



African Anti-corruption Commitments: A review of eight NEPAD countries

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Background

This report presents the findings of a review evaluating eight African countries that have acceded to the African peer review mechanism (Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda). The countries were chosen on the basis of regional representativeness and their key role in the New Partnership for Africa's Development (NEPAD). The review examined the extent to which the countries have complied with commitments they made at OAU/AU heads of state and government level with regard to combating corruption.

These commitments are contained in various documents that include declarations, memoranda of understanding, action plans and treaties that have been agreed to by African leaders. Among others, the documents used as the basis of the review include:

- The Constitutive Act of the African Union (Lomé, Togo: OAU, 11 July 2000).
- African Union Convention on Combating Corruption and Related Offences.

- The New Partnership for Africa's Development (NEPAD) (Abuja, Nigeria: OAU, October 2001).
- NEPAD's Declaration on Democracy, Political, Economic and Corporate Governance. Assembly of Heads of State and Government, Thirty-Eighth Ordinary Session of the Organisation of African Unity (Durban, South Africa: AHG/235 (XXXVIII), Annex 1, 8 July 2002).
- The CSSDCA Solemn Declaration, Declaration and Decisions adopted by the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government (Lomé: AHG/Decl.4 (XXXVI), 12 July 2000).
- CSSDCA Memorandum of Understanding (Durban: OAU, July 2002).

Corruption as a threat to human security

There is a growing body of literature providing evidence of the link between corruption and underdevelopment.

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THE AFRICAN HUMAN SECURITY INITIATIVE (AHSI)

AHSI is a network of seven African Non-Governmental research organisations that have come together to measure the performance of key African governments in promoting human security. The project is inspired by a wish to contribute to the ambitions of the New Economic Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). Whereas the APRM process has defined a comprehensive set of objectives, standards, criteria and indicators that cover four broad areas, AHSI only engages with one of the four, namely issues of political governance in so far as these relate to human security. Within this area, each AHSI partner has identified a set of key commitments that African leaders have entered into at the level of OAU/AU heads of states meetings and summits. A "shadow review" of how these commitments have been implemented in practice has then been conducted. Eight countries have

been chosen for review, namely Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda. All eight are members of NEPAD and have acceded to the APRM. While not constituting an exhaustive list of human security challenges in Africa, the AHSI Network selected the following seven clusters of commitments: human rights, democracy and governance; civil society engagement; small arms and light weapons; peacekeeping and conflict resolution; anti-corruption; and terrorism and organised crime. The AHSI partners are the South African Institute for International Affairs (SAIIA), the Institute for Human Rights and Development in Africa (IHRDA), the Southern Africa Human Rights Trust (SAHRIT), the West African Network for Peace (WANEP), the African Security Dialogue and Research (ASDR), the African Peace Forum (APFO) and the Institute for Security Studies (ISS).

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It has also become evident that political governance and corruption influence each other in many ways. The tragedy is that corruption facilitates the diversion of public resources into private hands. For corruption to be effectively addressed, there is a need for African States to embark on political and economic reforms. These reforms should promote, for example, free and open competition, as in the case of bidding to provide goods and services to government. They should also promote transparency and accountability in the private sector (not dealt with in this report, which limits its work to the public sector). The aim of these reforms should be to hold the political leadership accountable for their actions. As long as there is no accountability on the part of the political leadership and as long as they do not set an example in the conduct of their official and private affairs, the fight against corruption will not be an easy one.

Civil society has an important oversight role to play in the fight against corruption. This includes playing a monitoring role as well as advocating and lobbying for the enactment and enforcement of effective legislation to fight corruption, exposing acts of corruption and naming and shaming public officials found engaging in corrupt activities.

