

REPORT ON BENCHMARKING ANTI-CORRUPTION INITIATIVES IN AFRICA



COMMITTED TO AFRICA'S GROWTH AND DEVELOPMENT

As the world's number one supplier of mineral fertilizers and agronomic solutions, with 25 years of on-the-ground experience on the continent, Yara International ASA contributes to developing sustainable farming methods and helps provide affordable food in line with the growing nutrition requirements of people across Africa. Yara has the ambition to take a leading role in those areas of business, environmental, social and ethical responsibility where it can contribute in a meaningful way to a Green Revolution in Africa. Eliminating corruption will have a significant beneficial impact on the success of such an agenda.



Yara's core values – ambition, trust, accountability and teamwork form a core part of our organisational behaviour and business conduct.

Our strategy of local partnerships based on trust and sustainable conduct gives us a unique potential for supporting sustainable agriculture and ethical business practices in Africa. Yara has strong internal zero tolerance policy on corruption and sees the need for taking a strong stand in supporting the fight against corruption as being a key part of its overall business agenda. In this capacity we are proud to support the publication of this report and hope that the highlighted examples of good practice prove of benefit to a range of stakeholders both in Africa and abroad as they join the battle to eradicate the scourge that is corruption.

In Africa, Yara has taken a lead on a number of fronts in this regard. In Malawi, Yara formed part of the core working team that developed the Malawi Business Code of Conduct in Fighting Corruption that has been endorsed by His Excellency the President Dr Bingu wa Mutharika and currently co-chairs the Business Action Against Corruption in Malawi. Yara is also a member of the management committee of the wider pan

African Business Action Against Corruption (BAAC). BAAC is an African initiative whose main object is to develop practical approaches to reduce corruption. It is a unique and unusual working partnership between governments business and wider civil society in the area of fighting corruption and has been formally endorsed by the Presidents of Nigeria and Malawi as well as the Prime Ministers of Cameroon and Namibia.

As the emphasis in many African countries shifts towards taking decisive action to significantly curb corrupt practices there is a growing awareness that the complexity of the challenge at hand is beyond the resources of any given sector. Innovative multi-stakeholder approaches are needed if success in the fight against corruption is to be achieved with any degree of certainty.



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FOREWORD

The fight against corruption has become more urgent than ever. As our knowledge of the phenomenon expands, we realise the extent of the harm it causes. Corruption undermines growth and development by diverting resources away from development programmes thus increasing poverty, inequality and underdevelopment.

So far, corruption has largely been perceived as an African and “developing south” phenomenon. Definitions of the problem have often been limited to the abuse or misuse of public power or resources for private benefit, thus focusing on the behaviour of politicians and those in the public service. Corruption and bribery have also frequently been used interchangeably and in a manner that conceals that bribery is a two way transaction involving both bribe-givers and bribe-takers. There has also been a projection of particular societies or people as endemically corrupt, so that an outsider is required to pay bribes in order to conduct legitimate business.

The Africa Forum on Fighting Corruption saw us emerging with a common understanding of corruption: corruption takes place at the interface between the public and private sectors. This definition will assist us with dealing with this scourge in a holistic manner.

Recent years have also seen the creation of a number of regional and international legal instruments aimed at fighting corruption. However, many challenges lie ahead especially regarding the effective implementation and application of instruments that have been put in place to prevent and combat corruption. There has also been a tendency to propose solutions and strategies for combating corruption based on one size fits all without necessarily taking into consideration the context in which corruption takes place.

The result of this approach is that the problem ends up not being effectively addressed as the medicine does not suit the diagnosis. The time has come for Africa to showcase its own anti-corruption good practices. This report is a compilation of anti-corruption good practices from around Africa aimed at preventing and combating corruption. Let’s put these practices into good use and ensure the effective implementation and application of anti-corruption measures leading to improving the quality of life for the people of Africa and the world.

Mr M R Baloyi

Minister for the Public Services and Administration, South Africa

Chairperson of the 5th Pan African Conference of Ministers of Public/Civil Service

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AICC owes appreciation to the participants of the Codes of Conduct meeting held in Lusaka, Zambia in February 2007 [under the auspices of the Anti-Corruption Commission in Zambia, Southern Africa Forum Against Corruption (SAFAC) and Business Action Against Corruption (BAAC)] as well as the Africa Forum on Fighting Corruption [jointly convened by the Government of South Africa, the African Union Commission (AUC) and UNECA] in Johannesburg, South Africa (28 February to 2 March 2007). These meetings provided an opportunity for eliciting case studies from respective experts and validating the content of this report.

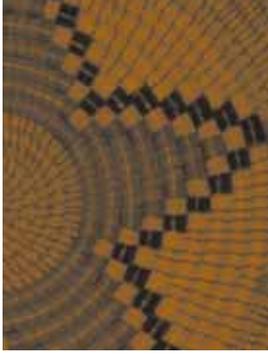
The efforts and support of the AICC team is very much appreciated: Michelle Ndiaye (CEO of AICC); Paul Kapelus, Yoliswa Mawela (Associate Researcher), Faiza Farah and Benedict Chinsakaso from AICC's Malawi office. AICC wishes to thank the implementing partners of BAAC for their valuable support and co-operation. This includes SAFAC and its Secretariat – Human Rights Trust of Southern African (SAHRIT); Convention on Business Integrity (CBI) Nigeria/BAAC Nigeria; West Africa Business Association (WABA) Cameroon/BAAC Cameroon and the Commonwealth Business Council (CBC).

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INDEX OF ACRONYMS

ACA	Administrative Control Authority	CGG	The Campaign for Good Governance
ACB	Anti Corruption Bureau	CHRGG	Commission on Human Rights and Good Governance
ACC	Anti-Corruption Commission of Namibia	CIPE	Centre for International Private Enterprise
ACU	Anti-Corruption Unit	CMA	Capital Market Authority
ACSF	Africa Corporate Sustainability Forum	COMESA	Common Market for Eastern and Southern Africa
ADB	African Development Bank	CPAR	Country Procurement Assessment Review
AFFC	Africa Forum on Fighting Corruption	CSAAC	Civil Society Action Against Corruption
AfriMAP	Africa Governance Monitoring and Advocacy Project	CSI	Civil Society Initiatives
AICC	Africa Institute for Corporate Citizenship	CSJ	Special Court of Justice
ALI	Africa Leadership Initiative	CSOs	Civil Society Organisations
AML	Anti-money laundering	DANUDUC	Danish Education Association of Uganda
AOC	African Organising Committee	DCEC	Directorate on Corruption and Economic Crime
AoA	Association of Accountants, Mozambique	DCEO	Directorate on Corruption and Economic Offences
APNAC	African Parliamentary Network Against Corruption	DFID	Department for International Development
APRM	Africa Peer Review Mechanism	DFIs	Development Finance Institutions
ATIP	Transparency and Integrity Programme	DFID	Department of International Development
AUC	African Union Commission	DFRC	Development Finance Resource Centre
BAAC	Business Action Against Corruption	DioB	Directors Institute of Botswana
BAC	Business Against Crime	ECSAFA	Eastern, Central and Southern Africa Federation of Accountants
Ben-Africa	Business Ethics Network- Africa	EFCC	Economic and Financial Crimes Commission
BDOs	Business Development Organisations	EI	Extractive Industry
BEST	Business Environment Strengthening for Tanzania	EITI	The Extractive Industries Transparency Initiative
BIACO	Independent Anti-Corruption Bureau of Madagascar	EPRCP	Enhancing Procurement Reforms and Capacity Project
BOCCIM	Botswana Chamber of Industry and Manpower	ESAAMLG	Eastern and Southern African Anti-Money Laundering Group
BPED	British Partnership for Enterprise Development	FATF	Financial Action Task Force
BSG	Business Support Group	FIRS	Federal Inland Revenue Service
BUSA	Business Unity South Africa	FIU	Financial Intelligence Unit
CAC	Corporate Affairs Commission	FGN	Federal Government of Nigeria
CBC	Commonwealth Business Council	FNI	Fix Nigeria Initiative
CBI	Convention Business Integrity	FRA	Financial Reporting Act
CCG	Centre for Corporate Governance	FSAP	Financial Services Action Plan
CELC	Commission for Ethics and the fight against Corruption	GAC	Governance and Anti-corruption
CBK	The Central Bank of Kenya	GCA	Global Coalition for Africa
CBOs	Community Based Organisations		
CGEM	General Confederation of Moroccan Enterprise		

GCGF	Global Corporate Governance Forum	NESG	Nigerian Economic Summit Group
GDD	Gold and Diamond Department	NGOs	Non Governmental Organisations
GFV	Global Forum V on Fighting Corruption and Safeguarding Integrity	NPO	Non Profit Organisation
GPAC	Global Programme Against Corruption	NRLF	National Religious Leaders Forum
HIPC	Highly Indebted Poor Countries	NSCs	National Steering Committees
IAF	Industry Alignment Forum	OECD	Organisation for Economic Co-operation and Development
ICAC	The Independent Commission Against Corruption	OHADA	Organisation for Harmonising Business Law in Africa
ICGU	Institute of Corporate Governance of Uganda	ONS	Office of National Security
ICPC	Independent Corrupt Practice Commission	OSISA	Open Society Initiatives for Southern Africa
IFC	International Finance Corporation	OSIWA	Open Society Initiatives for West Africa
IOC	International Organising Committee	PACFCG	Pan African Consultative Forum on Corporate Governance
IoDSA	Institute of Directors of Southern Africa	PEMFA	Public Expenditure Management and Financial Accountability
JDA	Joint Development Authority	PEP	Politically Exposed Persons
JDZ	Joint Development Zone	PFMA	Public Finance Management Act
JPTC	Joint Permanent Technical Committee	PPT	Petroleum Profit Tax
KIPCS	Kimberly Process Certification Scheme	PSC	Public Service Commission
King II	King Report for Corporate Governance in South Africa 2002	ROSC	Reports on the Observance of Standards and Codes
LEAP	Leadership, Effectiveness, Accountability & Professionalism	SADC	South African Development Community
LHDA	Lesotho Highlands Development Authority	SAFAC	Southern African Forum Against Corruption
LHWC	Lesotho Highlands Water Commission	SAHRIT	Human Rights Trust of Southern African
MAP	Millennium Partnership for the African Recovery programme	SANGOCO	South African NGO Coalition
MFI s	Micro Finance Institutions	SEC	Securities and Exchange Commission
MNC s	Multinational Companies	SOCAM	Society of Accountants in Malawi
NAC	Network Against Corruption	SMME s	Small Medium and Micro Enterprises
NACS	National Anti-Corruption Strategy	SOEs	State Owned Enterprises
NACF	National Anti-Corruption Forum	TCTA	Trans-Caledon Tunnel Authority
NACSAP	National Anti-Corruption Strategy and Action Plan	TI	Transparency International
NAFDAC	National Agency for Food, Drug Administration and Control	TICG	Tanzania Institute of Corporate Governance
NAMFISA	Namibian Financial Institutions Supervisory Authority	TI-SA	Transparency International –South African
NAP	National Anti-Corruption Programme	UNCAC	United Nations Convention Against Corruption
NEITI	Nigerian Extractives Industries Transparency Initiative	UNODC	United Nations Office on Drugs and Crime
NEPAD	New Partnership for Africa's Development	WABA	West Africa Business Association
		WHO	World Health Organisation
		YEP	Youth Empowerment Programme
		ZCC	The Zero Corruption Coalition



1. INTRODUCTION

1.1 Background

1.1.1 *The Impact of Corruption in Africa*

Africa is richly endowed with human and natural resources. It however faces enormous development challenges. As observed by Transparency International: “It is the only region of the world where poverty has increased in the past 25 years and half of the continent’s population of 840 million people live on less than 1 USD per day. Thirty-two of the world’s 38 highly indebted poor countries (HIPC) are in Africa”.¹ Challenges facing the continent include corruption, protracted armed conflict, the HIV/AIDS pandemic and declining terms of trade for non-mineral primary products continue to exacerbate the many challenges facing the region.

The devastating effects of corruption include capital flight, misuse of grants and aid resources earmarked for development purposes and lack of service delivery etc, thereby severely contributing to the development crisis faced by Africa today. According to the Global Programme Against Corruption (GPAC): “corruption undermines democratic institutions, retards economic development and contributes to government instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law, and creating bureaucratic quagmires whose only reason for existence is the soliciting of bribes. Economic development is stunted because outside direct investment is discouraged and small businesses within the country often find it impossible to overcome the “start-up costs” required because of corruption”².

This view is supported by Kofi Annan, the former UN Secretary-General who stated during the adoption by the General Assembly of the United Nations Convention against Corruption as follows: “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”.

1.1.2 *Africa’s susceptibility*

There are constellations of factors that make Africa susceptible to corruption, including historical, socio-economic and political dynamics that contribute to this.

The economies of some countries are still primarily dependent on natural resources and in many cases dominated by the extractive sector. This proffers a number of opportunities for economic growth as in the case of resource rich countries. The reliance on natural resources however creates a number of susceptibilities in terms of fuelling corrupt and dubious business practices as well as internal strife and conflict arising out of the quest for control and allocation of resources. Properly managing the revenues arising from natural resources to contribute to the long-term sustainability requires that the forces of public and economic governance be converged within a culture of the cardinal principles of accountability, transparency, responsibility and fairness.

Other drivers of corruption in Africa include the link between economic and political governance and the exploitation of public office for private benefit. Also, noteworthy are the abuse of cultural practices that facilitate corruption (e.g. the cultural practice of “shaking hands” or giving of token gifts as a courtesy – originally in the form of kola nuts – during meetings presents an opportunity for misuse).

The culture of disclosure regarding African corporations, generally, is yet to come up to par with international standards. According to the Summary of Progress Report on Corporate Governance in Africa 2005: “the challenge is to convince corporations that disclosure is an asset, rather than a burden, but this impediment will remain for so long as corporations continue to suspect that disclosure of information may be used in a manner perceived as discretionary by the authorities”⁴.

The continent’s dark history of autocratic and unaccountable governments, as well as conflicts and crisis in many parts of the continent have posed particular challenges to governance and the fight against corruption in Africa. Unfortunately, many parts of the region are particularly characterised by a proliferation of weak governance zones, where governments are unwilling or unable to assume their responsibilities in relation to public administration and protecting human rights. Also, progress is slow even in those countries where the political will to reform exists. There is also the issue of resistance to reform by groups and individuals benefiting from the status quo. In addition, the capacity of civil society organisations to increasingly become active and outspoken in respect of governance and corruption issues requires additional impetus.

1 See http://www.transparency.org/regional_pages/africa_middle_east/about/africa

2 Global Programme Against Corruption. See <http://www.unodc.org/unodc/en/corruption.html>

3 Reuters, 14/12/2004. See World News, Boston.Com. http://www.boston.com/news/world/africa/articles/2004/12/17/corruption_costs_nigeria_40_percent_of_oil_wealth_official_says/

4 Armstrong, P. 2005. *Summary of Progress Report on Corporate Governance in Africa*. Pan African Consultative Forum on Corporate Governance.

