

# Reduction of Corruption in Africa: A Tremendous Challenge

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## Abstract

Although corruption has always existed throughout the history of mankind, it has become lately the major concern of the international community because of its underground characteristics and its corrosive impact on economic growth.

Every year, over \$1 trillion is paid in bribes around the world, enriching the corrupt and robbing generations of a future. Each act of corruption contributes to global poverty, obstructs development and drives away investment.

But corruption cannot only be measured in economic terms. Where corruption is present, society at large suffers. It debilitates the judicial and political systems that should be working for the public good by weakening the rule of law and silencing the voice of the people. As a result, citizens' trust in government officials and national institutions dwindles.

Africa has long been perceived to be the most corrupt continent, but corruption in Africa is not only an endogenous matter, but is also and mostly exogenous. It is in some extent an historical legacy of colonialism, which fundamentally shaped the current political culture of most of our countries.

The necessity to take measures against it has become evident and everyone has a role to play in stopping corruption: governments, donors, the private sector and civil society.

**You can stop  
CORRUPTION**

***"Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid".***

Kofi Annan, United Nations Secretary-General in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption

## **A. Definitions and the state of the Art of Corruption**

### **Definitions**

Perhaps, because corruption has received an extensive attention in the communities, and perhaps, due to the fact that it has been over-flogged in the academic circles, corruption has received varied definitions.

Corruption has broadly been defined as a perversion or a change from good to bad. Specifically, corruption or corrupt behavior involves the violation of established rules for personal gain and profit.

Corruption is efforts to secure wealth or power through illegal means private gain at public expense; or a misuse of public power for private benefit.

Transparency International (TI) has chosen a clear and focused definition of the term: Corruption is operationally defined as the misuse of entrusted power for private gain. TI further differentiates between ***"according to rule"*** corruption and ***"against the rule"*** corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute the former. The latter, on the other hand, is a bribe paid to obtain services the bribe receiver is prohibited from providing.

Bribery is a crime implying a sum or gift given alters the behavior of the person in ways not consistent with the duties of that person. It is defined by Black's Law Dictionary as the offering, giving, receiving, or soliciting of any item of value to influence the actions as an official or other person in discharge of a public or legal duty. The bribe is the gift bestowed to influence the receiver's conduct. It may be any money, good, right in action, property, preferment, privilege, emolument, object of value, advantage, or any promise or undertaking to induce or influence the action, vote, or influence of a person in an official or public capacity.

## **State of the art**

Some studies have taken a holistic approach in the discussion of corruption by dividing it into many forms and sub-divisions. These are:

**Political Corruption** or grand corruption; **Bureaucratic Corruption** or petty corruption; and **Electoral Corruption**.

**Political** corruption takes place at the highest levels of political authority. It occurs when the politicians and political decision-makers, who are entitled to formulate, establish and implement the laws in the name of the people, are themselves corrupt. It also takes place when policy formulation and legislation is tailored to benefit politicians and legislators. Political corruption is sometimes seen as similar to corruption of greed as it affects the manner in which decisions are made, as it manipulates political institutions, rules of procedure, and distorts the institutions of government (*The Encyclopedia Americana*).

***Government is more than the sum of all the interests; it is the paramount interest, the public interest. It must be the efficient, effective agent of a responsible citizen, not the shelter of the incompetent and the corrupt."***

***- Adlai Stevenson, speech, 1948***

**Bureaucratic** corruption occurs in the public administration or the implementation end of politics. This kind of corruption has been branded low level and street level. It is the kind of corruption the citizens encounter daily at places like the hospitals, schools, local licensing offices, police, taxing offices and on and on. Bureaucratic petty corruption, which is seen as similar to corruption of need, occurs when one obtains a business from the public sector through inappropriate procedure. (*The Encyclopedia Americana*).

**Electoral** corruption includes purchase of votes with money, promises of office or special favors, coercion, intimidation, and interference with freedom of election. Votes are bought, people are killed or maimed in the name of election, losers end up as the winners in elections, and votes turn up in areas where votes were not cast. Corruption in office involves sales of legislative votes, administrative, or judicial decision, or governmental appointment. Disguised payment in the form of gifts, legal fees, employment, favors to relatives, social influence, or any relationship that sacrifices the public interest and welfare, with or without the implied payment of money, is usually considered corrupt (*The Encyclopedia Americana*).