Corruption erodes the ability of the state to provide social services for its citizenry and thereby threatens the human security of individuals. The general breakdown of social services and a state's inability to provide these services lead to instability and this in turn leads to an increase in the insecurity of persons at an individual and national level. The perspective on human security is enshrined in the various decisions and documentation from the Conference for Security, Stability, Development and Co-operation in Africa (CSSDCA) and from NEPAD. The nature of African governance has often been identified as an important contributing factor in, and often the main cause of, poverty in Africa. Improving human security can only be achieved where the political leadership's public participation and accountability to the public are part and parcel of transparent and accountable systems. In this sense, corruption is a human security issue because it undermines progress and economic development by leading to the depletion of resources for the disadvantaged.

The term "corruption" has not been defined in any of the documents that African leaders have signed. What have instead been defined are acts of corruption. Article 4 of the AU Convention on Combating Corruption and Related Offences define

acts of corruption as:

- a) The solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.
- b) The offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.
- c) Any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party.
- d) The diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position.
- e) The offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties.
- f) The offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that

influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

- g) The significant increase in the assets of a public official or any other person that he or she cannot reasonably explain.
- h) The use or concealment of proceeds derived from any of the acts referred to in this article, and
- i) Participation as a principal, co-principal, agent, instigator, accomplice after the fact, or in any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit any of the acts referred to in this article.

When one talks of corruption, it is unavoidable not to talk also of good governance. Good governance means a system of governance that is free of abuse and corruption and which pays due regard to the rule of law. Various writers have attempted to identify the attributes of good governance. The UN's Commission on Human Rights took a major step in trying to clarify this concept. In its Resolution 2000/64, it identified eight major characteristics of good governance. These are:

- i) Participation: good governance needs organised and informed participation in public affairs by both men and women. Such participation could either be direct or through legitimate intermediate institutions or representatives;
- ii) Rule of law: there should be a fair legal framework that is enforced impartially. Furthermore, there should be protection of human rights and an impartial enforcement of laws. This would require an independent judiciary and an impartial and incorruptible police force;
- iii) Transparency: decisions taken by public bodies must be taken and their enforcement carried out in a manner that follows rules and regulations. In addition, information should be freely available and directly accessible to those who will be affected by the decisions of the public authorities;
- iv) Responsiveness: institutions and processes should try to serve all stakeholders within a reasonable timeframe;
- v) Consensus: in view of the fact that there are several actors and as many view

points in a given society, good governance requires mediation of the different interests in society to reach a broad consensus on what is in the best interest of the whole community and how this can be achieved;

- vi) Equity and inclusiveness: all members of a society need to feel that they have a stake in it and do not feel excluded from the mainstream of society. This is important particularly to the most vulnerable members of the society;
- vii) Effectiveness and efficiency: processes and institutions should produce results that meet the needs of society while making the best use of resources at their disposal; and
- viii) Accountability: governmental institutions, private sector and civil society organisations must be accountable to the public and to their institutional stakeholders.

These characteristics of good governance complement those that seek to measure the levels of corruption, and can be used when looking at what the eight countries under review have achieved, to assess their level of compliance with the commitments to which they have agreed. In fact, we argue that the absence of any one of these characteristics may mean that the country offers a permissive environment for corruption and, whatever evidence may be available in the public domain, corruption may also be more widespread.

Adoption of legislative measures to combat corruption

The legislative framework is the starting point in the fight against corruption. This framework is important in that it provides the basis for identifying the constituent elements of corruption to be proven in a court of law. As noted above, there is no definition of the term "corruption" at the continental level, but the countries under review have all broadly defined it by outlining acts of corruption in line with the AU Convention on Combating Corruption and Related Offences. To facilitate the progress made by the countries under review, the following indicators were used to measure compliance:

- a) The enactment and enforcement of criminal laws, which effectively deal with corruption.
- b) The adoption of legislative mechanisms and procedures for the public to submit

complaints related to corruption, including the protection of witnesses and whistleblowers.

Generally, the countries under review have made good progress with adopting legislative measures to combat corruption.

The historical context of each country needs to be appreciated when reviewing anti-corruption laws, as it defines the legislative environment of each of them.