Further challenges facing reform in Africa include the quality of the regulatory and institutional framework to promote transparency and accountability. Notable in this regard is the capacity for reform and enforcement considering that public services are unevenly provided and of poor quality, and civil servants are often so badly paid that they resort to petty corruption in order to survive. Also, the institutions that are intended to provide checks and balances within the system (including prosecuting systems) are generally under-resourced and lack requisite skills, infrastructure and independence. Furthermore, the appropriateness of global standards to local markets and economic structures is also a point in issue. With regards to the regulatory environment, there are lacunas or gaps in the procedural and evidence laws of some countries, some of which are out of date and do not accommodate technological advancements (particularly the evidential status and admissibility of computer and other electronically generated documents) that are part of the present day. This links with jurisdiction problems, owing to the digital revolution that has dissolved physical boundaries of countries around the world, thus, making those with inadequate cyber crimes or internet related offences laws to be susceptible for the commission of such crimes.

Furthermore, the proliferation of small, medium and micro enterprises (SMMs), State-owned enterprises (SOEs), co-operatives and other indigenous forms of economic enterprises within the informal sector in many parts of the continent require significant innovation to mainstream corporate governance. This may be easier said than done considering the lack of incentives for the informal sector to improve their corporate governance standards as well as their capacity to implement reform programmes. A further challenge is the lack of shareholder activism/effective ownership in promoting acceptable levels of corporate governance standards within investee companies throughout the various stages⁵ of investment processes.

1.1.3 Anti-corruption efforts

Research findings from this project indicate that there are emerging developments in terms of combating corruption on the continent, emanating from government and non-governmental actors as well as multi-stakeholder actions at continental, sub-regional and national levels, as well as internationally led initiatives that are relevant to Africa. Noteworthy are the protocol origins of both the Southern African Development Community (SADC) and the Economic Community of West African States (ECOWAS) dating back to

the 1960's and 1970's, long preceding the UN convention against corruption which was recognised in 2003. This report attempts to capture many of these developments, highlighting in the process sixteen case studies that cover the following:

- Actions geared towards strengthening the effective implementation of anti-corruption measures (see case studies on Common Market for Eastern and Southern Africa's (COMESA) Enhancing Procurement Reforms and Capacity Project (EPRCP); whistle blower protection in South Africa, and the SADC Development Finance Resource Centre (DFRC) /Global Corporate Governance Forum (GCGF) initiative for capacity building of development finance institutions (DFIs) in Southern Africa).
- Monitoring and evaluating the prevalence and impact of corruption (see case studies on Governance and Corruption Baseline Survey in Malawi; and the National Anti-Corruption Strategy (NACS) in Sierra Leone).
- Setting the stage for non-state actors, particularly civil society action (in respect of which the report explores the Corporate Governance Codes for the NGOs in Kenya's business development and micro finance sector and Malawi Civil Society Action Against Corruption (CSAAC). Also, private sector initiatives (see case studies of the King Report for Corporate Governance in South Africa 2002 (King II); CBI Nigeria; and the BAAC Malawi).
- Law enforcement both in terms of illicit proceeds (see case study on the EFCC) as well as lessons for investigators and prosecutors (in respect of which the Lesotho Highland Water Project (LHWP) case is highlighted).
- The significance of preventative measures in national integrity systems in respect of which we have discussed the due diligence process of the Nigerian Budgetary and Price Intelligence Unit; the governance of State-owned Enterprises (SOEs) in South Africa; the management of oil revenues in São Tomé and Príncipe; and the National Strategy Process in Madagascar.



5 Including due diligence, negotiation, investment, monitoring and exit stages

1. INTRODUCTION (*CONT.*)

1.2 Objectives

This report attempts to highlight some of the anti-corruption initiatives undertaken by both government and non-governmental actors at continental, sub-regional and national levels, as well as internationally led initiatives that are relevant to Africa.

In order to consolidate Africa's anti-corruption good practices in preparation for the African Forum on Fighting Corruption (AFFC) and the Global Forum V on Fighting-Corruption (GFV), AICC undertook a research project to benchmark anti-corruption best practices in Africa.

The findings of this research project contributed to discussions at the AFFC held from 28 February to 2 March 2007 (in Johannesburg, South Africa) and assisted with the consolidation of the anti-corruption initiatives in Africa that were used to showcase anti-corruption initiatives in Africa.

1.3 Methodology

The Benchmarking Anti-corruption Initiatives in Africa Report is a compilation based on a research project undertaken over a period of four months (from November 2006 to February 2007).

The research project involved a desktop element as well as contributions on relevant anti-corruption initiatives from experts at national, sub-regional, regional and international levels.

The input from the experts culminated from an invitation or call for contributions from a wide range of:

- private sector representatives in Africa (notably from the business community and the banking sector and those engaged in the State-owned enterprise sector and small, micro and medium sized enterprises)
- policy makers, regulators and leading corporate governance organisations engaged in capacity building
- national, regional, continental and international institutions with an interest in corporate governance reform in Africa. It provided a reasonable assessment of a number of good practices or commendable actions that are worth highlighting and which contributed to the discussions at the AFFC and GFV.

1.4 Report Structure

The Report provides an overview of key legal instruments and conventions relevant to combating corruption in Africa.

Furthermore, the report provides some detail on the New Partnership for Africa's Development (NEPAD) and the Africa Peer Review Mechanism (APRM) focusing on their intended outcomes, processes and impacts on good governance in Africa.

The main body of the report is constituted by case studies of various measures against corruption (structured according to the themes of the GFV: strengthening actions for effective implementation of anti corruption measures; monitoring and evaluation; setting the stage for non state actors; law enforcement; and preventative measures) that are ongoing or complete on the continent. Where possible, each profiled initiative entails the discussion of the following:

- a brief description of the implementing organisation/government department or agency as well as an overview of the project (also highlighting the degree of innovation involved)
- the definition of corruption or other problem that the initiative is addressing;
- an assessment of "good practice" as well as the impact and effectiveness of the intervention
- an indication of special circumstances specific to the local environment
- challenges faced and lessons learned that would assist similar interventions for the future.

Appendix I discusses the Business Action Against Corruption (BAAC), a G8 endorsed African initiative to build public - private partnerships in order to combat corruption.

In Appendix II, the report highlights key initiatives and institutional framework supporting anti-corruption work in Africa, including internationally led and regional initiatives. A matrix is incorporated in this section that describes each initiative, the region or country that the respective initiatives emanate from as well as the sector that they target.

A matrix is also included as Appendix III to provide a description of country initiatives in respect of which twenty-six African countries are profiled. These should not be seen to be a definitive nor comprehensive compilation, but an attempt to provide a reasonable assessment of a number of laudable efforts within countries, in respect of which information was readily available within the tight timelines of this research project.

2. LEGAL INSTRUMENTS AND CONVENTIONS

2.1 United Nations Convention Against Corruption⁷

At an international level, The United Nations Convention Against Corruption (UNCAC) creates the opportunity to develop a global language about corruption and a coherent implementation strategy, with the purpose of promoting and strengthening measures to prevent and combat corruption more efficiently and effectively; promoting, facilitating and supporting international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and promoting integrity, accountability and proper management of public affairs and public property.

The Convention provides a number of obligations on state parties which cover:

- a) Preventive measures, such as: developing and implementing preventive anti-corruption policies and practices; ensuring the existence of preventive anti-corruption body or bodies; strengthening public sector systems and efficiency; codes of conduct for public officials; ensuring appropriate measure to promote public procurement and management of public finances; promoting public reporting on corruption; establishing relevant measures relating to the judiciary and prosecution services; preventing corruption within the private sector; promoting active participation of the society; and ensuring appropriate measures to prevent money laundering.
- b) Criminalisation and law enforcement, in respect of: bribery of national public officials; bribery of foreign public officials and officials of public international Organisations; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment, bribery in the private sector; embezzlement of property in the private sector; laundering of the proceeds of crime; concealment; obstruction of justice; liability of legal persons; participation in and attempting criminal acts; knowledge, intent and purpose as elements of an offence; statute of limitations; prosecution, adjudication and sanctions; freezing, seizure and confiscation; protection of witnesses, experts and victims; protection of reporting persons; establishing specialised institutions; cooperation with law enforcement authorities; cooperation between national authorities; cooperation between national authorities and the private sector; bank secrecy; criminal record; and jurisdiction.

- c) International co-operation including extradition; transfer of sentenced persons; mutual legal assistance; transfer of criminal proceedings; law enforcement cooperation; joint investigations; special investigative techniques.
- d) Asset recovery: prevention and detection of transfers of proceeds of crime; measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation; special cooperation; return and disposal of assets; establishment of financial intelligence units; and bilateral and multilateral agreements and arrangements.
- e) Technical assistance and information exchange: training and technical assistance; collection, exchange and analysis of information on corruption; and other measures: implementation of the Convention through economic development and technical assistance.
- f) Mechanisms for implementation including Conference of the States Parties to the Convention.

As the secretariat of the Convention, the United Nations Office on Drugs and Crime (UNODC) is building on the framework of the Convention, working with other international and regional bodies to ensure a unified response that maximises the impact of international assistance.



⁷ http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf

⁸ See <http://www.unodc.org/unodc/en/corruption.html>

2. LEGAL INSTRUMENTS AND CONVENTIONS (CONT.)

2.2 AU Anti-corruption Convention⁹

The African Union Convention on Preventing and Combating Corruption (AU Anti-Corruption Convention) provides a comprehensive framework and is unique among anti-corruption instruments in containing mandatory provisions with respect to private-to private corruption and on transparency in political party funding. Other strong points of the AU Convention are mandatory requirements of declaration of assets by designated public officials and restrictions on immunity for public officials (Art. 7). The AU anti-corruption convention also gives particular attention to the need for the media to have access to information (Art. 12)

The obligation of the parties fall into the following categories:

- a) Preventive measures: The AU has extensive provisions on preventive measures in the public and private sectors. These include requirements in the public service of declarations of assets and establishment of codes of conduct. Also included are requirements of access to information, whistleblower protection, procurement standards, accounting standards, transparency in the funding of political parties and civil society participation. It also requires states to establish, maintain and strengthen independent national anti-corruption authorities;
- b) Criminalisation: The AU Convention calls for criminalisation of a 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 and contains a broad definition of the term public official. Moreover, it includes offences relating both to public sector corruption and private sector (private-to-private) corruption;
- c) International cooperation: The AU Convention also establishes an international cooperation framework, which has the potential to improve mutual law enforcement assistance within Africa. It also provides a framework for the confiscation and seizure of assets; and
- d) Follow-up mechanism: The follow-up mechanism provided for in AU Convention Article 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.

2.3 ECOWAS Protocol on the Fight Against Corruption¹⁰

This ECOWAS Protocol was adopted by the sixteen members of the sub-regional body in December 2001 with the objective of strengthening effective mechanisms to prevent, suppress and eradicate corruption in each of the State parties through mutual co-operation. It has not yet entered into force.

Just like the AU Convention, the obligations on State parties involve the following:

- a) Ensuring preventive measures to combat corruption in the public and private sectors. These include requirements in the public service declarations of assets and establishment of codes of conduct. Also included are requirements of access to information, whistleblower protection, procurement standards, transparency regarding political party funding, civil society participation and establishing, maintaining and strengthening independent national anti-corruption agencies;
- b) Criminalising a wide range of offences, including trading in influence and illicit enrichment. It also includes offences relating to public and private sector corruption as well as the liability of legal persons;
- c) It also establishes an international cooperation framework, which has the potential to improve mutual law enforcement assistance within Africa. It also provides a framework for the confiscation and seizure of assets; and
- d) Follow-up mechanism, in respect of which the Protocol calls for the establishment of a Technical Commission to monitor the implementation at both national and sub-regional levels, as well as gathering and disseminating information, organising training programmes and providing assistance to State parties.

⁹ See http://www.transparency.org/layout/set/print/news_room/in_focus/2006/au_convention

¹⁰ See www.ecowas.int

2. LEGAL INSTRUMENTS AND CONVENTIONS (CONT.)

2.4 SADC Protocol Against Corruption¹¹

The adoption of the SADC Protocol by Southern African Heads of States was in recognition of the extent to which corruption has become a problem in the region. In August 2001, the Heads of States of SADC met in Malawi and adopted the SADC Protocol against Corruption.

To date nine southern African States have ratified the Protocol namely, Botswana, Lesotho, Malawi, Mauritius, South Africa, Tanzania, Zambia, Zimbabwe and Namibia, making the requisite number of countries required for the Protocol to come into force, which it did on the 6th of July 2005.

The purpose of the Protocol is:

- 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 cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the public and private sectors; and
- c) to foster the development and harmonisation 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.

Taking note of the fact that corruption varies amongst countries, which are also at different levels of development, the Protocol seeks to identify traits and forms of corruption that are characteristic to SADC member countries.

Based on the provisions of the protocol, most anti-corruption institutions have made efforts to review the legislation that governs their operations to be in line with the provisions of the protocol as well as to suite the environments that they are operating in.

The SADC Protocol Against Corruption provides for provisions dealing with corruption at trans-boundary level in SADC.

The establishment of anti-corruption agencies by most of the SADC countries is another positive result of the protocol and continued lobby efforts of stakeholders. To date the SADC can boast of ten established institutions.

Pursuant to the entry into force of the protocol will be its implementation. One major challenge in taking the anti-corruption drive further has been the delay in the establishment of the body that will review its implementation. The establishment of this body is provided for under Article 11 of the Protocol and specific time frame provided within which it should have been established. To date this has not taken place and the adverse effect is the delayed implementation of the Protocol.

In 2004, a five year regional anti-corruption programme was adopted and its framework would serve as the implementation tool for the protocol. This programme was scheduled to run from 2005 until 2010. The programme will be implemented both at national level and regional level through the SADC Anti Corruption Committee.



¹¹ Based on submissions by SAHRIT

3. THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT

3.1 Background¹²

The New Partnership for Africa's Development (NEPAD) was launched in 2001 with the objective of reviving the African continent's development, combining The Millennium Partnership for the African Recovery Programme (MAP) proposed by Presidents Thabo Mbeki (South Africa), Abdelaziz Bouteflika (Algeria) and Olasegun Obasanjo (Nigeria) and the OMEGA Plan put forward by Senegalese President Abdoulaye Wade.

The principles of NEPAD are as follows:

- good governance as a basic requirement for peace, security and sustainable political and socio-economic development;
- African ownership and leadership, as well as broad and deep participation by all sectors of society;
- anchoring the development of Africa on its resources and resourcefulness of its people;
- partnership between and amongst African peoples;
- acceleration of regional and continental integration;
- building the competitiveness of African countries and the continent;
- forging a new international partnership that changes the unequal relationship between Africa and the developed world; and
- ensuring that all partnerships with NEPAD are linked to the Millennium Development Goals and other agreed development goals and targets.

