

# Update on UNCAC implementation in Africa

## Query:

*“Could you provide an update on experience with UNCAC implementation in Africa?”*

## Purpose:

Following Mozambique's recent ratification of the UNCAC, U4 is organising a workshop covering “Essentials on anti-corruption” in Maputo in November 2008 and we will try to address UNCAC issues in different sessions (what it implies for the judiciary, what it implies for the parliament, what it implies for donors, etc.). We would like to distribute an updated copy of the answer to the participants, stakeholders, etc.

\*This is an update of a helpdesk answer published in November 2006.

## Content:

- 1) **Status of the UNCAC in Africa**
- 2) **UNCAC Implementation : Update on Selected African Countries**
- 3) **Lessons Learnt from UNCAC Implementation**
- 4) **Selected reading and Resources**

## Summary:

Of the sub-Saharan African countries, 28 have ratified UNCAC, four are signatories and six have acceded to the Convention. In the Middle East, 12 countries have ratified UNCAC and four are signatories. However, case studies conducted by Transparency International indicate that although legal measures, such as anti-corruption acts and agencies, have been established to execute UNCAC, there are local constraints to the full implementation of the Convention, such as under funding, cultural factors and lack of political will. Successful implementation requires local ownership and broad participation of social and political stakeholders to encourage local “buy-in”. It is also recommended to base reforms on a comprehensive diagnostic, preferably conducted in a participatory manner, to identify compliance gaps and priority areas of reforms. Monitoring progress is also a critical dimension of successful implementation; should be an integral component of any reform program; and envisaged from the early stage of policy development.

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## 1. Status of the UNCAC in Africa (as of 1<sup>st</sup> of October 2008)

### *Africa*

- **Ratifications:** Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Congo, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Madagascar, Mali, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Togo, Uganda, Tanzania, Zambia, Zimbabwe
- **Signatures:** Côte d'Ivoire, Comoros, Guinea, Sudan
- **Accessions :** Burundi, Congo, Guinea Bissau, Liberia, Mauritania, Niger

### *Middle East*

- **Ratifications:** Algeria, Djibouti, Egypt, Jordan, Kuwait, Lybia, Morocco, Qatar, Tunisia, United Arab Emirates, Yemen
- **Signatures:** Bahrein, Brunei Darussalam, Saudi Arabia, Syrian Arab Republic

Lebanon and Oman have neither signed nor ratified the convention.

Please see: <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

## 2. UNCAC Implementation : Update on Selected African Countries

### *African Experience with UNCAC Implementation*

In 2007, TI published nine detailed country studies that analyse the implementation of anti-corruption laws in Algeria, Burundi, Kenya, Liberia, Nigeria, Sierra Leone, South Africa, Togo and Uganda, providing an overview of compliance with UNCAC provisions. (Please see: [http://www.transparency.org/news\\_room/in\\_focus/2007/uncac\\_africa](http://www.transparency.org/news_room/in_focus/2007/uncac_africa).) The studies indicate that although progress has been made in aligning domestic legislation to the requirements of the UNCAC in most countries, there are still major gaps to overcome for successful implementation of the convention:

- In **Algeria**, the concept of illegal enrichment as well as measures for judicial cooperation has been established as part of the process of domesticating the conventions into Algerian law. Despite this progress, critics questions the political will to implement anti-corruption measures effectively. Reports of the anti-corruption preventive body are not made public while Government appears reluctant to set up an international review mechanism to monitor the implementation of the Convention. Key recommendations include awareness raising activities targeting public institutions, banks, media and universities as well as the need to strengthen mutual assistance within and outside the country.
- In **Burundi**, economic and cultural factors supporting the socialisation of gift-giving were identified as practical obstacles hampering the implementation of the UNCAC.