Ghana and Uganda have anti-corruption laws in place and the two countries have used these effectively to deal with corruption cases. Algeria has a glaring gap in its laws, its legal framework lacks instruments specifically designed to deal with bribery in international transactions, especially in relation to the hydrocarbons industry, which is the mainstream of this country's economy. While the current government has attempted to effect some reforms, these have not succeeded, owing to the heavy involvement of the army in its politics – a result of the military intervention in 1992.

In May 2001 Ethiopia enacted new legislation and new rules of procedure corruption in an effort to deal with corruption cases. New legislation was also introduced in Nigeria, Kenya and South Africa. These efforts were all meant to provide more clarity on definitional issues related to corruption so that convictions would be made much more easily. In Nigeria the Independent Corrupt Practices and Other Related Offences Act criminalising corruption was passed in 2000.

In Kenya, the new government under President Mwai Kibaki enacted new legislation called the Anti-Corruption and Economic Crimes Act of 2003 to provide for the prevention and punishment of corruption as well as economic crimes. In South Africa the Prevention and Combating of Corrupt Activities Act No. 12 was promulgated on 28 April 2004. These developments are positive and serve to demonstrate the commitment of these countries to combating corruption.

However, the fight against corruption needs more than just a good legislative or criminal justice framework. There should also be strong political will on the part of the government to ensure that no offender escapes the law – regardless of position or status in society. Unfortunately, in some of the reviewed countries the courts tend not to entertain cases of corruption involving high-ranking government officials or ruling party officials who have access to state resources and who can influence decisions

by virtue of their positions. However, the degree of political will varies from country to country. Of the reviewed countries, South Africa, Ghana, Nigeria and Uganda have demonstrated more political will to deal with corruption than Kenya, Algeria, Ethiopia and Senegal.

In Kenya, assessing the political will was not easy, given the relative youthfulness of the ruling coalition that replaced Kenyan African National Union (KANU). Yet some of the persons who had in the past been accused of corruption are still in government, which gives the citizenry a sense of hopelessness. The changes that have been made to the legislative framework, however, suggest that this government has a stronger commitment to fight corruption than its predecessor.

The legislative mechanism notwithstanding, there is little evidence in Ethiopia to suggest that there is political will to fight corruption. Current practice suggests rather that the anti-corruption campaign is used to settle political scores. Similarly, Algeria and Senegal have little to show in the way of political will to fight corruption. In Algeria, President Bouteflika's reform efforts have achieved very little, despite his numerous promises. The Algerian situation is further complicated by the strong position of the military. Similarly, there has been no evidence of political will to fight corruption in Senegal, where President Wade's government has been accused of paying only lip service to good governance.

Oversight and regulatory institutions

Oversight institutions include all those institutions in a country that are tasked with ensuring the sound administration and protection of the public purse and the general accountability of public officials. With respect to anti-corruption, however, this relates to those institutions that are specifically mandated to investigate and prosecute those found guilty of committing acts of corruption. The AU Convention on Corruption calls upon each State Party to designate a national authority or agency to be responsible for anti-corruption and other related offences. The Convention further states that State Parties should undertake to adopt the necessary measures to ensure that national authorities or agencies develop the necessary specialised capacity to combat corruption and other related offences. In this regard, the indicators used in reviewing the progress made by the reviewed countries are the following:

- a) Ensuring that anti-corruption agencies are autonomous, independent and governed by laws that are effective.
- b) Establishment of other oversight institutions e.g. Inspector-General/Auditor-General.
- c) Safeguarding the independence of the judiciary, including effective parliamentary oversight.

Except for Algeria, which has weak institutional frameworks, all the other countries reviewed have oversight institutions in place to fight corruption. Ethiopia, Kenya, Nigeria, South Africa and Uganda have anti-corruption institutions. The Federal Ethics and Anti-Corruption Commission (FEACC) is the chief anti-corruption institution in Ethiopia, while the Kenya Anti-Corruption Commission is key in Kenya. Nigeria has the Independent Corrupt Practices and Other Related Offences Commission (ICPRC) responsible for dealing with corruption. These institutions are mandated to deal with investigations and the prosecution of persons who have committed corruption-related offences.

