Corruption:

No.	Country	Signature	Ratified, accession
1	Angola	No	No
2	Botswana	No	No
3	DRC	5 December 2003	No
4	Lesotho	27 February 2004	No
5	Malawi	No	No
6	Mauritius	6 July 2004	No
7	Mozambique	15 December 2003	No
8	Namibia	9 December 2003	5 August 2004
9	South Africa	16 March 2004	No
10	Swaziland	No	No
11	Tanzania	5 November 2003	No
12	Zambia	No	No
13	Zimbabwe	18 November 2003	No

### 2.3 UN Convention against Corruption

2.3.1 As mentioned above, the General Assembly of the United Nations adopted the UN Convention against Corruption on 31 October 2003.

2.3.2 Article 67(1) of the UN Convention provides that the Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at the Headquarters of the United Nations in New York, until 9 December 2005. In terms of Article 67(3) the Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval must be deposited with the Secretary-General of the United Nations.

2.3.3 In terms of Article 68(1) the Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. Article 68(2) of the Convention provides that for each State ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, the Convention shall enter into force on the thirtieth day after the date of deposit by such State of the relevant instrument or on the date the Convention enters into force pursuant to Article 68(1), whichever is later.

2.3.4 The position in respect of ratification, acceptance, approval or accession of SADC Countries as at the beginning of October 2004 was as follows:

No.	Country	Signature	Ratification, accession, acceptance, approval
1	Angola	10 December 2003	No
2	Malawi		21 September 2004
3	Mauritius	9 December 2003	
4	Mozambique	25 May 2004	No
5	Namibia	9 December 2003	3 August 2004
6	South Africa	9 December 2003	No
7	Tanzania	9 December 2003	No
8	Zambia	11 December 2003	No
9	Zimbabwe	20 February 2004	No

### **3. OBJECTIVES OF THE THREE ANTI-CORRUPTION INSTRUMENTS**

#### **3.1 SADC Protocol against Corruption**

3.1.1 Articles 2 and 11 of the Protocol set out four main objectives of the Protocol.

3.1.2 In the first instance Article 2 of the Protocol provides for the following objectives:

- (a) To promote and strengthen the development, by each of the State Parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector.
- (b) To promote, facilitate and regulate co-operation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the public and private sector.
- (c) To foster the development and harmonization of policies and domestic legislation of the State Parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.

3.1.3 Secondly, Article 11 provides the fourth main objective, namely, to set standards so as to measure the performance of Member States in combating corruption on a periodical basis.

#### **3.2 AU Convention on Preventing and Combating Corruption**

In terms of Article 2 the AU Convention has the following objectives:

- (a) To promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors (Article 2(1)).
- (b) To 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 (Article 2(2)).

- (c) To coordinate and harmonise the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent (Article 2(3)).
- (d) To promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights (Article 2(4))
- (e) To establish the necessary conditions to foster transparency and accountability in the management of public affairs (Article 2(5)).

### 3.3 UN Convention against Corruption

In terms of Article 1 of the UN Convention the purposes of the Convention are the following:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively.
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery.
- (c) To promote integrity, accountability and proper management of public affairs and public property.

### 3.4 Comparative analysis of objectives

3.4.1 In general one can say that the three instruments have the same objectives, namely, to promote and strengthen the development of mechanisms; to promote, facilitate and regulate co-operation among State Parties; and to develop and harmonize policies and domestic legislation of State Parties, relating to the prevention, detection, punishment and eradication of corruption.

3.4.2 The objectives of the AU Convention are almost identical to the objectives of the SADC Protocol. However, it is striking that the UN Convention emphasises international cooperation and technical assistance relating to the recovery of assets and the promotion of anti-corruption measures relating to public affairs and public property. In the preamble to the UN Convention these two aspects are also emphasised. In particular, the preamble states that State Parties –

- are determined to prevent, detect and deter international transfers of illicitly acquired assets in a more effective manner, and they are also determined to strengthen international cooperation in asset recovery;
- bear in mind that public affairs and public property should be properly managed.