- **Liberia** has not yet ratified the UNCAC and various steps need to be taken to meet the Convention's requirements, including the formulation of a comprehensive national anti-corruption strategy and some legislative reforms. However, some progress has been made since 2006, under the auspices of the Governance Reform Commission, leading to the enactment of a public code of conduct and the establishment of an anti-corruption agency. The lack of financial resources appears to be a major constraint to the effective implementation of anti-corruption measures.
- In **Nigeria**, there is an impressive array of anti-corruption structures and institutions in place, including two codes of conduct for public officers. Two new commissions have also been set up, the independent Corrupt Practices and Other Related Offences Commission and the Economic and Financial Crime Commission. In spite of these anti-corruption bodies, Nigeria's fight against corruption faces major implementation challenges.
- As early as 2000, **Sierra Leone** has passed an anti-corruption act and established an anti-corruption commission. However its effectiveness is hampered by factors such as the lack of political will, delays in drafting legislative and administrative measures. Political interference into decision to prosecute is still a possibility, as the anti-corruption act confers the Attorney General and the Minister of Justice the power to consider "*whether criminal proceedings may be instituted*".
- According to Global Integrity 2007, **South Africa** topped the list as having the best anti-corruption legislation on the continent, as the only country in Africa to receive a rating of 'Very Good' in the annual Integrity Index. UNCAC provisions have been substantially translated into national legislation and there are several institutions involved in the fight against corruption in South Africa, such as the National Prosecuting Authority, the South African Police Service, the Directorate of Special Operations, the Special Investigations Unit, and the Financial Intelligence Centre. However, TI's study identifies the lack of inter-agency cooperation between these various bodies as a major obstacle to effective implementation and further recommends adopting tighter regulation of private political party funding.
- **Uganda** has in place a number of legislative and policy measures aimed at tackling and combating corruption, such as the Prevention of Corruption Act, the Penal Code Act, a code of conduct for public officials including wealth declaration and anti-corruption institutions such as the Inspectorate of Government, the Directorate of Public Prosecution and the Auditor General. There is still need for reforming the legal framework against corruption, with measures aimed at criminalising certain acts of corruption, combating private sector corruption and addressing political corruption.

A review of the implementation of the UNCAC prepared in December 2007 within the framework of the second Conference of the State Parties confirms the general trends observed in the above mentioned case studies. Only five States parties from the Group of African States reported on their implementation of the convention and completed the self-assessment checklist provided by UNODC, including Algeria, Burkina Faso, Namibia, Nigeria and Tanzania. (Please see: <http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0788913e.pdf>.)

## Preventive measures

The five reporting countries have indicated that major progress has been made to implement the preventive measures of the Convention. The large majority of reporting countries state that anti-corruption policies and bodies have been established. Out of the five African reporting States:

- Only Burkina Faso reported partial implementation of Article 5 on establishing anti-corruption policies, highlighting the importance of involving civil society in the process, while the other four countries reported complying with this article. A U4 report focuses specifically on the implementation of article 5 of the UNCAC through a series of 6 case studies. (Please see: <http://www.cmi.no/publications/file/?2914=anti-corruption-policy-making-in-practice>)

- The five countries reported the adoption of measures in compliance with article 6 on the existence of preventive anti-corruption bodies. Measures included the establishment of anti-corruption commissions and procurement agencies, education, training and awareness raising activities, the provision of adequate human and financial resources to ensure independence as well as measures aimed at encouraging civil society participation. Lack of resources and of training programmes hampered the effectiveness of the preventive body in some countries.
- 4 countries indicated full compliance with article 9 on public procurement and management of public finances, while only Tanzania reported partial compliance.

### **Criminalisation and law enforcement**

In reporting on criminalisation and law enforcement, measures providing for the criminalisation of bribery of national public officials and embezzlement of public funds enjoy the highest rate of compliance, while provisions providing for the criminalisation of bribery of foreign public officials are least frequently implemented.

- All 5 countries cited legislative measures to criminalise active and passive bribery of national public officials in compliance with the convention.
- Burkina Faso indicated non compliance with Article 16 criminalising active bribery of foreign public officials and officials of public international organisations. In Nigeria, neither active nor passive bribery of foreign public officials and officials of public international organisations were established as criminal offences.
- All reporting States cited domestic measures adopted to establish as criminal offence embezzlement, misappropriations or other diversion of property by a public official.
- All five reporting states cited, excerpted or annexed information on domestic measures adopted to implement article 23 on laundering the proceeds of crime.