South Africa also has several units entrusted with the responsibility for fighting corruption. These include the Directorate of Special Operations (the Scorpions), Special Investigative Units created by the Special Investigation Units and the Special Tribunals Act of 1996 as well as the Anti-Corruption Unit housed in the South African Revenue Authority (SARS). The Office of the Auditor-General also plays a key role in the fight against corruption. Like South Africa, Ghana has a number of independent anti-corruption oversight institutions. The major body in Ghana that has the responsibility of fighting corruption is the Commission for Human Rights and Administrative Justice (CHRAJ), which is the equivalent of the ombudsman in other countries.

Senegal has a number of institutions whose mandate includes fighting corruption. These include the Government Inspectorate-General, the Public Institutions Audit and Control Commission and the Fiscal Discipline Court.

The number of institutions aside, more work still needs to be done. For example, the FEACC in Ethiopia is not adequately resourced – in terms of both human and financial resources. The FEACC gets all its funding from the government and this hampers the institution's independence. The Nigerian ICPRC has experienced similar problems, where under-funding has adversely affected the performance of the institution, particularly in the areas of public

enlightenment, investigation and prosecution.

A common thread running through most of the oversight institutions in the reviewed countries is the incapacity of personnel to perform the functions that are expected of them. This is particularly true of institutions in Kenya and Nigeria where the review found that the officials do not have the necessary training and experience to investigate complex corruption-related offences.

The performance of the Inspector-General in Uganda has also been hampered by the lack of institutional capacity, as some staff members lack the required skills. This is further complicated by low motivation levels owing to meagre staff incentives. These oversight institutions need to be more independent and autonomous in their functions. They also need increased capacity and training to ensure that the right people are employed to do the job. These problems are not entirely unknown to the governments of these countries and the lack of a response by their executive is also an indication of the level of their political will to fight corruption.

Transparency and accountability in the management of public affairs

Transparency leads to predictability – the existence of rules and regulations and public officials' adherence to them, making it possible for the public to know what to expect in any given situation, and thus to know when public officials may have breached their own rules. It includes access to information by the public. Most importantly, accountability requires public entities ultimately to respond to peoples' needs, and places an obligation on a government to explain to the citizenry the basis upon which decisions are made.

Transparency is imperative in the fight against corruption because it makes it possible for the public to monitor the actions of office bearers in relation to rules and regulations. This, therefore, obliges officials to be accountable for whatever actions and decisions they take. To measure accountability, the following indicators were used:

- a) The existence of budgetary and financial management frameworks/systems as well as adherence thereto.
- b) Transparency in procedures for public procurement and tender procedures and the promotion of this by the government.

By and large, the countries under review have made

efforts to ensure transparency, equity and efficiency in the tendering and hiring processes of the public service. Evidence was found suggesting that the governments of Ethiopia, Ghana, Nigeria, Uganda and South Africa are promoting transparency. In this regard, South Africa went beyond the proverbial mile when the Public Service Commission handed over a report to Parliament in which it proposed a system that officially blacklists corrupt contractors and officials.

Information related to government accountability and transparency in Algeria was not accessible to the review, which made it difficult to arrive at an informed conclusion about the situation there.

Although efforts were being made to address the issue of transparency in Kenya, the country has inherited a unique problem of inadequate technical manpower. There is, therefore, an urgent need for this country to address this problem in order to meet its commitments. While the new political regime inspires hope for the country, only time will tell whether the government's promises will be translated into practical policy actions.

Senegal appeared to have made little progress in promoting transparency after it was bequeathed, by its former colonial power, France, an already bad institutional framework, which to a large extent remains unchanged. Lack of access to information was also a complicating factor in Senegal, raising serious questions about the readiness of the country for the APRM process.