***“each candidate behaved well in the hope of being judged worthy of election. However, this system was disastrous when the city had become corrupt. For then it was not the most virtuous but the most powerful who stood for election, and the weak, even if virtuous, were too frightened to run for office.”***

Niccolo Machiavelli, The Prince

Other forms of corruption include:

**A) Bribery:** The payment (in money or kind) that is taken or given in a corrupt relationship. These include *kickbacks, gratuities, pay-off, sweeteners, greasing palms*, etc.

**B) Fraud:** It involves some kind of trickery, swindle and deceit, counterfeiting, racketing, smuggling and forgery;

**C) Embezzlement:** This is theft of public resources by public officials. It is when a state official steals from the public institution in which he/she is employed.

***“One must beware of ministers who can do nothing without money, and those who want to do everything with money.”***

Indira Gandhi

**D) Extortion:** This is money and other resources extracted by the use of coercion, violence or threats to use force.

**E) Favoritism:** This is a mechanism of power abuse implying a highly biased distribution of state resources. However, this is seen as a natural human proclivity to favor friends, family and any body close and trusted.

**F) Nepotism:** This is a special form of favoritism in which an office holder prefers his/herfamily members.

## **B. The corruption ground**

Corruption is not limited to any one part of the world. It is a reality in industrialized countries as in countries in transition and in developing countries. Nor is corruption restricted to the public sector only. There are many reports of ministers embezzling donor funds allocated to their ministries, allowances paid to officials and discounts given in goods purchases in

anticipation of political influence for tenders and government contracts. Business is also involved in corruption: bribing customs, police, drug enforcement, tax and procurement officers in order to avoid tax payments, secure lucrative public contracts, access emerging markets or smuggle illegal commodities is just another avenue of corrupt transactions. Millions of people, often the poor who can least afford it, live in places where they must pay bribes for services they are entitled to and are considered a right under the law. These include driver's licenses, telephone lines, building permits, jobs, pensions, and the list seems endless.

### **C. The Effects of Corruption**

The effects of corruption on a nation's socio-political and economic development are myriad. The negative effects impact economic growth as it, among other things, reduces public spending on education. The effect of corruption on education comes from the fact that the government spends relatively more on items to make room for *graft*. In my Senegal the government claim to spend 40% of the budget in education, yet the teacher trade Union declared recently that part of this budget allocated to national education is for virtual school, not existent.

And corrupt government officials would shift government expenditures to areas in which they can collect bribes easily. Large and hard-to-manage projects, such as airports or highways, make fraud easy. We have actually a case in the court where the dismissed prime minister was alleged of exceeding expenditure of more than 20 billion CFA in road construction and the like. After six month in prison he pleaded not guilty and obtains an provisional liberty. Citizen are asking now if he is faulty or if the president who alleged him and release him is faulty.

In addition, poverty and income inequalities are tied to corruption. Development projects are often made unnecessarily complex to justify the corrupt and huge expense on it. To host the OCI summit, we are transforming the cornice which already underwent important modification since 2000, and people tend to ask if those modifications are important for the country.

Corruption causes a reduction in quality of goods and services available to the public. Corruption effects investment, economic growth, and government expenditure choices; it also reduces private investment.

Corruption upsets ethnic balance, and exacerbates problems of national integration in developing countries. Corruption is also destructive of governmental structures and capacity. Experiment.

Corruption can destroy the legitimacy of a government.

In summary, corruption diverts scarce public resources into private pockets, literally undermines effective governance, endangers democracy and erodes the social and moral fabric of nations.

#### **D. External factors**

***Economic hit men (EHM) are highly paid professionals who cheat countries around the globe out of trillions of dollars. The funnel money from the World Bank, the U.S. Agency for international Development (USAID), and other foreign "aid" organizations into the coffers of huge corporations and the pockets of a few wealthy families who control the planet's natural resources. Their tools include fraudulent financial reports, rigged elections, payoffs, extortion, sex, and murder." They play the game as old empire, but one that taken on new and terrifying dimensions during this time of globalization.***

