ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

COMPARATIVE ANALYSIS OF THE UNCAC AND THE AU CONVENTION

QUERY

What are the features and respective advantages/disadvantages of the UN Convention against Corruption and the African Union (AU) Convention on Preventing and Combating Corruption and their respective management/implementation mechanisms?

PURPOSE

This query will serve to inform future activities and support to the Africa region.

CONTENT

1. Overview of the main characteristics of the UN and AU conventions
2. A comparison of common features and differences
3. References

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CAVEAT

Given the timeframe and the scope of Helpdesk services, this answer should not be considered as a comprehensive in-depth legal assessment of the two conventions.

SUMMARY

Adopted in 2003, The United Nations Convention against Corruption (UNCAC) and the Africa Union (AU) Convention on Preventing and Combating Corruption share common aims and objectives, covering standards and requirements for preventing, detecting and sanctioning corruption in public and private sectors. Both conventions are important and strategic as they serve different purposes in the region

They both opted for a comprehensive approach to combat corruption, providing for prevention, criminalisation, international cooperation and asset recovery. They both also provide for an implementation mechanism (Transparency International 2006). However, they differ in terms of their geographical coverage, scope, detail and in the mandatory/non-mandatory nature of their provisions. They also differ in the nature and current effectiveness of their review mechanisms. The UNCAC is often referred to as the most comprehensive anti-corruption treaty to date.

1. OVERVIEW OF THE MAIN CHARACTERISTICS OF THE UNCAC AND THE AU CONVENTION

Key features of the conventions[1]

Adopted in 2003, The United Nations Convention against Corruption (UNCAC) and the Africa Union (AU) Convention on Preventing and Combating Corruption came into force in 2005 and 2006 respectively.

Geographical coverage

As a regional instrument, the AU convention has a more limited geographical coverage than the UNCAC. It is open for signature by all member states of the African Union (AU Art. 23). As of January 2014, 48 out of the 54 countries in the region had signed the convention, out of which, 35 have ratified it.

As a global instrument, the UNCAC is much more far-reaching in its geographical coverage. It is open for signature and accession by any state or regional integration organisations which include state parties. As of September 2014, there are 172 parties to the UNCAC, including the European Union.

Interestingly, many of the African countries which have not yet ratified the AU convention have ratified or acceded to the UNCAC, such as Angola, Botswana, Cameroon, Central African Republic, Cape Verde, Djibouti, DRC, Egypt, Mauritania, Mauritius, Sao Tome & Principe, Sudan, Swaziland and Tunisia.

Strategic importance

Both conventions are relevant, important and strategic for the region, as they provide a consensual framework to address cross-border issues, facilitate international cooperation and mutual legal assistance, and harmonise the legal and institutional framework to prevent and fight corruption.

As a regional treaty, the AU convention manifests a continent wide consensus around common African values and priorities and sets regional standards, promoting a certain degree of harmonisation across countries of the region.

As a truly global convention, UNCAC offers opportunities to improve cross-border cooperation with countries in other regions, as signatory countries commit to openly cooperate with one another in cases of cross-border corruption and to return stolen assets to countries of origin. As such, it is the only instrument that provides an asset recovery framework on a global basis, north and south (Transparency International 2006). In addition, the UNCAC contains extensive provisions on prevention.

Subject matter coverage

While there are many commonalities between the two instruments, there are also important differences in subject matter coverage, with elements in each that are not found in the other. For example, in the prevention area UNCAC is more detailed on a number of articles. In the criminalisation field, it includes provisions on bribery of foreign public officials, obstruction of justice, liability of legal persons and statutes of limitations, but these are absent from the AU convention.

On the other hand, the AU convention contains items not contained in the UNCAC, starting with an undertaking to respect democratic principles, respect human rights and promote social justice (Art. 3). It specifically recognises a right of access to information (Art. 9), and has stronger language on the involvement of civil society (Art. 12). (Please see a more complete discussion of some of the key differences in the relevant sections below).

Level of obligation

In terms of obligations, while both conventions contain mandatory and optional provisions, the AU convention primarily has mandatory provisions, indicated by words such as “undertake to”, “shall adopt” or “commit themselves to”. Some of its mandatory provisions are subject to the provisions of domestic legislation.
In comparison, the UNCAC has a mixture of mandatory and discretionary provisions, with three

[1] *This section is mainly drawn from “Anti-Corruption Conventions in Africa: What Civil Society Can Do To Make Them Work“*

levels of obligation, marked by words such as "shall adopt", "shall consider adopting" or "may adopt", and some mandatory provisions are subject to the fundamental principles of the state's legal system. As many of the UNCAC provisions are non-mandatory, this can undermine the development of common standards.

Specific areas where the AU convention includes mandatory provisions, as compared to the non-mandatory provisions in the UNCAC, include political party funding, private sector corruption and whistleblower protection (Transparency International 2006). It also makes trading in influence and abuse of function mandatory.

Aim and purpose

Both conventions are largely similar with regards to their aim and purpose of promoting and strengthening anti-corruption mechanisms, facilitating international cooperation, developing and harmonising policies, and domestic legislation of state parties to prevent and combat corruption. While, as a holistic instrument, no part of the UNCAC should be considered more important than the other, the UN convention emphasises international cooperation and technical assistance in relation to the recovery of assets and the promotion of anti-corruption measures relating to public affairs and public property, even in its preamble (Institute of Security Studies 2004).