The constraints and deficiencies applicable to economic governance in Africa underscore the need for fundamental reforms to close loopholes and eliminate administrative procedures that facilitate corruption, fraud and embezzlement; strengthening institutional capacity; and reduce government intervention and allow markets to operate efficiently to stimulate growth and reduce poverty.

Responsibility for governance issues, certainly in Africa, lies first and foremost with the national authorities to improve economic governance in order to:

- enhance their ability to implement development and poverty reduction programmes with scarce resources;
- execute public management functions in an accountable manner;
- create a credible policy environment in which domestic and international investors can have confidence and trade can be enhanced;
- strengthen absorptive capacity to attract and mobilise development assistance flows; and
- demonstrate transparent and participatory economic policy

making and execution as well as an open flow of information available to all stakeholders, and signal an adherence to acceptable international standards of institutional functioning free of corruption or other such rent-seeking behaviour.

It was within this context, that the Assembly of Heads of States and Government of the AU in July 2002 issued the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance.¹³ The NEPAD framework deals with corruption as a cross cutting issue in the four thematic areas covered within the declaration as not only an economic imperative, but a political priority by Africa's leaders subscribing to NEPAD. This provides a positive opportunity for reform in Africa, through mutual co-operation and mutual learning and the allocation of resources and assistance to strengthen institutions of democracy and human rights; improving budgeting and financial management; fighting corruption; increasing access to social services such as education, health, water and energy; and working towards increased co-operation in mobilising the necessary institutional infrastructure and processes to attract both domestic and foreign investment.

3.2 African Peer Review Mechanism¹⁴

Adherence to the principles and objectives of NEPAD is being monitored by the African Peer Review Mechanism (APRM) in relation to those countries in Africa acceding to APRM. This will require participating countries to accelerate their progress towards adopting and implementing specific objectives, standards, criteria and indicators demonstrating appropriate levels of democracy, political, economic, social and corporate governance.

The APRM, which has to date attracted 25 countries, is a self-monitoring mechanism voluntarily acceded to by member states of the AU with the aim of fostering the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional and economic integration. This is achieved through sharing of experiences and reinforcement of successful best practices, including identifying deficiencies and assessing the needs for capacity building of participating countries.

The APRM review has been finalised by five countries: Algeria, Ghana, Kenya, South Africa and Rwanda. Reviews have also been launched in Benin, Burkina Faso, Lesotho, Mozambique, Nigeria, Tanzania and Uganda.

¹² See www.nepad.org

¹³ *ibid*

¹⁴ Input by Ms. Evelynne Change, Co-ordinator for Corporate Governance, APRM Secretariat



4. CASE STUDIES

This chapter intends to provide a sharper understanding of the efforts that have been and continue to be taken by African countries to eradicate corruption. An in-depth look at several case studies will be taken to survey the different measures, reforms and strategies, which have been used by different countries across the continent of Africa to combat anti-corruption.

4.1 Strengthening Actions for Effective Implementation of Anti-corruption Measures

Case Study 1: *Common Markets for Eastern and Southern Africa – Enhancing Procurement Reforms and Capacity¹⁵*

The Common Market for Eastern and Southern Africa (COMESA) is a regional integration of 20 sovereign African states comprising Angola, Burundi, the Comores, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

Following the successful conclusion of the two-year pioneering Public Procurement Reform Project in December 2004, COMESA worked with the African Development Bank (ADB) in developing a successor project that was designed to deepen the modernisation and harmonisation of public procurement systems in support of regional integration and increased intra-regional trade in COMESA. The ADB Board eventually approved the Enhancing Procurement Reforms and Capacity Project (EPRCP) on 21 July 2006, following several Bank missions and enhancements to the Project Appraisal Report. Grant effectiveness took effect upon signing of the protocol Agreement on 14 August 2006 (Grant ref: 2100155007378).

The objective of the EPRCP is to enhance the public procurement systems of COMESA members states by modernising and harmonising the laws, regulations and procedures and by strengthening the countries capacities to manage public procurement systems. The Project has identified some four key outcomes that have to be achieved during the 4-year project implementation period expected to end in year 2011, namely:

- Public and Private Sector that are fully aware of the principles and working of the modern national and regional public procurement systems

- National Procurement systems that are consistent with COMESA regional procurement Directive;
- Well-trained procurement practitioners developed through a comprehensive programme to be run by selected training institutions and also internally through Training Programmes;
- Mainstreams of Web-based Information Technology in the Procurement processes with a view to increasing the dissemination of procurement Information and streamline operations.

Specific outputs and Activities for year 2007 are described under the project Components and Sub-components below:

(a) Awareness and sensitisation on the modern public procurement framework

A number of awareness and sensitisation workshops will be undertaken in the member states with the assistance of individual consultants who will be tasked among other things with the role of highlighting the features of the procurement Directives passed by the COMESA Authority in March 2003 that would include a discourse on the core principles underpinning good governance and covering among others the concepts of transparency and accountability. The awareness will also cover the background and achievements of the pioneering PPRP. Finally, the conscientisation drive should leave member states at a level where they are able to demonstrate their comment to the reform process through the formation of National Steering Committees (NSC's).

(b) Support to national policy and legislative process

Support to the national policy and legislative process will initially involve the staging of Stakeholders Workshops in a number of member states with a view to mapping out and agreeing on some policy framework. This will then be followed up by direct Technical Support involving the drafting of national procurement laws in those member states that have not already done so. A team of individual consultants will be engaged to provide the necessary support.

(c) Development of training systems

The exercise of developing training systems is a critical component to the capacity development process that is expected to produce a critical mass of procurement professionals capable of managing the modern procurement system. A consulting firm was engaged to develop these systems before getting involved in capacity building and business opportunity seminars in the ensuing years under Component B of the project. The assignment will start off

4. CASE STUDIES (CONT.)

by conducting a diagnostic review of existing human resource capacities and deficiencies in COMESA and then proceed to the actual development of training systems including pedagogically relevant case studies. Some regional workshops will be held for the purpose of getting stakeholder input and ownership to the process.

(d) *Development of procurement information systems*

COMESA managed to develop a near functional prototype Web- based procurement information systems under the pioneering PPRP. This project seeks to substantially enhance that work and come up with state of the art IT driven procurement information systems with e-procurement functionalities. A consulting firm will be engaged to undertake the development work on the procurement information systems that eventually will be presented to a COMESA regional workshop for review and possible approval.

Case Study 2: Whistle blower Protection in South Africa¹⁶

The Protected Disclosures Act 26 of 2000 offers protection for whistleblowers that make “protected disclosures” from any type of “occupational detriment” or victimisation at the workplace. It makes provision for procedures for employees in both the public and private sector who disclose information regarding unlawful or irregular conduct by their employers or other employees, to be protected in terms of the Act.

The Act assists organisations to create a workplace culture which facilitates disclosures by employees in a responsible manner by providing comprehensive guidelines for disclosures (including the creation of alternative reporting lines and procedures) and for the protection of employees from victimisation and occupational detriments, which may occur as a result of their disclosures.

The Act requires that a disclosure must be made in accordance with one of five possible procedures: a legal representative; an employer; a Minister or provincial Member of the Executive Council; a specified person or body; or to any other person as a general protected disclosure. Each procedure contains certain requirements, which must be complied with.

The Act deals with the remedies at the disposal of an employee. If an employee is subjected to an occupational detriment in contravention of the Act, that employee may approach any court (including the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act 66 of 1995)) or tribunal having jurisdiction for protection. A dismissal or other occupational deficit which takes place because the employee made a protected disclosure is automatically an unfair labour practice in terms of the Labour Relations Act. Any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected on account of having made that disclosure, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the disclosure to another post or position in the same division or another division of his or her employer or, where the person making the disclosure is employed by an organ of state, to another organ of state.

The terms and conditions of employment of a person so transferred may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

The implementation of the Act in a workplace requires that policies and procedures be established which provide for such things as: alternative reporting lines; how to decide if a disclosure is bona fide or should get the benefit of the doubt; awareness and training of managers and employees; disciplinary action against persons who breach the protection aspects of the Act; and following up on disclosures.

Hotlines are intended to encourage people to blow the whistle on corruption, albeit anonymously, and are a fairly common form of alternative reporting lines. There are, however, a number of policy issues in relation to such hotlines, including the danger that they will provide a “cloak for the malicious”.

The Protected Disclosure Act has also been criticised as being ineffective in practice, leading workers to have little faith in its ability to provide meaningful protection if they ‘blow the whistle’. The Act is under review by the Department of Justice and Constitutional Development.

16 Based on input from Dr Herrick Mpuku, Programme Manager for Capacity Building at SADC-DFRC

Case Study 3: *SADC-DFRC and GCGF's Capacity Building Initiative for Development Finance Institutions*¹⁶

Based in Botswana, SADC- Development Finance Resource Centre (DFRC) is an autonomous institution established in July 2003 under the SADC principle of subsidiarity to serve as a sub-regional centre of excellence to strengthen the SADC DFIs network and to enhance the capacity of the SADC DFIs to deliver on their mandates towards the achievement of the SADC RISDP goals of economic growth, employment generation and poverty alleviation.

SADC-DFRC, which currently includes 24 DFIs in 11 African countries is partnering with the Global Corporate Governance Forum (GCGF) regarding the development of a model corporate governance and director development pilot program to institutionally strengthen the 24 DFIs within the DFRC network. This will build the capacity of the DFIs and their clients to implement good corporate governance. More than a director-training program, this project is about skills enhancement and advanced techniques in directing financial institutions. The project aims at addressing the challenges faced by directors in the stewardship of their organisations as well as managing risk and strategy in a financial institution having the State as a significant shareholder. In this regard, the project is expected to be:

- practical and focused on operating issues faced by the boards of DFIs
- link in with policy issues in the region e.g. SADC Protocol on Finance and Investments, NEPAD
- both training and interactive in nature with a specialised curriculum for director training within the DFI sector
- the idea is to sensitise on proper processes and procedures in DFIs, including appointments to DFI board of directors by the government
- form a leverage point for other initiatives towards mainstreaming corporate governance in the sub-region and the continent
- consider the role of Company Secretaries in strengthening director skills and consolidating good corporate governance in DFIs
- having the long-term goal of creating cross-pollination of issues and experiences – inter-country and inter DFI.

The first phase of the project involves the development of a tailor made curriculum for directors as well as a corporate governance development programme for trainers premised on good corporate governance practices for the DFI sector in Southern Africa. The project also involves a significant monitoring and evaluation component to assess the impact of the programme on the capacity and environment of the DFIs within the network.

This project is expected to impact on the environment of DFIs in SADC including strengthening their anti-corruption systems. Furthermore, the project will inform anti-corruption measures in Africa, including conflicts of interest issues. This is a flagship project of the GCGF which if successful has the potential of being replicated in other regions of the world.

4.2 Monitoring and Evaluation

4.2.1. Monitoring the Prevalence of Corruption

Case Study 4: *Governance and Corruption Baseline Survey in Malawi*¹⁷

The Malawi Government through its anti-corruption fighting agency, the Anti Corruption Bureau, conducted a Governance and Corruption Baseline Survey from June to November 2005, which was financially supported by DFID.

The survey's main aim was to ascertain the locus and extent of corruption in Malawi and to determine how citizens understand and perceive it and how actual users of the system including the business community, civil society, government and citizens themselves have actually experienced it in practice. The report for this survey was launched by the State president of Malawi on the 5th of February 2007. It is hoped that the survey will help the country in the preparation of action programs, promoting broad based participation and consensus building in the fight against corruption. It is also expected that the results of the survey will be useful to the government, civil society, private sector and faith-based Organisations to jointly design a national strategy and program to fight corruption.

After the release of the survey report, various stakeholders comprising the Anti Corruption Bureau, various government departments, faith-based Organisations, civil society

17 Based on submissions by Benedict Chinsakaso and Sean de Cleene from AICC office in Malawi

4. CASE STUDIES (CONT.)

Organisations and the business community formed a team to plan for one national and three regional workshops. The aim of these workshops was to develop a National Anti Corruption Strategy for Malawi which would be used as a guide by all stakeholders in the fight against corruption. This would ensure that the efforts of the various stakeholders in combating corruption are collaborated and coordinated. It is hoped that this will make the overall anti corruption interventions by various stakeholders to be efficient and effective. The fact that various stakeholders have teamed up and are collaborating in coming up with a master strategy for fighting corruption in Malawi is a commendable development.

The greatest challenge for the government and Anti-corruption Bureau (ACB) is to strengthen the support of other stakeholders by raising awareness, being transparent and making information accessible. The other challenge that the ACB is facing is to make the members of the general public feel obliged to report and reject corruption.

It is apparent that the support which has been received from the private sector, civil society and faith-based Organisations have largely been a response to the political will that the government have shown in fighting corruption. What the nation can learn from this is that it will always be easy for the other stakeholders to join the fight if they see that the government is genuinely willing to take the lead, otherwise this support could easily be lost.

4.2.2 *Evaluating the Impact of Corruption*

Case Study 5: National Anti-Corruption Strategy, Sierra Leone¹⁸

The development of the National Anti-Corruption Strategy (NACS) is a vital component of a comprehensive national programme to combat corruption in the country and an indication of the government's commitment to good governance and institutional reform.

The NACS was developed by a high level Steering Committee under the chairmanship of the Minister of Finance, in consultation with a cross section of society and stakeholders in Freetown and regional capitals in Sierra Leone. This culminated in the National Consultative Group Meeting held in Freetown (February 2005), with the objective of increasing public participation in the review and finalisation of the draft NACS that was presented to the government.

There are three components to the NACS. Firstly, it examines the face of corruption in the country, focusing on the root causes of corruption and the perception of the citizens regarding impact and costs of corruption to the nation. Secondly, the NACS covers the priority areas that need to be tackled in combating corruption and the institutions deemed to be most susceptible from corruption (corruption hot spots). Thirdly, the NACS provides recommendations that are necessary for each sector to reduce the risks of corruption in the system.

The National Anti-Corruption Strategy 2005 (NACS) identifies corruption as a critical factor in the “personalisation” of the government and its services in the country and the emergence of a shadow State that uses the apparatus of the formal state for informal or personal uses in Sierra Leone. Corruption is also seen as the number one threat to security as assessed by the Security Sector Review undertaken by the Office of National Security (ONS).¹⁹ The level of corruption, governance and transparency in Sierra Leone is acknowledged by the NACS as a principal factor for the socio-economic decay, poverty and instability in the country, as well as a major factor that led to and fuelled the decade-long civil war.

Other causes of corruption, as highlighted by the NACS, include poverty, the abuse of cultural practices that facilitate corruption (e.g. the cultural practice of ‘shaking hands’ or giving of token gifts as a courtesy – originally in the form of kola nuts – during meetings presents an opportunity for misuse) and the misuse of public office for private benefit.

The NACS identified a number of corruption hot spots in the country that include the following sectors: health, education, judiciary, agriculture, local government and mineral resources.