Administrative reforms and codes of good practice

Article 7 of the African Union Convention on Corruption calls upon public officials to declare their assets while in the public service. Civil service reforms are key to addressing some of the causes of corruption. Underpaid, overworked and demotivated civil servants are breeding grounds for corruption.

However, civil service reform goes beyond just the working conditions of civil servants. It includes reforming civil service institutions themselves, with the aim of making them perform their functions better and more efficiently. The following indicators were used in reviewing administrative reforms and codes of conduct:

- a) The simplification of government systems and procedures.
- b) The establishment of merit-based recruitment and remuneration for employees.
- c) The establishment of effective revenue

collection systems.

- d) The declaration of assets by public officials.

With the exception of Algeria, where no information could be found, all the countries under review were generally aware of the need to reform their civil service.

Ethiopia, Ghana, Nigeria, Uganda and South Africa have all, with varying degrees of success, put measures in place to reform their civil service. Several programmes have, for example, been developed in Nigeria to address civil service problems. However, various problems were encountered, making the realisation of these programmes difficult. Similarly in Ethiopia, the fact that the FEACC was under-resourced, coupled with jurisdictional problems, has rendered reform efforts fruitless. It was, however, encouraging to find that these countries appreciated the urgent need to reform their civil service. Information about the remuneration of civil servants was difficult to access, which prevented the formulation of a conclusion in this regard.

As noted above, the new government in Kenya still needs time to prove its capacity/political will to deal with the array of problems it inherited from Daniel Arap Moi's regime, which was massively inefficient and characterised by rampant corruption.

Although South Africa has made strides in addressing the problems that faced its civil service, the findings of the Public Service Accountability Monitor have demonstrated that a lot still needs to be done to move beyond the practices inherited from the apartheid era. The problem of corruption is worse in the provinces that inherited Bantustan (homeland) administrations.

The Government of Uganda has implemented a number of civil service reform measures to combat corruption and to achieve efficiency. These include structural reforms, economic liberalisation, administrative decentralisation and downsizing. Civil servants' salaries have also been increased threefold to reduce incentives for petty corruption.

Public participation and accountability

Article 12 of the AU Convention on Corruption envisages that State Parties undertake to allow and encourage full participation of the media and civil society in combating corruption. Governments are also called upon to allow the media access to information in cases of corruption and related offences, on condition that the dissemination of such information does not

adversely affect the investigation and the right to a fair trial. This recognises the importance of an independent press in the fight against corruption. The indicators below were used to evaluate the performance of the countries under review in promoting public participation:

- a) Allowing the involvement and participation of civil society in formulating and monitoring anti-corruption strategies.
- b) Access to information and the protection of freedom of speech and that of the press.

Ghana, Kenya, Nigeria, South African and Uganda have all embarked on anti-corruption initiatives that provide space for accountability and public participation. In Ghana, this has led to the formation of a civil society anti-corruption coalition group, working closely with government in dealing with corruption.

Nigeria has also made some progress by opening up for the participation of CSOs in the formulation of the Corrupt Practices and Other Related Offences Act. However, it remains to be seen whether civil society will be allowed to participate in the implementation of the Act.

Although the Ugandan Constitution guarantees the empowerment and encouragement of the active participation of all citizens, the country's anti-corruption strategy – which allows for the participation of all stakeholders – requires much better co-ordination if it is to be effective.

South Africa is a good example of an African country that protects and promotes the freedom of speech and expression. However, this does not mean that it is perfect; there is still room for improvement, and challenges remain. The National Anti-Corruption Forum launched in June 2001, among whose objectives is to establish national consensus through the co-ordination of sector anti-corruption strategies, has, for example, experienced a number of difficulties in achieving its goals, owing to a lack of capacity among the stakeholders to organise and implement anti-corruption plans and strategies.