***I should know; I was an EHM***

***His job was to convince countries that are strategically important to the U.S.—from Indonesia to Panama—to accept enormous loans for infrastructure development, and to make sure that the lucrative projects were contracted to U. S. corporations. Saddled with huge debts, these countries came under the control of the United States government, World Bank and other U.S.-dominated aid agencies that acted like loan sharks—dictating repayment terms and bullying foreign governments into submission.***

Perkins, J., Confessions of an Economic Hit Man, (Plume, 2006)

Africa's anti-corruption campaigners must also contend with external actors who often have perpetuated and aggravated the problem. In several countries in recent years, courts trying corrupt former officials have uncovered clear evidence of foreign involvement, but those implicated have been beyond the reach of national jurisdictions. In addition, efforts in Africa to recover embezzled funds diverted into foreign accounts have often run up against the problem of banking secrecy.

Because of such external influences and obstacles, Africa's anti-corruption efforts can make only limited headway on their own, argue Transparency International and other organizations. Gradually, the international community has come to acknowledge the problem.

### **E. Remedial measures an Recommendations**

In recent years, an increasing number of African countries have been taking more resolute action to stem such losses. One factor has been the rise in political pluralism and public accountability, since opposition parties, independent newspapers, and other avenues for public expression make it harder to cover up high-level corruption or avoid action against officials suspected of misdeeds. Democracy is fundamental to the battle against corruption.

A variety of measures and institutions have been introduced to facilitate corrective action, including special investigative and audit commissions, codes of conduct that seek to prevent a casual blending of public duties and private business, and mandatory disclosures of officials'

Regional cooperation among African countries is also increasing, aimed at countering trade malpractices and inhibiting the flow of illegal funds across African borders (See appendix).

*Robert S. McNamara*, former presidents of the *World Bank* and *Ford Motor Corporation*, has argued that for any campaign against corruption to be successful in Sub-Saharan Africa, certain characteristics should be common in the plans against corruption. His suggestions on how to control corruption in the region include to:

- 1) Require direct, clear and forceful support of the highest political authority: the president or prime minister;
- 2) Introduce transparency and accountability in government functions, particularly in all financial transactions;

- 3) Encourage a free press and electronic media to forcefully report to the public on corrupt practices in the society;
- 4) Organize civil society to address the problems of corruption brought to light by the process of transparency and the activity of the media;
- 5) Introduce into government watch-dog agencies - anti-corruption bureaus; inspectors general; auditors general and *ombudsmen* [government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials, etc] - which will identify corruption practices and bring them to public attention;
- 6) Minimize and simplify government regulations, particularly those involving the issuance of licenses, permits and preferential positions, thereby restricting opportunities for rent seeking by corrupt means.
- 7) Insert anti-bribery clauses into all major procurement contracts and with the assistance of both international financial institutions and bilateral aid agencies insist that international corporations, bidding on African procurement contracts, accept such clauses and the penalties associated with their violation.
- 8) Introduce similar anti-bribery clauses into contracts relating to privatization of government enterprises, and the development of natural resources.
- 9) Ensure that enforcement is predictable and forceful; and
- 10) To criminalize the acts of bribery; prohibit the deduction of bribes for tax purposes; and erect barriers to transfer to western financial institutions of financial gains derived from corrupt practices (*United States Information Agency*, Nov 17, 1997).

Other steps authorities could take to control corruption include:

- 11) *Declaration of Assets*: The state should require that all high-level Nigerian officials (Presidents, Ministers, Legislative officers, Central bank governors, Police and Customs Chiefs, Military Generals), sign a statement granting permission to banks (both local and foreign), real estate or investment house to disclose any personal assets they may hold. Breaking this veil of secrecy, it has been argued, is crucial if assets declarations are to be verified and accountability enforced (Diamond, 1992);



- 12) *Withholding of Aid*: International donors (the *IMF* and *World Bank*) can be helpful by cutting off completely distribution of assistance to any country marked for high-level corruption;
- 13) *Scrutiny for sources of income*: As was pointed out above, scrutinizing individual depositors of huge sum of money, by financial institutions for sources, would go along way to curbing looting of national treasury by civil servants.

To eradicate corruption, one must tackle both giver and taker.