The NACS further provides a number of recommendations to combat corruption in the country concerning the executive offices of government, the ministry of foreign affairs and immigration department; law enforcement and security; the judiciary; social services; health sector; education sector; public finances; ministry of works, housing and technical maintenance; procurement; natural resources; ministry of development; local government and decentralisation, oversight agencies (including the Auditor-General, Ombudsman, Anti-Corruption Commission, and public complaints mechanism); electoral systems, parastatals and non-state actors.

¹⁸ Information is based on the National Anti-Corruption Strategy 2005 (NACS), except otherwise stated

¹⁹ Institutional corruption and bad governance/corruption occupy ranks 2nd and 7th on the ONS “Threat Calculations to Sierra Leone Vision” prepared for the Security Sector Review. These two subject headings being essentially the same, should give it the top rank in terms of security threats. *ibid* NACS, p.7

²⁰ Please note that Corporate Governance Codes have been developed for the NGO sector in South Africa (by Charities Aid Foundation for Southern Africa –CAFSA)

4.3 Setting the Stage for Non-State Actors

4.3.1 Integrity Systems in Civil Society²⁰

Case Study 6: *Study of Governance within Business Development and Micro Finance NGOs in Kenya*²¹

In July 1999, the British Partnership for Enterprise Development (BPED) of the Department of International Development (DFID) in Kenya, commissioned a study of current governance practices in Business Development (BDOs) and Micro Finance (MFIs) non governmental organisations (NGOs) in Kenya. BPED commissioned this study with the purpose of:

- Reviewing the methods of current governance practices in BDO and MFI NGOs and to identify examples of good governance practices developed by NGOs;
- Increasing understanding of the governance practices and needs in NGOs working in the area of small business development and Microfinance;
- Recommending strategies [for DFID and NGOs] for strengthening Business Development and Microfinance NGO governance;
- Building local capacity for delivery of support for Good NGO governance in Kenya;
- Identifying and understanding the respective roles of board and management, and particularly those of the Chairperson and Chief Executive;
- Identifying overall strategies and specific actions for improving governance;
- Identifying problem issues and training needs associated with governance in NGOs; and
- Identifying major governance issues that ought to be addressed in a study of governance in the co-operative sector.

The consultants drew on the various Codes of Practice for Governance developed by the private and corporate sectors, the legal responsibilities of Directors under Company law, the experiences of Governance practice as examined in various documents relating to NGO governance and more general publications focussed on governance.

The project utilised case-study methodology and therefore two MFIs and two BDO NGOs as well as a co-operative union were identified. The Institutions who agreed to take part in the study were Faulu Kenya Limited, Kenya Women's Finance Trust, Kenya Enterprise Promotions Programme, Approtec and

Machakos District Co-operative Union. The project was accomplished through four phases that are as follows:

- Review of good governance practices and design of an assessment tool for the study;
- Assessment and study of governance practices in the 2 BDOs, 2 MFIs and 1 Co-operative Union with the preparation of 5 individual brief reports for the respective institutions; and
- A workshop was held to examine issues of governance in NGOs with a wider audience and to agree on training and support needs.

The final Report proffered 10 recommendations covering: capacity building for a framework of NGO governance support in Kenya; codes of principles and practice for good governance; donor approach to good governance; training; increasing the pool of potential board members; compliance and standards; and governance of co-operatives.

In addition and as an outcome of the study, the consultants produced a self assessment Benchmarking tool for NGOs based on the assessment tool devised as a basis for the study.

Case Study 7: *Malawi Civil Society Action Against Corruption*²³

The Civil Society Action Against Corruption (CSAAC) is an initiative of civil society organisations in Malawi initiated and implemented by AICC in partnership with Action Aid. CSAAC was launched in September 2006 with the aim of complementing government efforts in the fight against corruption. It is expected that CSAAC will facilitate increased participation by civil society Organisations in partnership programmes aimed at effectively eliminating corruption. Specifically, CSAAC aims at:

- increasing awareness and building capacity among civil society in Malawi on anti-corruption related issues;
- developing strategies and policies aimed at addressing loopholes that promote corruption;
- creating a learning forum for civil society organisations on corruption related matters;
- developing rating and award systems on corruption levels and anti corruption efforts in the civil society sector; and
- developing in-house policies aimed at addressing corruption within the civil society sector.

21 See www.ccg.or.ke

22 Hermier, A. 2004. Non-state actors in Senegal, Towards a strategy for political action by non-state actors (ECDPM In Brief 3C). Maastricht : ECDPM. See <http://www.ecdpm.org/>

23 Input from Benedict Chinsakaso and Sean de Cleene (ibid)

4. CASE STUDIES (CONT.)

CSAAC is fairly new and it is worth noting that since its inception, CSAAC has held consultative workshops in all the three regions of Malawi with the aim of soliciting views on main focus points affecting the fight against corruption in Malawi in which civil society Organisations could partner to address. In addition to that, CSAAC has engaged itself in awareness programmes with the media and the general public on the importance and need to engage in the fight against corruption. CSAAC deliberately took this approach in order to build consensus among civil society organisations on issues to be focussed on and to also raise awareness among members of the general public on why they need to participate in the fight against corruption. As the coalition forges ahead with its work, it will have already broken the ground in readiness for the implementation of its activities.

CSAAC leverages from the political will in Malawi to fight corruption. The ACB is very accommodative and willing to work with other stakeholders including the civil society as it leads in the battle against corruption in Malawi.

Incidences of lack of accountability on the part of some civil society organisations (regarding donor funds) present a challenge to the profile of the civil society movement against corruption. In this regard, civil society is increasingly pressured to 'walk the talk'. The other challenge is for the civil society to strive to always create more space for discussions with government regarding corruption issues as such space has rarely been created in the past. The same would also be expected from the government side.

4.3.2 Private Sector Initiatives

Case Study 8: *The King Report on Corporate Governance for South Africa (2002)*²⁴

In 1992, the Institute of Directors of Southern Africa ("IoD") initiated the establishment of the King Committee on Corporate Governance ("King Committee") and the release of the first King Report in November 1994, which enshrined corporate governance in South Africa. The King Committee, chaired by former judge and businessman Mervyn King, is also a voluntary body with a wide range of institutional and professional representative interests serving on the Committee (at the invitation of the IoD).

The first King Report drew attention to the importance of a properly functioning board of directors as a key ingredient of good corporate governance. It was not stimulated by any

significant crisis in the corporate sector at that time, but was generated by similar developments in other Commonwealth countries following the Cadbury Report in the United Kingdom and also concerns with the competitiveness of the South African private sector following the re-admission of South Africa to the global economy in 1994 with the advent of the new democratic dispensation.

The second King Report ("King II") came about following an assessment of developments that had taken place in the South African economy and the global markets since 1994. King II was designed to elaborate on the practices of good governance as required in law, and was not intended to substitute or in any way replace legal deficiencies. To the extent that legal deficiencies were identified, certain recommendations were made by the King Committee for consideration by the relevant authorities. A number of the guidelines of King II were structured to encourage greater board effectiveness and did not merely set out procedural requirements. For this reason, a number of the guidelines (certainly in the area of non-financial reporting) were considered aspirational at the time of the introduction of King II and perhaps remain so for many companies two years hence. A further feature of the guidelines contained in King II, was to align international standards with domestic practices and circumstances.

The pivotal influence of King II is also acknowledged in respect of promoting corporate integrity in South Africa with regards to the following:

- Influence on legislative reforms and regulatory measures as well as the societal obligations of the corporate sector in terms of contributing to the country's transition and development and ensure that the South African regulatory environment is operating in accordance with international best practices and conventions.
- The JSE listing rules have been comprehensively updated to incorporate certain elements of King II as mandatory requirements for companies quoted on the JSE. Complying with the King II has become a requirement for companies listed on the Johannesburg Stock Exchange, which has a 'comply or explain' mandate in place.
- In taking this a step further, the JSE has also launched a social responsibility index (in conjunction with FTSE in the United Kingdom), which seeks to validate companies' adherence to the principles and standards of corporate governance set out in King II and other international norms and conventions.

24 Armstrong, P., Segal, N. and Davis, B. 2005. Global Best Practice: Corporate Governance: South Africa, a Pioneer. SAIIA. See also Agbazue, T. et al. 2006. NEPAD APRM Technical Report on Corporate Governance for South Africa. DPISA

- The banking regulator has introduced rigorous provisions around director accountability in amendments to the South African Banks Act, which reflect a number of the principles enshrined in King II.
- The State has used the platform laid by King to initiate its own codes of conduct for example, the Protocol on Corporate Governance for the Public sector that introduces inter alia some uniform rules for SOE's.
- King II is for the most part the benchmark in Southern Africa and has been adopted by many Southern African countries and provides a model of good governance elsewhere on the continent.

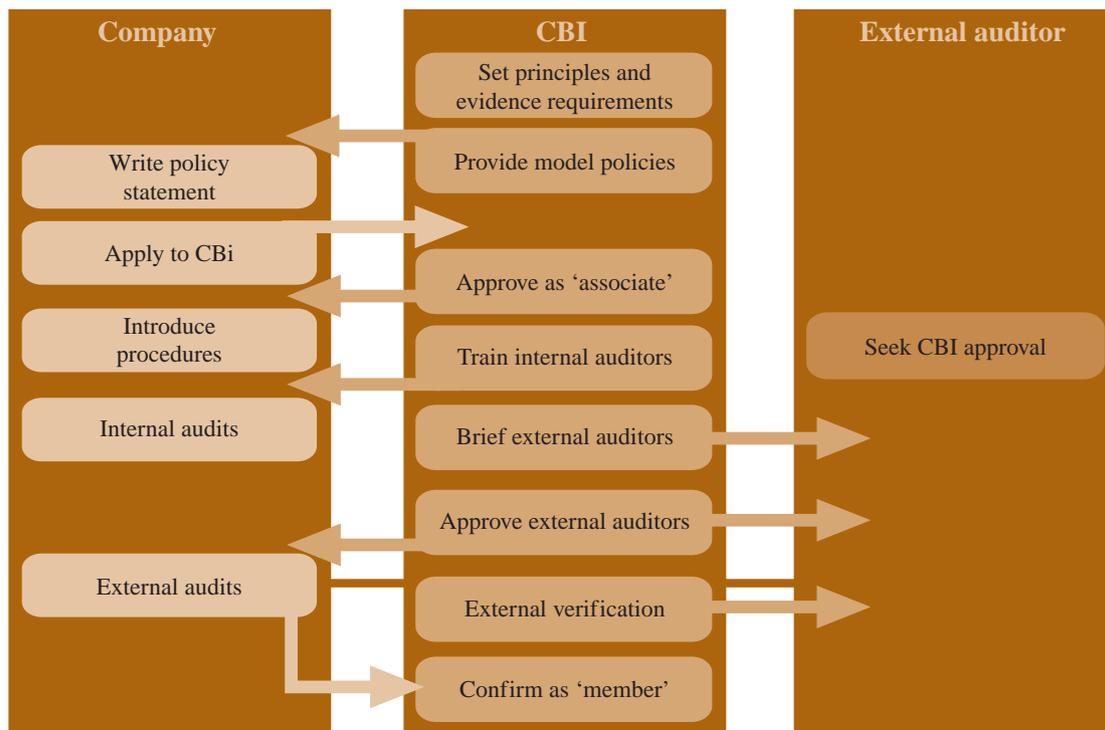
Case Study 9: Convention on Business Integrity – Nigeria

The Convention on Business Integrity (CBI) is a company limited by Guarantee. The organisation was established in 1997 with the mission of promoting ethical business practices, transparency and fair competition in the private and public sectors. In January 2006, The Convention on Business Integrity (CBI) joined the BAAC network as the Nigerian partner.

Signatories of the Convention undertake to observe the values of the Code of Business Integrity, both within their own Organisations and in their dealings with customers and partners. The code includes both sanctions and incentives for the Organisations involved. To show their pledge to the Convention, signatories enter into a purely moral commitment with the intent of benefiting from and upholding the platform of credibility which the members of the Convention share.

Current signatories include Dunlop Nigeria, Lagos Business School, Pfizer Global Pharmaceuticals, Express Discount Limited, Prominent Securities Limited, Diamond Bank Plc, Cadbury Nigeria, GT Bank Plc, Vmobile Nigeria, Prima Garnet Ogilvy, MTN Nigeria, Omolayole and Associates, Federal Capital Territory Administration, Denham Management, Riskwatch Limited and SAP AG. Over the past three years the Convention has continued to gain support and followers in Nigeria and to be recognised globally as a very innovative and as a positive contribution from Africa to global best practices relating to the promotion of good governance – at the governmental level and vis-à-vis the private sector.

The CBI concept is borrowed from the traditional method of saving in Africa where members of a community agree to poll money together and collect on agreed terms and tenure. In the



4. CASE STUDIES (CONT.)

case of CBI, it involves polling together credibility from bigger companies known for their reputation and ethical standing in the markets in which they operate and those that are less known. This is administered by a group of signatories referred to as the Core Group who ensure that there is a consistent peer-to-peer monitoring. Conformity is ensured by companies publicly declaring their adherence to the code. There is also the peer pressure component which is principally driven by stakeholders who act as whistleblowers/watchdogs. Finally, there is the oversight mechanism of the General Assembly of Signatories and The Core Group and the Secretariat.

Key features of the CBI are:

- a) **Accreditation:** The CBI has a very rigorous accreditation process as set out in the figure above on page 19.
- b) **The Rating System:** The Convention on Business Integrity designed the Rating System as a deliberate set of index to ensure and measure compliance. This system which is constantly subject to adaptation of its mode and not the principles has been adapted by Nigeria's Economic and Financial Crimes Commission as a way of measuring Integrity within the Banking and Financial Sector. This will be launched later this month. It has been proven effective among CBI signatories as a way of measuring a company's compliance to its declared values by its stakeholders. Where there is a high rate of agreement between a company's stated values and the views of its stakeholders in relation to this, such a company is awarded the Tick Mark. The Components of the Rating System are as follows:
 - **Credentials:** This is to establish the bona-fides of an entity, whether or not it is properly set up to carry out what it is doing. It includes simple background checks on its registration status, location, business scope, ownership, etc.
 - **Value System:** This is simply "the way we do things around here". It is the set of behaviour standards that an organisation has adopted as its guiding principles in carrying out its objectives. These must be understood by all stakeholders and be anchored in the culture of the organisation.
 - **Accountability:** The organisation should make appropriate disclosure to all stakeholders regarding information to which each stakeholder group should have

a right, subject itself to appropriate scrutiny from them and recognise when there is need to seek approval from relevant higher authority (e.g. shareholders, board or supervisory body) concerning major decisions to be taken/implemented.

- **Commitment:** A demonstration of the company's will and power to comply with its own stated principles. This may be through internal audit procedures or an appropriately empowered nominee of the board (or its equivalent). In either case there must be a mechanism to bring the organisation back to its stated principles in case it deviates from it.
- **Track Record:** The commitment is better measured when the organisation can show anecdotal evidence of rewards to those who uphold the values and sanctions for those that flout the values irrespective of their position or contribution/importance to the organisation's success.

