

## **Conventions overview African Union (AU)**

Adopted: 11 July 2003

Signatories: 32 (as of 10 August 2004)

Ratifications: 3 (as of 10 August 2004)

Entry into force: 30 days after the deposit of the 15th instrument of ratification (not yet in force as at 12 August 2004)

Open to: Member states of the African Union (53)

The African Union Convention on Preventing and Combating Corruption (AU Convention) was adopted in Maputo on 11 July 2003. It represents regional consensus on what African states should do in the areas of prevention, criminalisation, international cooperation and asset recovery.

General structure: 28 articles:

Arts 1,2, 3, 4, 13:	Definitions, Objectives, Principles, Scope of Application, Jurisdiction
Art 5:	Legislative and Other Measures
Art 6:	Laundering of the Proceeds of Corruption
Art 7:	Fight Against Corruption and Related Offences in the Public Service
Art 8:	Illicit Enrichment
Art 9:	Access to Information
Art 10:	Funding of Political Parties
Arts 11, 12:	Private Sector; and Civil Society and Media
Art 14:	Minimum Guarantees of a Fair Trial
Arts. 15, 18, 19, 20:	Extradition; Cooperation and Mutual Legal Assistance, International Cooperation and National Authorities
Arts. 16, 17:	Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption, Bank Secrecy
Art 22:	Follow up Mechanism
Arts. 5, 21, 23, 24:	Relationship with other Agreements and Final Clauses on: Signature, Ratification, Accession, Entry into Force, Reservations, Amendment, Denunciation, Depository, Authentic Texts

### Coverage

- Sectors covered: Public sector and private sector corruption
- Corruption offences covered: Wide range of offences including bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property
- Measures: Prevention, criminalisation, regional cooperation and mutual legal assistance, recovery of assets
- Level of obligation: Primarily mandatory provisions.

### Monitoring arrangements

The follow-up mechanism provided for in Art. 22 calls for an Advisory Board of eleven members elected by the AU Executive Council, serving for a period of two years, renewable once. The Board has broad responsibilities for promoting anti-

corruption work, collecting information on corruption and on the behaviour of multinational corporations operating in Africa, developing methodologies, advising governments, developing codes of conduct for public officials, and building partnerships. In addition it is required to 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 the AU Convention. At the same time, States Parties are required to report to the Board on their progress in implementing the AU Convention within a year after the coming into force of the AU Convention and thereafter on an annual basis through reports by national anti-corruption authorities to the Board. Further, States Parties are required to ensure and provide for the participation of civil society in the monitoring process.

#### Main benefits of the AU Convention

- Regional agreement on importance of addressing corruption with a comprehensive framework, setting common standards.
- Covers the supply and demand sides of corruption, private sector and public sector corruption, broad range of criminal offences
- Requirements relating to public sector internal accounting and auditing systems (Art. 5)
- Requirements of whistleblower and witness protection (Art. 5)
- Important preventive measures required in the public service such as declaration of assets by designated public officials; creation of code of conduct and monitoring body; ensuring proper management of tendering and hiring procedures. Additionally, restrictions on immunity for public officials (Art. 7)
- Requirement of transparency in political party funding (Art. 10)-the only Convention to have mandatory provisions on this subject.
- Recognition of role of private sector in corruption and addresses private-to-private corruption (Arts. 4, 11)
- Other preventive measures calling for education and awareness-raising (Art. 5), as well as access to information for the media and involvement of private sector and civil society in the prevention of corruption (Art. 12)
- Broad jurisdictional provisions (Art. 13)
- Regional cooperation framework established providing improved mutual law enforcement assistance, including in extradition, investigations, as well as confiscation, seizure and repatriation of proceeds of corruption. (Arts. 15 -18) Includes restrictions on use of banking secrecy (Art. 17)

#### Main weaknesses

- Access to information provision too limited
- No provision on statutes of limitation
- No requirement of liability of companies
- No provision on sanctions
- Provision allowing for reservations
- No real peer review process envisaged
- Current lack of resources for follow-up mechanism

#### Next steps

- Ratification still outstanding in most countries (as of 10 August 2004)

- Adoption of new domestic legislation to meet the AU Convention requirements; depends on adequacy of existing legislation
- Reviews within follow-up mechanism

23.08.04