History shows that all effective programs shared these common elements:

- a. The persecution of corrupt, high-profile, public figures, multinationals, and institutions (domestic and foreign). This demonstrates that no one is above the law and that crime does not pay.
- b. The conditioning of international aid, credits, and investments on a monitored reduction in corruption levels. The structural roots of corruption should be tackled rather than merely its symptoms.
- c. The institution of incentives to avoid corruption, such as a higher pay, the fostering of civic pride, "good behavior" bonuses, alternative income and pension plans, and so on.
- d. In many African countries the very concepts of "private" versus "public" property are fuzzy and impermissible behaviors are not clearly demarcated. Massive investments in education of the public and of state officials are required.
- e. Liberalization and deregulation of the economy. Abolition of red tape, licensing, protectionism, capital controls, monopolies, discretionary, non-public, procurement. Greater access to information and a public debate intended to foster a "stakeholder society".
- f. Strengthening of institutions: the police, the customs, the courts, the government, its agencies, the tax authorities - under time limited foreign management and supervision.

## Can corruption be curbed?

***“Corruption is like a ball of snow, once it's set a rolling it must increase.”***

Charles Caleb Colton

Given the transnational nature of bribery and corruption, the detrimental impact on development, the endemic nature of corruption in many states such that it has become difficult if not impossible for businesses to operate transparently, and the resulting distortions to the global economy, the issue can only be successfully addressed if there is international cooperation.

The World Bank, among others, now targets corrupt practices as a major cause of underdevelopment and provides assistance to countries seeking to address the factors underlying corruption. This includes introducing measures to combat fraud and corruption and black-listing companies from participating in World Bank projects where they have been found to have breached procurement guidelines.

Transparency International is another private sector initiative. Formed in 1993, it is a coalition against corruption and has national chapters in 80 states, most of them in developing countries.<sup>26</sup> It is a non-political and non-profit organisation that does not take sides or impose judgement on either bribe payers or bribe seekers. It does not investigate individual cases, nor does it seek to expose individuals who engage in corrupt activity. Instead, it devotes itself to combating grand corruption through creating awareness, improving systems and encouraging other organizations and individuals to join the coalition.<sup>27</sup> Transparency International uses a number of strategies to achieve these ends, including two surveys: the Corruption Perception Index (CPI) and the Bribe Payers Index (BPI). The CPI, published annually since 1995, has been instrumental in increasing public awareness. The CPI ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. In contrast, the BPI, launched in 1999, lists those countries in order of the propensity of their businesses and businesspeople to pay bribes. The problem of corruption is thus becoming increasingly exposed and growing numbers of agencies and businesses are prepared to speak out against it and to take steps towards addressing it. Transparency International, through its national chapters, works with all governments, institutions and private sector companies and organisations, be they for-profit or non-profit, to assist them in this process.

## F. Conclusion

Poverty is worsening in many populations, particularly in Africa. Corrupt activities contribute significantly to the perpetuation of poverty and to the continued underdevelopment of some nations. It is only through international cooperation and a change in attitude by multinational companies, many of which are wealthier than the nations in which they operate, that corrupt activities can be curbed.

## **G. Appendix**

Sectors and Institutions most affected by corruption

Corruption Index Score versus Failed States Index Score

Rank of African Countries from 2000 to 2005 by Transparency International

Declaration of African Countries to fight corruption

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## AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

### AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

#### PREAMBLE

The Member States of the African Union:

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

**Further Considering** that Article 3 of the said Constitutive Act enjoins Member States to coordinate and intensify their cooperation, unity, cohesion and efforts to achieve a better life for the peoples of Africa;

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

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

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

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

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

**Recognizing** the need to address the root causes of corruption on the continent;

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

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

**Recalling** resolution AHG-Dec 126(XXXIV) adopted by the Thirty-fourth Ordinary Session of the Assembly of Heads of State and Government in June 1998 in Ouagadougou, Burkina Faso, requesting the Secretary General to convene, in 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;

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

Have agreed as follows:

## **Article 1**

### **Definitions**

1. For the purposes of this Convention;

**"Chairperson of the Commission"** means Chairperson of the Commission of the African Union;

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

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

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

**"Executive Council"** means the Executive Council of the African Union;

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

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

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

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

**"Requested State Party"** means a State Party requested to extradite or to provide assistance under this Convention;

**“Requesting State Party”** means a State Party making a request for extradition or assistance in terms of this Convention;

**“State Party”** means any Member State of the African Union which has ratified or acceded to this Convention and has deposited its instruments of ratification or accession with the Chairperson of the Commission of the African Union.