The Convention on Business Integrity, CBI has faced a lot challenges within its context, that are not uncommon to an organisation who works towards repositioning the perception that there is alternative to corruption. This challenge has resulted in a number of delays to public declaration for fear of being put in the spot light and subsequently losing business, there is also the fear of losing business particularly from the public sector and fear of the reprisals of non-compliance. The fear of a defaulting signatory also presents its challenge as such an occurrence has the potential to damage the sanctity of the Code and the reputation of the Signatories as a whole. Accessing Funding for an organisation such as this also has proven difficult.

The challenges mentioned above also have ensured that businesses that voluntarily subscribe to CBI should be taken seriously as many of such have demonstrated this as a way of publicising their commitment to follow the path of ethical practice in business despite the odds against them.

Case Study 10: Malawi BAAC²⁵

In June 2005, the Malawi Leaders' Forum on Building Alliances to Eliminate Corruption, which is a multi-stakeholder initiative with support from the presidency that involves a series of round-table discussions facilitated by BAAC Malawi and AICC/ACSF to map out the way forward and develop clear set of outcomes that includes the following measures:

- The establishment of a business action against corruption taskforce that includes government, private sector and civil society representatives;
- The development of a code of conduct for Malawi private sector and state enterprise that is to be endorsed and agreed upon by all management;
- The set up of an independent ratings system/agency that will assess systemic action of companies, state enterprise and government procurement (potentially using CBI as model); and
- The move towards a national framework on corruption that integrates government, business and civil society initiatives under one common umbrella.

The first assignment that the taskforce undertook was to initiate a process towards the development of a code of conduct for the business community. This code, which is called ‘Business Code of Conduct for Combating Corruption in Malawi,’ was launched in February 2007.

The Code has been established to serve as a guiding tool for business enterprises to develop effective actions in combating corruption in all its forms in Malawi. It will also provide a framework for good business practices and risk management strategies in the fight against corruption. It is hoped that the Code will assist in eliminating corruption mainly in the business sector but also in other sectors since business enterprises will commit themselves to counter corruption. It is also expected that the Code will help to improve business standards in Malawi.

During the G8 Business Summit held in July 2005 where global and African leaders identified corruption as a major obstacle to investment and growth, the endeavours of BAAC in Malawi was cited as a model where the business community had taken a deliberate effort to combat corruption by engaging with other sectors including the government. The multi-sectoral approach that the business community in Malawi has adopted in combating corruption has led to the creation of a rare blend of synergies that has proved to be effective in fighting corruption. The fact that the multi-sectoral taskforce has successfully developed the Code of Conduct is evidence enough of how much could be achieved if various stakeholders worked in unison in the fight against corruption.

In Malawi the political will to fight corruption is there especially with the current government. The State President has oftentimes

called upon everyone in Malawi to join in the battle against corruption. Complementing this is the interest and willingness of the business community and civil society to play active roles in fighting corruption. In most cases, the business community and civil society would view the responsibility to fight corruption as resting with the government and as such leave the responsibility to government alone.

Although BAAC Malawi should be commended for successfully developing the Code of Conduct, it still remains a challenge to see to it that companies use it after the launch. The other challenge for BAAC is to ensure that it does not lose its members with time and to also ensure that all members continue to actively participate in the BAAC.

4.4 Law Enforcement for Effective Implementation

4.4.1 *Illicit Proceeds*

Case Study II: Economic and Financial Crimes Commission of Nigeria²⁶

The Economic and Financial Crimes Commission (EFCC) was established as one of the mechanisms for the prevention, investigation and prosecution of corrupt practices, economic and financial crimes in the public and the private sector. The Economic and Financial Crimes Commission (Establishment) Act was first enacted in 2002.

The Act, which was re-enacted in 2004, is revolutionary in many respects. For the first time, powers of co-ordination and enforcement of varied but related economic and financial crimes laws are vested in one body. The definition of economic and financial crimes in the Act is all encompassing. Secondly, because the nature of the crimes handled by the EFCC is at the heart of the economy, all critical stakeholders including security, law enforcement agencies and apex financial regulators are made members of the EFCC. Thirdly, apart from the offences created by the Act itself, the EFCC has responsibility to specifically enforce the provisions of other principal laws bordering on economic and financial crimes. The Nigerian Financial Intelligence Unit (NFIU)²⁷, which is the Nigerian arm of the global Financial Intelligence Unit (FIU), is domiciled within the EFCC (as an autonomous unit).

²⁶ Input by Ms. Ime Enang (Project Co-ordinator, CBI)

²⁷ The core role of the NFIU is to serve as the country’s central agency for the collection, analysis and dissemination of information regarding money laundering and the financing of terrorism. See www.efccnigeria.org/nfiu/nfiu.htm

4. CASE STUDIES (CONT.)

To date, the Commission has successfully implemented its investigation and prosecution mandate. It can boast of the following achievements in its 4 years of existence:

- Petitions Received: 4,324
- Cases under Investigation: 2,103
- Cases under Prosecution: 306
- Arrests: More than 2,000
- Properties Recovered: Several houses, land, luxury cars, airplanes, and oil tankers
- Value of Assets and cash Recovered: \$5 billion US Dollars
- No of Convictions: 88

Despite these achievements, the Commission believes it can create an even greater impact if more attention is paid to its crime prevention and civic education mandate. The Fix Nigeria Initiative (FNI) was therefore initiated to pursue this mandate with the realisation that the EFCC and other anti-corruption agencies cannot effectively fight and eliminate corruption alone. This initiative will enable Civil Society Organisations (CSOs) and the private sector to become active agents in the fight against corruption as well as seek to build partnership between the Commission and the media, Community Based Organisations (CBOs), Non Government Organisations (NGOs), public institutions, as well as the business community (including bankers, lawyers, manufacturers association, oil companies, and small and medium enterprises).

The main challenge has been the fear and trepidation associated with the EFCC. For a project that is aimed at working with communities, this development has contributed to reducing the success rate. However, the cooperation of the Nigerians in diasporas has been ignited by this initiative in no small measure. Perhaps related to that is the fact that the Commission had engaged the services of Nigerians previously living abroad who have returned home with a vision to make a contribution to this change management program. An input of the idealism with which they have returned, the courage, will and commitment to ensure that the change takes place has made tremendous impact on the project.

4.4.2 Lessons for Investigators and Prosecutors

Case Study 12: Lesotho Highland Water Project²⁸

Lesotho was recently hard hit by a grand corruption scandal that involved the LHWP, which was a culmination of about 30 years of negotiations between the governments of South Africa

and Lesotho to channel the waters from the Maluti mountains of Lesotho to the industrial heartland of South Africa, in Johannesburg. This resulted in a treaty that was signed by the two governments of the Republic of South Africa and the Kingdom of Lesotho on the 24th October 1986, in Maseru, Lesotho²⁹. The total cost of the project was estimated at US\$8 billion with most of the money expected to come from the World Bank. This project became Africa's largest water transfer scheme, and one of the world's largest infrastructure projects under construction.³⁰

Following the audit of the LHDA in 1993, serious irregularities were identified ranging from abuse of the housing scheme to charging personal expenses to work accounts, by the then Chief Executive (CE), Mr. Masupha Sole. A full-scale disciplinary enquiry was undertaken, resulting in Mr. Sole's dismissal as CE of LHDA in 1995. Investigations revealed that the CE was living way beyond his means – expensive cars, gifts and travel.

In 1996, the LHDA began civil proceedings against Mr. Sole for the return of the monies which he had appropriated during his employment by the LHDA. It was during these proceedings that it emerged that Mr. Sole had accepted bribes from various companies contracting and consulting at work on the LHWP, via agents/intermediaries, involving millions of dollars. This resulted in the prosecution and conviction of the following, but not limited to the provided list:

- Mr. Masupha Sole, the former LHDA Chief Executive: Fined M8.9 million and 15 years in jail
- Acres (Canadian company): Fined M15 million
- Lahmeyer (Germany company): Fined M12 million
- Spie Batignolles (French company) : Fined M10 million
- Du Plooy (South African individual) : Fined M500,000

The LHDA itself has had to make some serious introspection, following these corruption scandals, and have identified the following shortcomings in their procurement process:

- Procurement Rules, then, were not well developed, as they allowed too much discretion
- The Chief Executive could easily make decisions that contradicted recommendations of the Evaluation Committee
- The appointed consultants and contractors could easily bypass the technical supervisors and directly engage the Chief Executive
- The evaluation of Technical Proposals initially had no mechanism for moderating too liberal scores
- There were potential slippages when assessing and correcting

28 Based on input by Mr. Litelu Ramakhoro (Director, Corruption Prevention & Public Education) Directorate of Corruption and Economic Offences, Lesotho

29 Altogether, the project featured five (5) dams, 200 km tunnels through the Maluti mountains and 72 megawatt hydropower plant to supply power to Lesotho

30 For management purposes, three (3) authorities were established to oversee the smooth implementation of the project: (a) The Lesotho Highlands Development Authority (LHDA) was to manage the part of the project that fell within the Lesotho borders; the construction, operations and maintenance of all dams, tunnels, power stations and infrastructure, as well as secondary developments such as relocation, resettlement, compensation, supply of water to resettle villages, irrigation, fish hatcheries and tourism; (b) The Trans-Caledon Tunnel Authority (TCTA) was responsible for part of the project that fell within the borders of South Africa – care of the delivery tunnel transporting water to South Africa; and (c) The Joint Permanent Technical Committee (JPTC) which later changes to become the Lesotho Highlands Water Commission (LHWC). The LHWC was a bi national body consisting of three (3) delegates per country, whose responsibility was to advise LHDA on design, technical acceptability, tender procedures and documents, cash flow forecasts, allocation costs and financing arrangements

anomalies, for example, arithmetic errors, man-months not matching Financial Proposals, etc. Trying to bring all bids to the same terms; comparing apples with apples

The following measures have had to be undertaken so as to tighten up the control mechanisms:

- Introduction of Protocol VI – clear delegations
- Drafting of comprehensive bidding documents – clear with no ambiguities
- Tightening of procedures, for example, clause to disregard too extreme scores i.e. any scores 7 points below or above average
- Introduction of awareness programmes for staff
- Internal audit measures
- Additional checks and balances – Board and LHWC
- Stringent periodic audit of contracts by Donor Agencies
- Establishment of sound governance framework ensuring the principles of Transparency, Accountability and Fairness

Since the scandals involved the multinational companies (MNCs), LHDA has identified a set of Best Practices, which need to be taken into account when dealing with the multinational corporations:

- Undertaking frequent independent Fraud and Corruption Risk Assessment
- Developing and implementing an ethics and fraud hotline
- Intensifying Fraud and Corruption awareness training
- Developing a code of ethics
- Establishing a fraud policy and response plan

In taking the anti-corruption measures beyond the LHDA, the Government of Lesotho has just reviewed its public procurement regulations and procedures. The process has been decentralised so that individual ministries have their own procurement committees. Some specific anti-corruption mechanisms are now enshrined in the regulations (Public Procurement Regulations No.1 of 2007, published 5th January, 2007). Currently, there are rigorous workshops for the training of the ministerial committees. The private sector continues to play a vital role in all these developments.

The Prevention of Corruption and Economic Offences Act No.5 of 1999 has been amended, thus enabling the Directorate on Corruption and Economic Offences (DCEO) to cover the private sector in its operations as well (Prevention of

Corruption and Economic Offences (Amendment) Act No.8 of 2006, which became effective on its date of publication, 15th December, 2006).

4.5 National Integrity Systems: The Significance of Preventative Measures

Case Study 13: Budget Monitoring and Price Intelligence Unit – Due Diligence Process in Nigeria³¹

One major area prone to corruption is the procurement sector; the procurement sector is one area that lacked transparency and accountability. A lot of corrupt practices occurred in the procurements sector. The introduction of the ‘Due Process’ mechanism in public procurement in the country has helped to reduce the corruption level in that sector drastically.

The objectives of the Budget Monitoring and Price Intelligence Unit are to:

- Harmonise existing government policies/practices regarding public procurement;
- Determine whether or not due process has been observed in the procurement of services;
- Introduce more honesty, accountability and transparency into the procurement process;
- Establish and update pricing standards and benchmarks for all supplies to Government;
- To monitor the implementation of projects during execution with a view to providing information on performance, output and compliance with specifications and targets; and
- Ensure that only projects which have been budgeted for are admitted for execution.

The due process mechanism in Nigeria has assisted in reducing the rate of corruption in the public procurement sector. It can be said that the process of awarding contracts is now done in a more transparent manner. Adverts are placed in newspapers for the award of contracts for executing developmental projects. This process is also commended for saving the nation over US\$ 3 billion which would have been lost through inflated contracts. It has significantly increased the quality of government’s capital spending. The process has also introduced local and international competitive bidding for government contracts.

31 Based on input by Ms Ime Enang (ibid)

4. CASE STUDIES (CONT.)

Furthermore, this reform has been formalised in legislation waiting to be passed by the National Assembly, by introducing local and international competitive bidding for government contracts.

Case Study 14: Governance of State-owned Enterprises in South Africa³²

A significant factor in the South African economy is the public sector. State-owned enterprises (SOEs) in South Africa control about a quarter of the country's capital stock, which makes this sector significant in the overall context of the South African economy.

Some SOEs in the country rank among the largest of their kind globally, including Eskom (electricity utility serving not just South Africa but much of Africa) and Transnet (transport utility responsible for South Africa's ports, railway system, national airline, etc.).

Notable in this construction, is that the SOEs are responsible for generating approximately a third of all savings in the country (on a gross basis). This means that they play a critical role in the allocation of capital in the South African economy.

The standard of corporate governance in this sector, therefore, plays an important role in the South African economy. This sector is also regulated by some of the most advanced, and onerous, public finance legislation internationally under the Public Finance Management Act (PFMA). This extends to the provincial and municipal government sectors and any commercial enterprise established at these levels.

The State has used the platform laid by King to initiate its own codes of conduct for example, the Protocol on Corporate Governance for the Public sector that introduces inter alia some uniform rules for SOE's (updated with King II and adopted by Cabinet in 2003), as well as the Treasury Regulations issued in terms of the PFMA.

Corporate governance practices have been promoted in SOEs with the release of the Policy Framework for SOEs by the Department of Public Enterprises in 2000.

The PFMA has also expanded the financial reporting requirements for SOEs, for instance, requiring that the board of directors disclose financial and non-financial information to the shareholder of public enterprises and SOEs. The Board of SOEs are required to submit budgets, corporate plan including

a borrowing program, Annual Report and financial statement. Further, the Treasury regulation requires that the board of an SOE conclude a shareholder compact with its shareholder.

There is however the concern that SOEs are doubly burdened by the requirements of both the Companies Act and the PFMA, which makes them more sluggish in complying with the regulations than are their private sector competitors.