Overall, the countries under review still need to introduce more effective measures to allow for greater public participation and accountability, especially with regard to corruption that involves the government. There exist numerous examples of the instrumentality of the media in exposing corruption, and it could be argued that the fourth estate is the single most effective anti-corruption agency on much of the continent. Less open societies should take this

as a lesson in how to deal with corruption.

The fact that there was hardly information on the initiatives taken by government in countries such as Algeria and Senegal may suggest that very little is being done to ensure that they meet the anti-corruption commitments they signed up to. For example, Algeria has examples of the harassment and prohibition of independent media. In Senegal, the head of state is on record as having attacked a civil society organisation for having reported on corruption in 2002.

Conclusion

Access to information in Algeria and Senegal was a serious challenge and should be improved if the two countries are to participate effectively and meaningfully in the APRM. The review generally found that these two countries, compared to the other countries under review, were the least prepared for APRM and faced the most daunting challenge in meeting their anti-corruption commitments.

Ethiopia has made significant progress in anti-corruption initiatives. Senior government officials and executives from the private sector had been brought to court and the government has taken a zero tolerance stance towards corruption. There appears to be a significant drop in corrupt practices – at least as reported publicly.

While remarkable progress has been made in Ghana the country still needs to improve the level of confidence among structures responsible for implementing anti-corruption programmes. Remuneration for public servants needs to be improved to raise their levels of motivation. Access to government information also needs to be improved. The repeal of the Criminal Libel and Section Laws would be an important step in this direction. The plans to enact the Freedom of Information Act are a welcome step and constitute an important initiative on the part of the government.

Kenya has faced many problems in combating corruption in the past. Since coming to power, the NARC government has reconfirmed its commitment to fighting corruption and improving transparency in the management of financial information and statistics to ensure good governance. The new government was also investigating the extent to which acts of corruption perpetrated under President Arap Moi's government had harmed the economic affairs of the State following

the announcement by the Minister for Planning that Kenya had lost more than US\$9 billion in a decade owing to corruption and the mismanagement of state funds. The NARC government subsequently constituted teams to investigate financial management in eight local authorities. All these are good signs of the new government's commitment. However, caution should be exercised in praising the government, given the mammoth challenges that lie ahead.

President Obasanjo's anti-graft campaign has received a low rating by Transparency International. The organisation has held that the top-down approach employed by the government is neither effective nor sustainable. The level of corruption remains a serious problem in Nigeria despite the government's implementation of anti-corruption programmes. Nigeria will have to address corruption through the initiation of national education programmes on corruption and the decentralisation of power and resources. More political will to fight corruption is also necessary to ensure the effectiveness of the anti-corruption strategy. There have, however, been improvements, although Nigeria is still perceived as one of the most corrupt countries in the world.

South Africa has a progressive anti-corruption strategy comparable to other best international anti-corruption practices. The existence of strong political commitment has contributed to the effectiveness of anti-corruption strategies since 1994. South Africa also has effective legislative, regulatory and institutional frameworks dealing with corruption and has also

implemented a number of reforms in this regard.

While successful in many respects, Uganda has encountered some problems in the fight against corruption. These include an apparent wavering of the political will to fight corruption and the long-standing habit of misuse of public power at all levels for private gain. The fact that 50% of the country's budget is donor-funded has contributed to the success of the country's anti-corruption strategy, as donors have made their support contingent upon the government accepting greater accountability. Yet the anti-corruption strategy – which is led by the government – still has considerable room for improvement, especially in relation to procurement agencies, which were losing funds owing to the lack of integrity, weak procurement policies and laxity of the procurement personnel.

Signing protocols, treaties and memoranda of understanding at the continental level has proven to be easy for most African leaders. The countries under review have all signed the necessary anti-corruption protocols and agreements and have all committed themselves to implementing what AU agreements, treaties, protocols and other legal instruments required of them. While there are grounds for optimism, the review found that in most of the countries there is still a gap between commitments and actions. Despite the fact that most of them have made some progress, greater political commitment is required if African governments are to be effective in combating corruption.