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

## **Article 2**

### **Objectives**

The objectives of this Convention are to:

1. Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.
2. Promote, facilitate and regulate 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.
4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

## **Article 3**

### **Principles**

The State Parties to this Convention undertake to abide by the following principles:

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

## **Article 4**

### **Scope of Application**

1. This Convention is applicable to the following acts of corruption and related offences:
  - (a) the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
  - (b) the offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or

for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

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

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

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

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

(g) illicit enrichment;

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

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

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

## **Article 5**

### **Legislative and other Measures**

For the purposes set-forth in Article 2 of this Convention, State Parties undertake to:

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

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

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

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

5. Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities.
6. Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals.
7. Adopt national legislative measures in order to punish those who make false and malicious reports against innocent persons in corruption and related offences.
8. Adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest, and awareness in the fight against corruption and related offences, including school educational programmes and sensitization of the media, and the promotion of an enabling environment for the respect of ethics.

#### **Article 6**

##### **Laundering of the Proceeds of Corruption**

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

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

#### **Article 7**

##### **Fight Against Corruption and Related Offences in the Public Service**

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

1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.
2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and 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.
4. Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service.
5. Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.

#### **Article 8**

##### **Illicit Enrichment**



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

#### **Article 9**

##### **Access to Information**

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

#### **Article 10**

##### **Funding of Political Parties**

Each State Party shall adopt legislative and other measures to:

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

#### **Article 11**

##### **Private Sector**

State Parties undertake to:

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

#### **Article 12**

##### **Civil Society and Media**

State Parties undertake to:

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

## **Article 13**

### **Jurisdiction**

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

## **Article 14**

### **Minimum Guarantees of a Fair Trial**

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

## **Article 15**

### **Extradition**

1. This Article shall apply to the offences established by the State Parties in accordance with this Convention.
2. Offences falling within the jurisdiction of this Convention shall be deemed to be included in the internal laws of State Parties as crimes requiring extradition. State Parties shall include such offences as extraditable offences in extradition treaties existing between or among them.
3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from a State Party with which it does not have such treaty, it shall consider this Convention as a legal basis for all offences covered by this Convention.
4. A State Party that does not make extradition conditional on the existence of a treaty shall recognize offences to which this Convention applies as extraditable offences among themselves.
5. Each State Party undertakes to extradite any person charged with or convicted of offences of corruption and related offences, carried out on the territory of another State Party and whose extradition is requested by that State Party, in conformity with their domestic law, any applicable extradition treaties, or extradition agreements or arrangements existing between or among the State Parties.

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

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

#### **Article 16**

##### **Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption**

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

- (a) its competent authorities to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgement;
- (b) confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention;
- (c) repatriation of proceeds of corruption.

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

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

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

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

#### **Article 17**

##### **Bank Secrecy**

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

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

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

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

### **Article 18**

#### **Cooperation and Mutual Legal Assistance**

1. In accordance with their domestic laws and applicable treaties, State Parties shall provide each other with the greatest possible technical 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.

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.

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

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

### **Article 19**

#### **International Cooperation**

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.

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.

## **Article 20**

### **National Authorities**

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.

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

23

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.

## **Article 21**

### **Relationship with other Agreements**

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

## **Article 22**

### **Follow up Mechanism**

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

2. The Board shall comprise 11 members elected by the Executive Council from among a list of experts of the highest integrity, impartiality, and 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.

5. The functions of the Board shall be to:

- a. promote and encourage adoption and application of anticorruption measures on the continent;
- b. collect and document information on the nature and scope of corruption and related offences in Africa;

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

## **FINAL CLAUSES**

### **Article 23**

#### **Signature, ratification, accession and Entry into Force**

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

### **Article 24**

#### **Reservations**

1. Any State Party may, at the time of adoption, signature, ratification or accession, make reservation to this Convention provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purposes of this Convention.

2. Any State Party which has made any reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Chairperson of the Commission.