The implementation review could not draw meaningful conclusions for the implementation of international cooperation related provisions, since the review was limited to the fulfilment of notification obligations. For asset recovery, the compliance rate was the lowest, with the highest percentage of parties unable to provide any information.

## **3. Lessons Learnt from UNCAC Implementation**

Although most countries have indeed made progress towards establishing the required legal and institutional framework against corruption, they still face major enforcement and implementation challenges. Factors affecting the effective implementation of anti-corruption reforms have mainly been found to be lack of ownership, unrealistic planning, inadequate prioritisation of reforms, insufficient involvement of non state actors, lack of coordination and monitoring and other implementation shortcomings.

In a paper published by Global Integrity in 2008, Marianne Camerer argues that a number of conditions are required to make anti-corruption reform work. Key features of successful implementation include having the necessary data to inform strategy and policy; comprehensive legal and institutional safeguards to prevent and combat corruption; and, the most difficult to secure, the necessary political leadership and will to tackle corruption credibly and put in place long term reforms. (Please see: <http://commons.globalintegrity.org/2008/08/what-makes-effective-anti-corruption.html>.) In addition, effective anti-corruption policy development requires a participatory design process that promotes national ownership of reforms, is based on a comprehensive analysis of the local context and allows for strategic prioritisation and sequencing.

## **Political Will and Local Ownership**

Successful implementation relies primarily on a strong, sustained and credible high level commitment against corruption that demonstrates sustained political will and institutional commitment to anti-corruption policies within the country. Reforms also need to be implemented by leaders that comply with the highest ethical standards. This high level leadership must further spread over to the various institutions and public agencies supposed to implement anti-corruption reforms.

## **Participatory Approach to Anti-Corruption Reforms**

The political dimension of the fight against corruption should be recognised and translated into the active involvement of all segments of society at all stages of the implementation process, with the view to developing the local ownership of reforms and getting “buy-in” of the various stakeholders. This can be achieved by adopting a bottom up approach and ensure the broad participation of all political and social players, including civil society, in the design and implementation of anti-corruption reforms. Stakeholder participation will ensure the credibility and legitimacy of the process and contribute to the successful implementation of reforms.

## **Gap Analysis**

Effective anti-corruption reforms should be based on a comprehensive analysis of the local situation and a solid understanding of the underlying causes of corruption. With regard to UNCAC implementation, it is often recommended to start with a comprehensive diagnostic exercise such as a gap analysis, preferably conducted in a participatory manner, to identify compliance gaps and priority areas of reforms.

## **Strategic Priority Setting and Sequencing**

As anti-corruption reforms usually take time to yield results, they can be politically costly. It is therefore important to set strategic priorities and realistic objectives in consultation with the various stakeholders taking into account opportunities, potential obstacles and strategic entry points for reform. Priority setting should be based on the country's context as defined in the gap analysis, local capacity, available resources and overall feasibility.

## **Coordination of Roles and Responsibilities**

Since anti-corruption interventions are often carried out through a series of policies cutting across various public agencies and involve multiple actors with potentially conflicting interests coordination of roles and responsibilities should receive sufficient political and operational attention. The coordinating agency should be granted sufficient resources and capacity to coordinate the implementation process effectively. In addition, the institutions in charge of coordinating the implementation of anti-corruption reforms should have the authority, political backing, and capacity to compel powerful line ministries to implement the strategy.

## **Resources and Capacity**

In view of the gap that often exists between limited capacity as well as insufficient resources and expertise and overly ambitious objectives, there is a need to invest sufficient resources in capacity building to ensure effective implementation. Public agencies should have access to adequate technical assistance, training and mentoring. Anti-corruption institutions in charge of implementing UNCAC should have sufficient financial, human and institutional resources and capacity to coordinate and monitor the overall implementation of the UNCAC.