Case Study 15: Management of Oil Revenues in São Tomé and Príncipe

In 2004, Nigeria and São Tomé and Príncipe signed a joint declaration³³ regarding transparency and governance in the JDZ shared by the two countries. Under the declaration, the JDA is required to make public the basis for all awards of interest in the JDZ, including the technical and due diligence analysis supporting such awards.

To help São Tomé and Príncipe limit the potential future mismanagement of oil revenues, a project within Columbia University (USA) was initiated to advise on the new laws and institutions needed in São Tomé and Príncipe's new oil sector. The result of the project is intended to help Saotomeans translate oil revenues into sustainable economic development, and demonstrate what can be done to maintain transparency and accountability for oil exporters around the world.³⁴

This has led to the adoption of an Oil Revenue Law³⁵ designed to guarantee that all of the country's expected windfall income from petroleum is transparently spent on improving the lives of the tiny country's inhabitants.

The law is underpinned by two fundamental principles. The first idea is centered on the payment and management of oil revenues, while the second fundamental idea of the law is centred on oil revenue management auditing, transparency and oversight mechanisms, which are considered to be of great importance to ensure that this law will be enforced according to its objectives.

Highlights of the Oil Revenue Law include:

- The establishment of a National Oil Account – in which all oil revenues shall be deposited directly. Mechanisms are also introduced to ensure that such revenues will not be used indiscriminately. Thus, limits are set forth for the use of the oil revenues, such limits not excluding, however, the need to make decisions about spending on priority sectors on which expenditures will focus and the respective revenue allocation.

32 See Agbazue, T. et al (ibid)

33 http://www.irinnews.org/report.asp?ReportID=41901&SelectRegion=West_Africa&SelectCountry=NIGERIA-SAO_TOME_AND_PRINCIPE

34 Centre on Globalisation and Sustainable Development (CGDD). See http://www.earthinstitute.columbia.edu/cgsd/STP/index_oillaw.htm

35 To download an English or Portuguese version of the law, visit http://www.earthinstitute.columbia.edu/cgsd/STP/documents/stp_oil_law_english.pdf

- Similarly, the law introduces mechanisms to prevent the revenues being channelled to other accounts. Revenues may only be deposited in the State treasury accounts or in accounts established for that specific purpose in the name of the State, as authorised by the National Assembly.
- The law establishes quantitative and qualitative limits on the amount of oil revenues that shall be used for annual budgetary expenditures. The quantitative limits define, in certain breadth, the maximum amount of annual expenditures to be financed by oil revenues. The qualitative limits determine the basic principles for the calculation of the annual expenditures within the maximum fixed limits in respect of planned and forecasts of future revenues and absence of distortions in the economy.
- The finite nature of oil resources was also taken into account, as well as the need to introduce mechanisms that will allow São Tomé and Príncipe to face the post-petroleum era with minimum economic distress.
- The management and investment of the oil revenues are assigned to an Investment and Management Committee, which is the institution with the authority ascribed by law for that purpose under a “prudent investor rule”.
- The law establishes clear transparency and publicity rules with respect to all acts and documents related to the oil activity. The law also creates a Petroleum Oversight Commission, with independence and administrative and financial autonomy to ensure its effectiveness, with oversight, investigative and sanctioning powers.

Case Study 16: *The National Strategy Process in Madagascar*³⁶

The government in Madagascar in demonstrating its commitment to combating corruption in order to reinforce good governance and rule of law as a mechanism for achieving a fast and sustainable development of the country, established the High Council on Corruption (July 2002) and appointed its president, members and executive secretary (September 2003). The High Commission was mandated to design an appropriate legislation, institutional framework, and establish the national strategy.

As part of its mandate, the High Council was responsible developing the national strategy for the country. The national strategy against corruption was conceived through a participatory process, which included associations, religious bodies and ordinary citizens belonging to civil society, private sector and public bodies. The wide consultative process for developing the strategy extended to diverse sectors from regions and provinces of Madagascar. The national consultation

which lasted for a year was conducted from February 2004 to April 2004, involving nearly 6,000 persons who formally participated, and representing nearly 40% of the sample. This has been acknowledged to be the highest rate regarding response in Africa for such consultation.

The final version of the national strategy was officially presented on July 2004, succeeded by a ceremony of signature with the day being earmarked as national day for the strategy against corruption. In this regard, the national strategy would be updated every year after an assessment.

All public bodies (led by the Prime Minister³⁷), civil society organisations, private sectors, journalists, and the media signed a personal “letter of commitment to implement the national strategy” during and after the convention. More than 2,000 letter of commitment were received by the High Council.



36 Based on submissions by Mr. Nampoina Rabenasolo (Directeur Adjoint, Education, Communication and Public Relations Independent Anti-corruption Bureau, Madagascar)

37 The President of the Republic was abroad and signed later the personal letter of commitment



APPENDIX I: BUSINESS ACTION AGAINST CORRUPTION (BAAC)

Appreciating the need for government-business collaboration, one of the outcomes of the G8 summit in Gleneagles was the creation of the Business Action for Africa initiative. Also appreciating that corruption is a priority area for most African countries, there was an urgent need to forge this initiative forward and focus exclusively on anti-corruption with a view of developing strategies between government and business to address it. This resulted in the further creation of the Business Action Against Corruption, an initiative (that has received great international and domestic support) which stresses the importance of African and private sector leadership in delivering practical results to reduce corruption. BAAC is an African initiative, which is founded on the view that corruption requires broad coalitions –political and administrative, private plus public sector, national and international private sector to create space

for reforms and overcome entrenched interests. The aim is to identify “winnable” reforms and implement them.

BAAC was launched in Johannesburg in October 2005 based on a programme endorsed by Commonwealth Heads of Government and piloted by the Botswana Chamber (BOCCIM) and DCEC (the anticorruption agency) in Botswana following an invitation from President Mogae. Since 2005, BAAC has demonstrated a new paradigm for African-led private-public work against corruption; its approach is uniquely aligned to the strategies of the continent.

BAAC, which is formally endorsed by the Presidents of Nigeria (HE Olusegun Obasanjo) and Malawi (HE Dr. Bingu wa Mutharika) as well as the Prime Minister of Cameroon (HE Ephraim Inoni), is one of the largest public private networks in Africa tackling corruption. BAAC has national campaigns in Algeria, Cameroon, Madagascar, Lesotho, Malawi, Mauritius, Namibia and Zambia and has been adopted as the flagship governance programme for Business Action for Africa and is chaired by Shell. It is a programme of the following organisations working together in partnership:

- Southern African Forum Against Corruption (SAFAC), which represents SADC anticorruption commissions
- Human Rights Trust of Southern African (SAHRIT) – Secretariat to SAFAC
- African Institute for Corporate Citizenship (AICC)
- BAAC Malawi (launched in March 2006)
- The Convention on Business Integrity (CBI) Nigeria/BAAC Nigeria (launched June 2006)
- West Africa Business Association (WABA) Cameroon/BAAC Cameroon (launched in November 2006)
- Commonwealth Business Council (CBC)



DFID Department for
International
Development

The BAAC programme is financially supported by DFID’s Governance and Transparency Fund to the tune of \$5 million. This grant was inaugurated by HE Ephraim Inoni, Prime Minister of the Republic of Cameroon along with other senior Pan-African officials from the private and public sector on the 4th of July 2008 at the G8 Africa Business Forum held in the UK.

BAAC aims to:

- obtain high level political endorsement for joint public sector – government (including the anticorruption agency) structure/strategy to tackle corruption
- focus on development of nationally-led and designed anti-corruption strategy
- generate rapid joint diagnosis of 3-4 priority areas of concern to the private sector.
- priority work streams/resource areas within the project are disclosure of interests (Codes of Conduct), issuing of licences and permits; tender system; customs; political party financing; lack of corporate governance/internal leadership within the private sector itself; national machinery and regulatory framework for addressing corruption

Its key organisational strategy is to set up joint business – government structures to simplify the regulatory environment and thus prevent corruption.

This initiative has managed to bring the private sector and public sector together in a number of countries. Such partnerships are seen in Botswana, Malawi, Nigeria and Zambia, and Cameroon where these partnerships have been officially launched most in 2006 following year. In each country programme, a national working group of public and private sector representatives manages activities e.g. in Nigeria this is run by the CBI and the Economic and Financial Crimes Commission (EFCC) with the support of the Nigerian Economic Summit Group (NESG); in Botswana by the Directorate on Crime and Economic Corruption (DCEC) and Botswana Chamber of Industry and Manpower (BOCCIM).

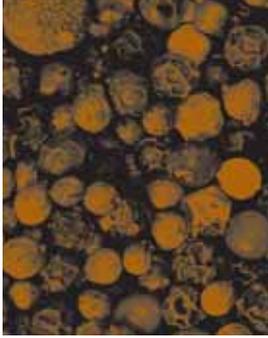
The programme is expanding – the concept of a practical model for private public cooperation and one grounded on national dialogue and reform is very appealing. The project

also seeks to develop Codes of Conduct – for political, civil service and business leaders. The project will also work with the NEPAD- APRM mechanism to develop a benchmarking system to assess and guide national strategies and peer reviews of businesses on the continent of each other. BAAC also aims to provide Africa corporate training programmes using international private sector material to develop capacity building interventions for national private sectors, including managing internal strategy, supply chain and business partners, examining accreditation schemes such as the Convention on Business Integrity. Further, BAAC proposes to develop specialised material for tackling financial corruption, commercial crime and money laundering that will also envisage SMEs. What has made this project a success in countries it has been launched is the political will of the leadership to tackle corruption at national level.

Irrespective of the support that this initiative has received, there are a number of challenges that are and still continue to be faced at country level. The economic environments within which this programme has to succeed are different posing different challenges in each scenario. Businesses, in the competitive environment have, in some instances, thrived on corruption to exist and expand resulting in highly corrupt embedded networks and procedures which may take a while to overcome.

A positive outcome is the best practice model that this initiative has turned out to be. The emulation and buy in that it has received has set the tone for closer collaboration between government and business, which is set to yield positive results in the fight against corruption.





APPENDIX II: KEY INITIATIVE RELEVANT TO ANTI-CORRUPTION MEASURES IN AFRICA

S/n	Initiative	Description	Origin	Applicable
1	Africa Corporate Sustainability Forum (ACSF)	ACSF is an international multi-stakeholder platform that provides opportunity for business, government and broader civil society to discuss and act on corporate sustainability policy and practice, including anti-corruption issues in Africa with the aim of driving/promoting responsible economic growth and competitiveness ACSF is one of the key facilitators of the BAAC campaign.	ACSF is a programme of AICC, supported by a pan-African Advisory Reference Group. See www.aiccafrica.org	Multi-stakeholder focus
2	Africa Governance Monitoring and Advocacy Project (AfriMAP)	AfriMAP was established in 2004 to monitor the compliance of member states of the AU with the standards that the AU has adopted in relation to good governance, democracy, human rights, and the rule of law. AfriMAP has a focus on public service and anti-corruption, in respect of which it purports to examine the performance of the public sector in service delivery, with a particular focus on the mechanisms that reduce opportunities for corruption by public servants, whether civil service employees or politicians. AfriMAP is piloting its methodology in four countries (Senegal, South Africa, Mozambique and Ghana).	AfriMAP is an initiative of the Open Society Institute's network of foundations, and works closely with the Open Society Initiatives for Southern and West Africa (OSISA and OSIWA) and the Open Society Foundation for South Africa See www.afriMAP.org	AfriMAP has a focus on public service
3	African Parliamentary Network Against Corruption (APNAC)	This is a network that aims at coordinating and strengthening the capacity of African Parliamentarians to fight corruption and promote good governance. APNAC's core areas of focus are in advocacy and in respect of anti-corruption efforts, geared towards ratifications and domestication of the anti-corruption protocol and conventions. Other areas include facilitating the passing of anti-corruption legislation; training and capacity building for its members on anti-corruption issues; civic education through public awareness campaigns; focus on thematic issues and collaboration with anti-corruption policy groups.	The network was established during a regional seminar on "Parliament and Good Governance: Towards a New Agenda for Controlling Corruption in Africa", held in Kampala, Uganda, in February 1999. APNAC presently comprises of chapters located within SADC and Eastern Africa.	African Parliaments
4	Basel Committee on Banking Supervision	Provides a forum for regular cooperation on banking supervisory matters, with the objective of enhancing the understanding of key supervisory issues and improve the quality of banking supervision worldwide. It seeks to do so by exchanging information on national supervisory issues, approaches and techniques, with a view to promoting common understanding. At times, the Committee uses this common understanding to develop guidelines and supervisory standards in areas where they are considered desirable. In this regard, the Committee is best known for its international standards on capital adequacy; the Core Principles for Effective Banking Supervision; and the Concordat on cross-border banking supervision.	The committee's members come from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. The Committee's Secretariat is located at the Bank for International Settlements in Basel, Switzerland.	Banking and financial institutions

S/n	Initiative	Description	Origin	Applicable
		The efforts of the Basel Committee on Banking Supervision to revise the standards governing the capital adequacy of internationally active banks culminated in the publication of Basel II. This framework describes a more comprehensive measure and minimum standard for capital adequacy that national supervisory authorities are currently working to implement through domestic rule-making and adoption procedures. It seeks to improve on the existing rules by aligning regulatory capital requirements more closely to the underlying risks that banks face. In addition, Basel II is intended to promote a more forward-looking approach to capital supervision, one that encourages banks to identify the risks they may face, today and in the future, and to develop or improve their ability to manage those risks. As a result, it is intended to be more flexible and better able to evolve with advances in markets and risk management practices.	In addition to undertaking the secretarial work for the Committee and its many expert sub-committees, it stands ready to give advice to supervisory authorities in all countries. See http://www.bis.org	
5	Business Action Against Corruption	BAAC, which is one of the largest public private networks in Africa tackling corruption, has national campaigns in Algeria, Cameroon, Madagascar, Lesotho, Malawi, Mauritius, Namibia and Zambia and has been adopted as the flagship governance programme for the UK led Business Action for Africa and is chaired by Shell. Its key organisational strategy is to set up joint business – government structures to simplify the regulatory environment and thus prevent corruption.	BAAC was launched in Johannesburg in October 2005 based on a programme formally endorsed by three African Heads of Government in addition to those of the Commonwealth. See www.baacafrika.org	Multi-stakeholder platform to facilitate government-private sector efforts.
6	Business Ethics Network-Africa (BEN-Africa)	BEN-Africa brings together Africans who share an interest in business ethics. It facilitates interaction between its members in various ways through its website, regular electronic communiqués and a printed quarterly newsletter. BEN-Africa also presents a conference annually. It has also undertaken a number of research projects including, among others, the Whistle Blowing Project, the Business Ethics Case Study Project and the HIV/AIDS Project.	BEN-Africa currently has members in 25 African countries. National chapters have been established in Botswana, Kenya, Nigeria, South Africa, Tanzania and Cameroon. See www.benafrika.org	Multi-stakeholder platform
7	Eastern, Central and Southern Africa Federation of Accountants (ECSAFA)	ECSAFA is a regional body whose objectives include to co-ordinate development of the accountancy profession and the promotion of internationally recognised standards of professional competence and conduct within the region with added focus on public governance. While ECSAFA's role primarily focuses on financial disclosure and reporting, it is also tackling issues of non-financial disclosure by co-operating with specialist agencies involved in the development of national or international codes of corporate governance. ECSAFA took the bold step in 1999 of requiring its member bodies to push for the adoption of International Financial Reporting Standards (IFRS) in their countries. ECSAFA has published a book titled: Governance in the Public Sector – an ECSAFA Perspective (2002), based on a study by the International Federation of Accountants (IFAC) and in 2004, ECSAFA published Guidelines on the Good Governance of Parastatal Organisations – an ECSAFA Perspective.	Full membership is open to national accountancy bodies in member States while observer membership is open to international accountancy organisations and other agencies with interest in accounting in the region. See www.ecsafo.org	Accountancy and auditing professions, parastatals and public sector enterprises.