#### **Article 25**

##### **Amendment**

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

#### **Article 26**

##### **Denunciation**

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

#### **Article 27**

##### **Depository**

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

#### **Article 28**

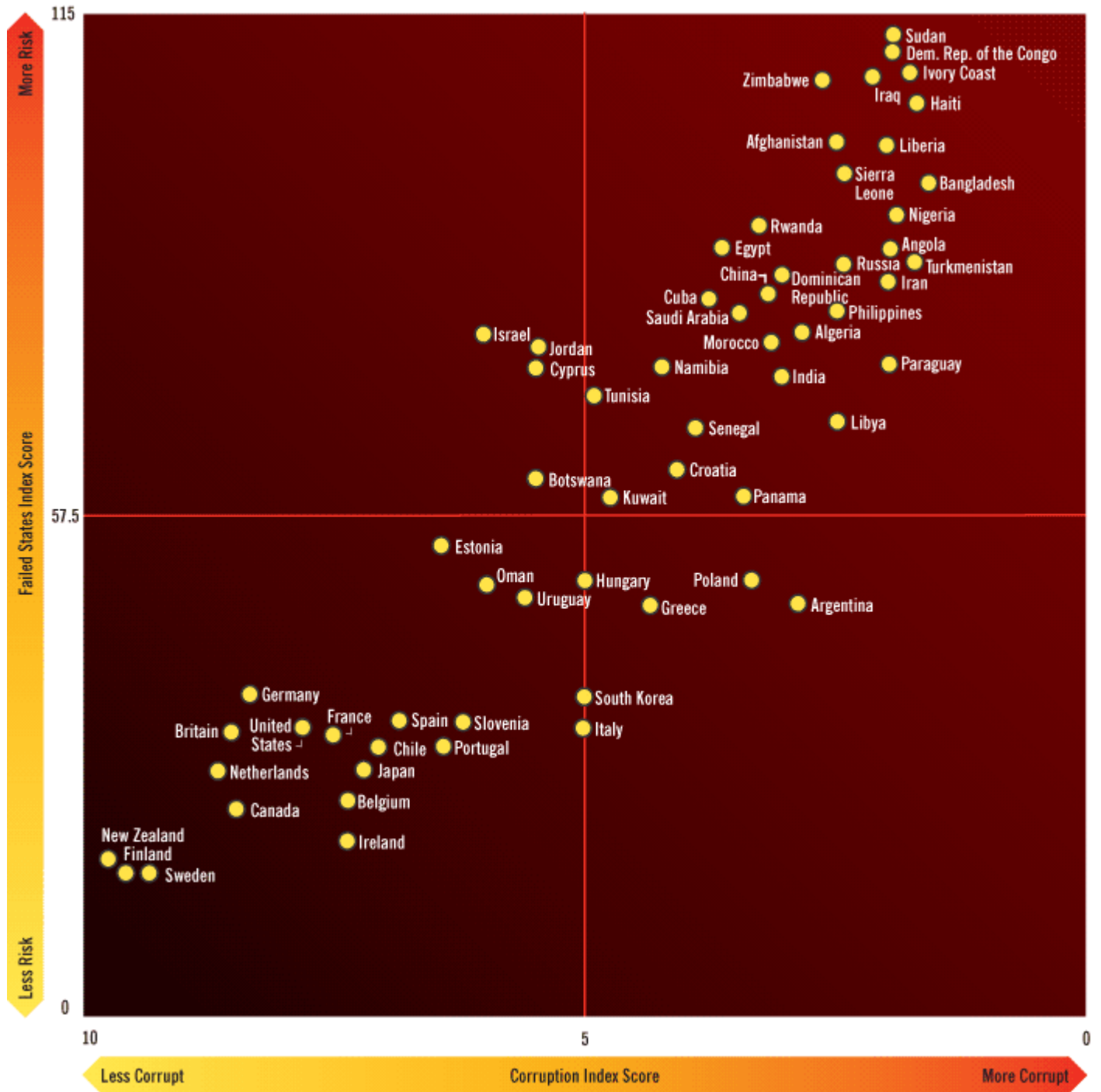
##### **Authentic Texts**

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

**IN WITNESS WHEREOF WE**, the Heads of State and Government of the African Union, or our duly authorized representatives have adopted this Convention.

**Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003**

## Corrupt Index Score cross failed States Index Score





Graph 1: Sectors and institutions most affected by corruption  
(1 - not at all corrupt ... 5 - extremely corrupt)