## Communication and Awareness Raising

Awareness raising activities targeting both the public and the various stakeholders is therefore an important aspect of successful implementation of UNCAC. The public needs to be informed about the UNCAC and fully understand its implications for the country with the view to strengthening support for change, while public agencies involved in the implementation of the UNCAC need to be given clear guidelines and practical guidance for implementation. Cross cutting reforms are also dependent on good communication between all implementing agencies and the public at large. A dynamic communication strategy targeting key actors such as political leaders, implementing agencies, the media and key civil society actors may sustain the political debate on corruption related issues, create demand for change and build the momentum for reform.

### The need for an effective monitoring mechanism

Monitoring progress is a critical dimension of successful implementation; should be an integral component of any reform program; and envisaged from the early stage of policy development. In practice however, monitoring provisions are often lacking or neglected.

Experience with monitoring anti-corruption conventions indicate that effective monitoring should involve to some degree a combination of monitoring methods, including self assessments, expert reviews, peer reviews, field visits, and the publication of a report with recommendation for improvements as well as a follow up on recommendations mechanism. (Please see: “Comparative of Anti Corruption Conventions’ Review Mechanisms” <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=163>)

## 4. Selected Reading and Resources

### ***Selected Reading***

#### **Anti-Corruption Making in Practice: What can be learned for implementing Article 5 of UNCAC? (2007)**

This study analyses the experience of six countries (Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia) with the design and implementation of explicit national anti-corruption strategies. It argues that such approaches are not necessarily the most suitable and not the only way to implement coordinated anti-corruption policies.

(Please see <http://www.cmi.no/publications/file/?2914=anti-corruption-policy-making-in-practice.>)

#### **Towards effective anti-corruption tools in Africa (2007)**

Transparency International (TI) published in 2007 nine detailed country studies that analyse the implementation of anti-corruption laws in Algeria, Burundi, Kenya, Liberia, Nigeria, Sierra Leone, South Africa, Togo, and Uganda. The studies found that the nine countries have legal gaps with respect to requirements established by the international anti-corruption instruments most relevant for the region: the UN Convention against Corruption (2003) and the African Union Convention on Preventing and Combating Corruption and Related Offences (2003).

(Please see [http://www.transparency.org/news\\_room/in\\_focus/2007/uncac\\_africa.](http://www.transparency.org/news_room/in_focus/2007/uncac_africa.))

#### **What makes effective anti-corruption systems? (2008)**

This Global Integrity paper published in 2008, highlights a number of conditions required to ensure effective, sustainable anti-corruption reforms. Key features of successful NACS include knowledge based strategies, comprehensive legal and institutional safeguards, political leadership and will. NIS also requires more than a single agency approach.

(Please see: <http://commons.globalintegrity.org/2008/08/what-makes-effective-anti-corruption.html.>)

## **Comparative Assessment of Anti-Corruption Convention's Review Mechanisms (2008)**

A range of different monitoring processes are currently in operation in connection with several anti-corruption conventions. They all involve to some degree a combination of monitoring methods including self-assessments, expert reviews, peer reviews, country visits and the publication of a report with recommendations for improvements. They also provide avenues for promoting dialogue and discussions with countries under review. The comparative assessment of the review mechanisms established by the OAS, the OECD, GRECO, UNODC or NEPAD indicate that an effective monitoring system requires a serious commitment by governments, adequate resources and expertise, an independent secretariat and should provide for civil society participation and access to information and documents. Follow-up mechanisms to assess progress made on the review recommendations such as for the OECD and GRECO mechanisms are essential to promote actual changes.

### ***Selected Links***

#### **UNODC**

<http://www.unodc.org/unodc/index.html>

#### **UNCAC First Conference of State Parties**

[http://www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html)

#### **UNCAV Second Conference of State Parties, Global Forum V**

[http://www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html)

#### **Coalition of Civil Society Friends of UNCAC**

<http://www.uncaccoalition.org/community/>