APPENDIX II: KEY INITIATIVE RELEVANT TO ANTI-CORRUPTION MEASURES IN AFRICA (CONT.)

S/n	Initiative	Description	Origin	Applicable
8	Eastern and Southern African Anti-Money Laundering Group (ESAAMLG)	ESAAMLG is made up of governments and various financial institutions within the sub-region with purpose of combating money laundering by implementing the FATF Forty Recommendations This effort includes coordinating with other international organisations concerned with combating money laundering, studying emerging regional typologies, developing institutional and human resource capacities to deal with these issues, and coordinating technical assistance where necessary. ESAAMLG enables regional factors to be taken into account in the implementation of anti-money laundering (AML) measures.	ESAAMLG was established at an inaugural Meeting of the Council of Ministers held in Tanzania in 1999. ESAAMLG has 14 member countries all located within Eastern and Southern Africa. See www.iss.co.za/Pubs/Papers/73/Paper73.html	Governments, financial and accountable organisations
9	The Extractive Industries Transparency Initiative (EITI)	EITI aims to increase transparency in transactions between governments and companies operating in the extractive industries as a way of ensuring that revenues from the extractive industries contribute to sustainable development and poverty deduction. The full publication and verification of company payments and government revenues in many cases demand that stakeholders confront issues of systemic corruption, poor governance, poverty and conflict. Over twenty countries have already committed to the EITI principles and criteria, out of which fourteen are African countries: Angola, Cameroon, Chad, DRC, Republic of Congo, Equatorial Guinea, Gabon, Ghana, Guinea, Mauritania, Niger, Nigeria, Sao Tome and Principe and Sierra Leone.	EITI was launched at the World Summit on Sustainable Development in Johannesburg, South Africa in September 2002. See www.eitransparency.org/index.htm	Revenue transparency: governments and the extractive industry.
10	Global Coalition for Africa (GCA)	This is an innovative, intergovernmental forum that brings together senior African policy makers and their partners to deepen dialogue and build consensus on Africa's priority development issues. The GCA's added value lies in the distinctive composition of its constituency, its emphasis on frank and open exchange of views, and its policy-focused approach. Building on this work, representatives of eleven African countries came together in 1999 under the auspices of the GCA to develop a set of principles designed to promote collaboration among countries to combat corruption and reinforce national anti-corruption efforts.	Under the overall guidance of its Co-Chairpersons, the Coalition's activities are coordinated by a Washington-based Secretariat. See http://www.gcacma.org	Participation in GCA meetings is at the ministerial and senior policy level, with the attendance of some African heads of state. The private sector, NGOs and the media also attended.
11	Global Compact	A voluntary programme, which contains ten principles on human rights, labour, environment and anti-corruption and has a clear focus on learning and dialogue. The tenth principle of the Global Compact states that businesses should work against all forms of corruption, including extortion and bribery. The Global Compact is not a regulatory instrument and has no monitoring or assurance function.	Initiated by the former UN Secretary-General Kofi Annan in 2000. See http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html	It convenes key actors such as companies, civil society, unions and Governments.
12	Global Corporate Governance Forum	The role of the GCGF is to promote initiatives to improve the institutional framework and practices of corporate governance in developing countries and emerging markets. The GCGF focuses on practical, targeted corporate governance initiatives at the local, regional and global level. By working with developing countries to build practical solutions to implementing reform, the Forum seeks to tackle poverty by	The GCGF is a multi-donor trust fund founded by the World Bank Group and the Organisation for Economic Co-operation and Development (OECD).	The GCGF promotes both government reform and private sector self-help.

S/n	Initiative	Description	Origin	Applicable
		<p>promoting reform efforts to protect and attract capital, inspire investor and lender confidence, and spur both domestic and foreign investment.</p> <p>The GCGF's mandate is to raise awareness build consensus for implementation of reform; support institution and capacity building and provide technical assistance; support research; and disseminate best practice materials and publications.</p>	See www.gcgf.org	
13	Global Integrity	<p>The Global Integrity Index assesses the existence and effectiveness of anti-corruption mechanisms that promote public integrity. More than 290 discrete Integrity Indicators generate the Integrity Index and are organised into six key categories and twenty three sub-categories. The Integrity Indicators not only assess the existence of laws, regulations, and institutions designed to curb corruption but also their implementation, as well as the access that average citizens have to those mechanisms.</p> <p>The Global Integrity Report is a comprehensive investigation of anti-corruption efforts in 25 countries around the world. The Public Integrity Index is the centre piece of that report, providing a quantitative scorecard of governance practices in each country.</p>	<p>Global Integrity is an independent, non-profit organisation tracking governance and corruption trends around the world. Global Integrity uses local teams of researchers and journalists to monitor openness and accountability. See http://www.globalintegrity.org/</p>	<p>Provides government, policymakers, emerging market investors, or grassroots advocates – with tools that identify unexpected trends and ground future decisions in trustworthy data and reporting.</p>
14	Financial Action Task Force (FATF)	<p>FATF's purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF has published 40 plus 9 Recommendations in order to meet this objective. There are however concerns that irrespective of FATF's guidelines in respect of politically exposed persons (PEP), funds siphoned from Africa as a result of grand corruption are still being laundered through financial centres abroad.</p>	<p>An inter-governmental body (created in 1989) and associated with OECD. See http://www.fatf-gafi.org</p>	<p>The FATF is a “policy-making body” that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas.</p>
15	Kimberley Process Certification Scheme (KPCS)	<p>This is a process designed to certify the origin of diamonds from sources which are free of conflict. The process was established in 2002 to prevent rebel groups and their rivals from financing their war aims from diamond sales. The certification scheme aims at preventing these “conflict diamonds” (also known as “blood diamonds”) from entering the mainstream rough diamond market. It was set up to try to assure consumers that by purchasing diamonds they were not financing war and human rights abuses.</p>	<p>Originated from a meeting of Southern African diamond producing states in Kimberley, South Africa in May 2000. See www.kimberleyprocess.com</p>	<p>World Diamond Council nations involved in the trade of diamond and diamond-mining and production companies.</p>
16	Organisation for Economic Co-operation and Development (OECD)	<p>The OECD is best known for its publications and its statistics, its work covers economic and social issues from macroeconomics, to trade, education, development and science and innovation. The OECD has provided guidelines for multi-nationals (including a risk management tool edition for those operating in weak governance zones); convention on combating bribery of foreign public officials in international business transactions; and principles of corporate governance.</p>	<p>The OECD groups 30 member countries sharing a commitment to democratic government and the market economy. With active relationships with some 70 other countries and economies, NGOs and civil society, it has a global reach. See http://www.oecd.org</p>	<p>Multi-national corporations from the OECD member countries, but with a wide sphere of influence.</p>
17	Pan African Consultative Forum on Corporate Governance (PACFCG)	<p>PACFCG provides a platform for an inclusive and open dialogue between leaders and representatives from the public and private sectors, multinational corporations, international agencies and institutions, global and local investors, civil society and others committed to the development of Africa as an integral constituent in the international policy framework in</p>	<p>The PACFCG is supported by GCGF, International Finance Corporation (IFC), the African Development Bank, Centre for International Private Enterprise (CIPE),</p>	<p>Public and private sectors, multinational international agencies and institutions,</p>

APPENDIX II: KEY INITIATIVE RELEVANT TO ANTI-CORRUPTION MEASURES IN AFRICA (CONT.)

S/n	Initiative	Description	Origin	Applicable
		launching practical corporate governance initiatives at the Pan-African, regional and national levels. The inaugural meeting of the PACFCG was held in Johannesburg, South Africa in July 2001 and the second session was held in Nairobi, Kenya in July 2003. The third meeting of the PACFCG (officially endorsed by NEPAD and its APRM Secretariat) was held in Dakar, Senegal, in November 2005.	the Centre for Corporate Governance (CCG), Kenya and NEPAD See www.corporategovernanceafrica.org	global and local investors, civil society and others committed to the development of Africa.
18	Publish What You Pay	The Publish What You Pay coalition of over 250 NGOs worldwide calls for the mandatory disclosure of the payments made to all governments for the extraction of natural resources, so as to help citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries.	Global coalition of NGOs See www.publishwhatyoupay.org	Revenue transparency: governments and the extractive industry.
19	Southern African Forum Against Corruption	SAFAC (with its Secretariat in SAHRIT) has a mandate to build the capacity of the anti-corruption institutions to effectively investigate and prosecute and prevent corruption as well as public education.	Established in 1998, SAFAC is a network of anti-corruption agencies from the region or relevant government ministries.	Anti-corruption agencies or relevant ministry in Southern Africa.
20	Transparency International (TI)	TI is prolific in the fight against corruption and its global network of chapters and contacts also use advocacy campaigns to lobby governments to implement anti-corruption reforms. Since 1995, TI has published an annual Index of perception on corruption, ordering the countries according to the degree to which corruption is perceived to exist among public officials and politicians. TI also publishes an annual Global Corruption Report, a Global Corruption Barometer and a Bribe Payers Index as well as convenes the International Anti-corruption Conference (IACC).	International civil society organisation founded in 1993 in Germany with about 100 chapters worldwide and its secretariat based in Berlin. See http://www.transparency.org	Targeted at governments to implement anti-corruption reforms.
21	UK Anti-corruption Forum	The Forum is a unique alliance of UK business associations, professional institutions, organisations and businesses with the objective of creating a business environment that is free from corruption, giving rise to fair competition. It has published an "Anti-Corruption Action Statement". It recommends preventive and enforcement actions which could be taken by those participants.	Members of the forum are all UK based, but operating internationally, with a growing network of contacts across the developing world. See www.anticorruptionforum.org.uk	The forum has interests in UK's domestic and international infra-structure, construction and engineering sectors.
22	Wolfsberg Anti-money Laundering Principles	An association of twelve global banks, which develops industry standards and related products for the financial services sector. Some of their initiatives relate to due diligence, Anti-Money Laundering and Counter Terrorist Financing policies.	The Group came together in 2000, at the Château Wolfsberg in north-eastern Switzerland. See www.wolfsberg-principles.com	Financial services industry
23	World Health Organisation (WHO) Good Governance for Medicines Project	WHO launched the Good Governance for Medicines project in late 2004. The project's overall goal is to raise awareness of the potential for corruption in the public pharmaceutical sector, and to minimise such corruption by promoting and implementing good governance measures within the public pharmaceutical sector. Its ultimate aim is to help to ensure that essential medicines achieve maximum impact in terms of improving people's health and well-being.	World Health Organisation From the world Health Organisation who piloted the initiative firstly in South East Asia and South America. See http://www.who.int	Public pharmaceutical sector



APPENDIX III: MATRIX OF NATIONAL EFFORTS TO COMBAT CORRUPTION

Note: These were among the initiatives highlighted by the research project. This information/matrix can by no means be comprehensive, and it is intended to serve as a baseline database that can be expanded upon.

Country	Initiatives
Botswana	<ul style="list-style-type: none"> • Enactment of Corruption and Economic Crime Act 1994 • Establishment of the Directorate on Corruption and Economic Crime in 1994 • Development of the Botswana Code of Conduct (yet to be implemented) • The Directors Institute of Botswana was officially launched in 2002 as a public – private partnership and now champions the mainstreaming of corporate governance issues in the country • For the most part, the King II provides a benchmark in Botswana
Cameroon	<ul style="list-style-type: none"> • The country has a revised national program on governance and the fight against corruption; the country procurement assessment review; the country financial accountability assessment and the platform for dialogue on public finance management. • The Cameroon Business Action Against Corruption was launched in 2006 and provided the first opportunity for government and business to jointly conduct a diagnosis of the critical problems in the country. Government has set up a committee towards the implementation of the outcomes of the meeting • In 2005, the government has joined the EITI, in respect of which it has committed to online publishing of quarterly data on oil production, sales prices and revenue • Government has created a specialised unit to fight corruption in the forestry industry
Central African Republic	<ul style="list-style-type: none"> • Good governance programme by Ministry of Planning and UNDP • The country has adopted the Organisation for Harmonising Business Law in Africa (OHADA) treaty to harmonise its existing laws relating to private and public enterprises • Establishment of National Committee on Investments and National Charter on Investments • Corporate governance training programmes through institutions of higher learning
Democratic Republic of Congo (DRC)	<ul style="list-style-type: none"> • Establishment of the Commission for Ethics and the Fight against Corruption (CELC) • Legal reform in the areas of the criminal and tax laws • The Mining Code
Egypt	<ul style="list-style-type: none"> • Establishment of the Administrative Control Authority affiliated to the Prime Minister’s office. The strategy of the Authority has been geared towards achieving the preventive control policy, adopting initiative policy to combat corruption, increasing the scope of international co-operation in and educating and sensitising the citizens. • The Administrative Control Authority already has cooperation relations with 21 international counterpart agencies in foreign, Arabic and African countries. • Legal review and developments including issuing a Tenders Law, Banks Law and Money Laundering Law, as well as amending the tax regime and the Civil Servants Law.
Ghana	<ul style="list-style-type: none"> • Chapter 24 of 1992 Constitution contains a Code of Conduct for public officers • Legal reform to strengthen anti-corruption drive – Public Procurement Act, Internal Audit Agency Act and Financial Administration Act. Also Companies Code of 1963 is under review • Banking Act incorporates Basel to check money laundering. Also, Bank of Ghana has introduced AML measures • Corporate governance issues have been highlighted following the liberalisation programme of government and the influx of multinational corporations and banks • Efforts to improve the country’s accounting standards • Strong commitment to financial sector development • Initiatives by Securities and Exchange Commission (SEC) to improve environment for capital market e.g. Code of Best Practice • Active TI chapter – Ghana Integrity Project

APPENDIX III: MATRIX OF NATIONAL EFFORTS TO COMBAT CORRUPTION (CONT.)

Country	Initiatives
Kenya	<ul style="list-style-type: none"> • Enactment of the Public Officer Ethics Act • Establishment of several bodies under Anti-Corruption and Economic Crimes Act 2003 e.g. Kenya Anti-Corruption Commission, Public Complaints Office and Public Service Integrity Programme • Launch of National Anti-Corruption Steering Committee in 2004 • Policy Measures from the Central Bank to mainstream corporate governance in the country • CCG has finalised a number of corporate governance codes for the country: (a) Good Corporate Governance in the Commercial Banking sector in Kenya; (b) Good Corporate Governance in the Cooperatives Sector in Kenya; (c) Reporting and Disclosure in Corporate Governance for Kenya; (d) Principles of Corporate Governance in Kenya and a Sample Code of Best Practice; (e) Good Corporate Governance in SOEs; and (f) Corporate Governance Standards for the NGO Sector)
Lesotho	<ul style="list-style-type: none"> • Important lessons regarding law enforcement emanating from its LHWP cases • Private sector initiative to create the Institute of Directors (IoD) chapter • Central Bank has included good governance elements in the regulatory environment for financial institutions
Madagascar	<ul style="list-style-type: none"> • Establishment of the High Council of the Fight Against Corruption – 2002 • Enactment of the Anti-Corruption Law in consonance with UNCAC • Establishment of the Independent Anti-Corruption Bureau (BIACO) using the Hong Kong model • Finalisation of the National Strategy on Corruption • Inception of National Coalition of Civil Society Against Corruption
Malawi	<ul style="list-style-type: none"> • Establishment of the ACB; National Anti-corruption day (5 February) and Governance and Corruption Baseline Survey • Role of the Malawi BAAC and development of the Business Code of Conduct for Combating Corruption and CSAAC • Corporate governance training for Board of Reserve Bank and Press Corporation • General review of corporate governance by Ministry of Economic Development and Planning in terms of the country's participation in the APRM • Society of Accountants in Malawi (SOCAM)/ECSAFA are circulating document on corporate governance to the public sector
Mali	<ul style="list-style-type: none"> • Adoption of ECOWAS and UEMOA frameworks • Reform in terms of public tenders • Establishment of Committee to evaluate the World Bank's recommendations regarding Mali's anti-corruption programme • Institutionalising of a General Comptroller for public services • Establishing bodies that control the State's institutions and administration • Statutory creation of Commissions within the Public Services Control Agency
Mauritius	<ul style="list-style-type: none"> • Establishment of the Independent Commission Against Corruption • Report/Code on Corporate Governance for Mauritius, compliance of which is voluntary except for designated institutions including listed companies; financial institutions; large public companies; State-owned enterprises, statutory corporations and parastatal bodies • Financial Reporting Act (FRA) • With the technical assistance of the World Bank, Government completed three "Reports on the Observance of Standards and Codes" (ROSC Assessments) for: Corporate Governance; Accounting and Auditing Practices; and Insolvency and Creditor Rights Systems
Morocco	<ul style="list-style-type: none"> • Diwane al-Madhalime was created in 2001 and endowed with some oversight functions in the area of corruption • In April 2005, the government announced a six-point plan to fight corruption. Among the measures is a requirement that all high office holders formally disclose their assets and net worth before and after holding public office • The Special Court of Justice (CSJ), which had dealt with cases of corruption since 1965, was replaced in 2004 by five courts of appeal • Forty-six non-governmental Organisations, including Transparency Maroc, have banded together to form the Network Against Corruption (NAC)

Country	Initiatives
Morocco (cont.)	<ul style="list-style-type: none"> • The General Confederation of Moroccan Enterprises (CGEM) has taken the lead in devising a code of ethics and promoting a culture of transparency and corporate responsibility for its private sector membership • Journalists took advantage of the media's new freedom to discuss corruption, unravelling complex accounts of reported corruption in state agencies and banks and examining the business activities of senior officers
Mozambique	<ul style="list-style-type: none"> • Centre for Public Integrity is active in the promotion of integrity; transparency; ethics and good governance in the public sphere • Public sector reform programme, including improvement in finance management and reporting • Creation of Association of Accountants (AoA) • The Report on the Implementation of the Global Strategy for Public Sector reform 2001-2004 was released with significant implications for good governance and anti-corruption, e.g. preparation of draft Code of Ethics for public servants in management and leadership
Namibia	<ul style="list-style-type: none"> • Establishment of the Anti-Corruption Commission of Namibia, SOE Governance Council and the Central Governance Agency • King II has been adapted in Namibia by the Namibia Stock Exchange via its listing rules, made mandatory for listed companies by contractual obligation • Namibian Financial Institutions Supervisory Authority (NAMFISA) has issued corporate governance guidelines in line with King II and other international benchmarks
Nigeria	<ul style="list-style-type: none"> • Implementation of political will to tackle corruption through a number of public sector initiatives and legislative reform • Approval of a Code of Best Practices for Corporate Governance by SEC and Corporate Affairs Commission (CAC) • Inception of Judicial integrity Project • Development of Code of Conduct for Government Ministers • Active BAAC Chapter through CBI • Strengthening of the EFCC and other Anti-Corruption bodies • The development of a number of anti-corruption initiatives e.g. the Fix Nigeria Initiative (FNI), Zero Tolerance Initiative as well as the Leadership, Effectiveness, Accountability and Professionalism (LEAP) project • Active Nigerian chapter of the EITI initiative, which is lauded as being a pacesetter within the initiative internationally • Commendable results regarding the due diligence process of its Budget Monitoring and Price Intelligence Unit
São Tomé and Príncipe	<ul style="list-style-type: none"> • In 2004, Nigeria and São Tomé and Príncipe signed a joint declaration regarding transparency and governance in the JDZ • A project within Columbia University (USA) was initiated to advise on the new laws and institutions needed in São Tomé and Príncipe's new oil sector towards helping the citizens translate oil revenues into sustainable economic development • Highlights of the new Oil Revenue Law includes the establishment of a National Oil Account that promotes transparency within the oil sector
Senegal	<ul style="list-style-type: none"> • National Programme of Good Governance (PNBG) • Newly created Senegalese Institute of Directors (SIoD) is facilitating private sector role in corporate governance reform • Training programme for company directors organised by CCG in collaboration with West African Bankers Association (WABA) and CESAG
Sierra Leone	<ul style="list-style-type: none"> • National Anti-Corruption Strategy 2005 • Establishment of Campaign for Good Governance • The Governance and Anti-Corruption Assessment • Efforts to ensure that the country's mineral resources pass through legitimate channels
South Africa	<ul style="list-style-type: none"> • Establishment of the National Anti-corruption Forum • Introduction of essential legislation governing whistle blowing, anti-corruption measures (Prevention of Corruption Act, which has extraterritorial implications), money laundering and antiterrorism measures • Comprehensive review of JSE listing rules to incorporate King II and the enforcement by the JSE of its general requirement for listed companies to "comply or explain" the extent of their adoption of the King II guidelines • The Protocol for SOEs on corporate governance was comprehensively updated with King II and adopted by Cabinet in 2003. This is supplemented by the National Treasury Regulations

APPENDIX III: MATRIX OF NATIONAL EFFORTS TO COMBAT CORRUPTION (CONT.)

Country	Initiatives
South Africa (cont.)	<ul style="list-style-type: none"> • Introduction of the Eight Batho Pele – Peoples First Principles for the transformation of the public service • Corporate Governance Codes have been developed for the NGO sector in South Africa by Charities Aid Foundation for Southern Africa (CAFSA)
Swaziland	<ul style="list-style-type: none"> • Legislative review in terms of the Prevention of Corruption Act
Tanzania	<ul style="list-style-type: none"> • The introduction of the National Anti-Corruption Strategy and Action Plan (NACSAP) • Adoption of Recommended Guidelines for Corporate Governance in Tanzania • Inception of the Public Service Reform Programme • Creation of the office of a Good Governance Minister • Recorded progress by Prevention of Corruption Bureau, Ethics Secretariat • Creation of NAO to replace Controller and Auditor-General's office, Tanzania Institute of Corporate Governance (TICG) and Commission on Human Rights and Good Governance (CHRGG) • Introduction of the Accountability, Transparency and Integrity Programme (ATIP) • Setting up of the Business Environment Strengthening for Tanzania (BEST) initiative
Uganda	<ul style="list-style-type: none"> • The establishment of the Institute of Corporate Governance of Uganda (ICGU), which has developed a checklist for corporate governance tool, a quarterly journal and other programmes to mainstream corporate governance • Adoption of the Ugandan Leadership Code • Adoption of voluntary corporate governance codes • Introduction of corporate governance guidelines by the Capital Markets Authority (CMA) • Legal reform to transfer capital markets matters from Companies Act to CMA Act • Investigative journalism training workshop by Government of Uganda, a Danish Education Association (DANUDUC) and Transparency International – Uganda • Investigation of Bujugali dam for corruption by the World Bank and four different countries after a British subsidiary of a Norwegian construction company admitted paying a bribe to a senior Ugandan civil servant
Zambia	<ul style="list-style-type: none"> • Establishment of the Anti-Corruption Commission • Reforming the Procurement and Tendering Procedures following the Country Procurement Assessment Review undertaken by the Government and World Bank in 2002 • The endeavours of the IoDZ which include director training, publication of the IoD Brochure for director development and the review of the corporate governance manual etc • The influence of King II • Inclusion of corporate governance issues in the Insurance and Pensions Scheme Regulation Act • Directive from the Lusaka Stock Exchange for all listed companies to put in place codes of corporate practices and conducts
Zimbabwe	<ul style="list-style-type: none"> • Very recent launch (February 2007) of a baseline survey of corruption in the country • The Development of corporate governance manuals with support from IFC and government of Denmark • Business ethics Charter • Reserve Bank has issued two bank licensing, supervision and surveillance guidelines that cover corporate governance and minimal internal audit standards for banking institutions • Legal and institutional developments towards enhancing transparency, accountability and good governance • Creation of new ministry of special affairs in the President's office for anti-corruption and anti-monopolies • Launch of Zimbabwean chapter of the African Parliamentarian Network against corruption



About the Author:

Tagbo G. Agbazue

Tagbo, who led the AICC team undertaking the research, is a Solicitor and Advocate of the Supreme Court of Nigeria. Tagbo specialises in corporate governance in addition to broader sustainability issues pertaining to public and private sector corporations in Africa. He has lectured law at the Institute of Management and Technology (IMT) Nigeria and practiced with C.C. Ogbo & Associates (Nigeria) and Edward Nathan & Friedland (South Africa).

Tagbo was part of the team that developed the instruments for the four thematic areas of the NEPAD APRM. He project managed the role of the African Institute of Corporate Citizenship (AICC) as the Technical Support Agency on Corporate Governance to the South African Government regarding the country's NEPAD APRM review process. He is also playing an advisory role supporting the NEPAD APRM process in Mozambique.

Tagbo is an expert resource person on corporate governance to the Collaborative Africa Budget Reform Initiative (CABRI), AICC, NEPAD APRM Secretariat, UN Office of the Special Adviser on Africa, the World Bank/IFC/Global Corporate Governance Forum (GCGF), Pan African Consultative Forum on Corporate Governance (PACFCG), the African Development Bank, as well as numerous key private and public sector corporations in Africa.

Tagbo has written and presented widely on corporate social responsibility and corporate governance, in respect of which he is a member of the faculty for the SADC-Development Finance Resource Centre's capacity building intervention for directors of development finance institutions in Southern Africa, in conjunction with the World Bank/IFC/GCGF.

He sits on the Public Sector Governance Committee (South Africa) and the Governing Board of the Business Action Against Corruption (BAAC), a G8 endorsed African initiative to build public-private partnerships in order to combat corruption.

Tagbo is a recipient of the inaugural "Millstein Rising Star of Corporate Governance Award" by Yale University's Millstein Centre for Corporate Governance and Performance, in collaboration with its partners in the selection process, the Open Compliance and Ethics Group and The International Corporate Governance Network.



AICC Project Director:

Sean de Cleene

Sean de Cleene is an internationally recognised social entrepreneur and a leader in the field of business and sustainability. He specialises in defining developing country business/market opportunities and risks and brokering relevant public private partnership solutions particularly in the agri-business and finance sectors. He is a skilled partnership broker, strategy formulator and facilitator.

Sean is currently the Vice President – Public Affairs at Yara International ASA. He is a co-founder and Director of the African Institute of Corporate Citizenship (AICC). He has also founded a number of other companies and organisations working in the area of sustainability and emerging market development. Sean was the lead facilitator and co-chair of the South African NEPAD APRM corporate governance consultative review process on behalf of the South African government. He is currently the acting Chair of the Malawi Sustainable Agri-Business Initiative – a public private partnership engaging the full spectrum of the agriculture sector.

He is the elected Co-Chair of the Malawi Business Action Against Corruption (BAAC), and a member of the Governing Board of BAAC, a G8 endorsed African initiative to build public-private partnerships in order to combat corruption. He is a senior advisor to the UNEP Finance Initiative Africa Taskforce and was also a member of the initial Johannesburg Stock Exchange SRI Index Advisory Council.

Sean has written widely and presented in over 30 countries on topics relating to sustainability and business as well as corporate governance. Sean has a BA (Law) Sydney University, MSc (Distinction) International Development Practices, Oxford Brookes and is a graduate of the Senior Executive Programme at Harvard Business School. He has lived the last ten years in Africa and prior to that was living in China for seven years.

“This report is a compilation of anti-corruption good practices from around Africa aimed at preventing and combating corruption. Let’s put these practices into good use and ensure the effective implementation and application of anti-corruption measures leading to improving the quality of life for the people of Africa and the world”.

Mr. M.R. Baloyi
Minister for the Public Services and Administration South Africa
Chairperson of the 5th Pan African Ministers of Public/Civil Service Conference

“The Report on Benchmarking Anti-corruption Initiatives in Africa highlights key anti-corruption initiatives undertaken by both government and non-governmental actors at continental, sub-regional and national levels, as well as internationally led initiatives that are relevant to Africa”. Rather than reinventing the wheel, this report is indeed useful in terms of knowledge sharing and information exchange regarding key developments on the continent”.

Mrs. Michelle Ndiaye Ntab
Chief Executive Officer
African Institute of Corporate Citizenship (AICC)

About AICC

The African Institute of Corporate Citizenship (AICC) is a non-governmental organisation that promotes sustainable business practice in Africa. Established in 2001, AICC is committed to being a centre of excellence in facilitating the competitiveness of countries, companies, and communities through responsible business activity. Our approach is cross-sectoral and partnership based, reflecting our commitment to constructive engagement between development stakeholders.

AICC’s portfolio contains a wide range of activities and services. We convene a number of multi-stakeholder project networks spanning many countries in Africa. AICC is a key player in a range of international corporate citizenship initiatives, providing an African perspective to emerging global standards of best-practice. We also support businesses and other organisations on improving their corporate citizenship policies, practices and performance. Through these and other processes, AICC strives to be an agent of progressive change in advancing the corporate citizenship agenda on the continent.

AICC is one of the implementing partners of the Business Action Against Corruption (BAAC), a G8 endorsed African initiative to build public-private partnerships in order to combat corruption.



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