As legally binding international agreements, both conventions cover standards and requirements for preventing, detecting and sanctioning corruption in the public and private sectors. While the UNCAC is typically referred to as the most comprehensive anti-corruption treaty to date (OECD CleanGovBiz), they both adopt a comprehensive approach to combating corruption, covering similar areas, including prevention, criminalisation, international cooperation and asset recovery, and provide for an implementation mechanism (Transparency International 2006). However, they differ in terms of the scope and detail of their provisions as well as the nature of their review mechanisms (see below).

Important provisions in the two conventions relate to international cooperation, covering topics such as extraditions, mutual legal assistance in investigations, prosecutions and judicial proceedings, as well as law enforcement cooperation including joint investigations and special investigation techniques (Transparency International 2006).

In addition, the UNCAC provisions on technical assistance and information exchange recognise the need to provide financial, material and technical assistance to developing and transition countries to support the implementation of the convention requirements.

Scope and jurisdiction

Definitions

The UNCAC contains more definitions than the AU convention. Besides the definition of "public official", "proceeds of crime" and "confiscation" that they both share, the UNCAC defines "foreign public official", "official of a public international organisation", "freezing and seizure", "predicate offence" and "controlled delivery". The AU convention, on the other hand, provides definitions for "illicit enrichment" and "private sector", among others. Neither the UNCAC nor the AU convention provide a general definition for corruption, but instead provide a prescriptive list of offences considered as corrupt practices and require state parties to adopt legislative and other measures to criminalise them (Carr 2014).

Both conventions provide a broad and inclusive definition of "public official", covering all selected, appointed, or elected officials of the state or its agencies, at all levels of the hierarchy. The UNCAC is more extensive and specific than the AU convention in its definition, and adds "any person holding a legislative, executive, administrative or judicial office of a state party" and clarifies that the convention also applies to every person considered a "public official" under domestic law (Institute of Security Studies 2004).

Jurisdiction

Both the AU convention and the UNCAC provide for each state party to establish its jurisdiction over offences:

- committed in its territory

- committed by one of its nationals or a person usually residing in its territory
- when the alleged offender is present on its territory and the state does not extradite him/her

In addition, the AU convention also gives jurisdiction when the offence, although committed outside its jurisdiction affects, in the view of the state concerned, its vital interests or the deleterious or harmful consequences or effects of such an offence, has an impact on the state party.

The UNCAC contains a number of additional provisions too regarding the state's jurisdiction, including (UNODC 2009):

- Situations when the offence is committed on a vessel or aircraft registered in the state
- offences committed against a national of that state party
- offences committed against the state party.

Preventive measures

Both conventions encompass a broad range of preventative measures, including anti-corruption policies and practices, preventative anti-corruption bodies, public sector ethics and procedures, public procurement, public sector finance, private sector standards, including accounting and auditing, public reporting, access to information and whistleblower protection. A description of some of the key provisions follows.

AU convention

The AU has extensive preventive measures in both the public and private sectors. It obliges states to establish and strengthen independent anti-corruption authorities. States are also required to establish assets declaration regimes and codes of conducts for designated public officials and have transparent and equitable hiring procedures in place. The convention provides for procurement and accounting standards, as well as access to information, and whistleblower protection.

The Africa Union convention also recognises the supply and demand side of corruption and the role of the private sector and covers private-to-private corruption, although it is less detailed and specific in its private sector related provisions than the UNCAC. It requires state parties to undertake to adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector, establish mechanisms to encourage participation by the private sector in the fight against unfair competition, to encourage respect for tender procedures and property rights, and to adopt such other measures as may be necessary to prevent companies from paying bribes to win tenders.

The AU convention also requires state parties to "engage the media and civil society at large" and to "create an enabling environment" in which civil society and the media can "hold governments to the highest levels of transparency and accountability in the management of public affairs" (Art 12). Civil society should also participate in the monitoring process and be consulted on implementing the AU convention. However, as in the UNCAC, no provisions relate to the accountability of NGOs, which would have added value to the text (Carr 2014)

What can also be considered as a shortcoming of the convention relates to regulation of the financial and banking sector, which is largely missing in the convention (Carr 2014).

Particularly noteworthy in the AU convention is the obligation for state parties to "adopt legislative and other measures' to 'incorporate the principle of transparency into funding of political parties" and "proscribe the use of funds acquired through illegal and corrupt practices to finance political parties" (Art. 10), while the UNCAC just requires member states to "consider" enhancing transparency in the *funding* of candidates for elected public office and where applicable, the funding of political parties. As such, it is one of the only international instruments making such a provision mandatory.

UNCAC

The UNCAC has the most detailed provisions for preventive measures, with extensive coverage of the ways, means and standards for preventive measures for both the public and the private sectors (Transparency International 2006).

The convention is also more detailed and specific in

its private sector related provisions than the AU. Among other measures, it lists a number of good practices state parties may wish to consider that prevent and detect acts of corruption in the private sector. It promotes standards and procedures to safeguard the integrity of private entities such as codes of conduct and transparency provisions, and contains measures to prevent conflicts of interest such as restricting private sector employment of officials leaving the public sector. Among other measures, the UNCAC also requires state parties to provide for effective, proportionate and dissuasive civil, administrative and criminal penalties for the private sector as well to establish accounting and auditing standards for the private sector. Member states are also required to eliminate the tax deductibility of bribes.

Article 11 of the UNCAC outlines preventive measures relating specifically to the judiciary and prosecution services, calling on state parties to "take measures to strengthen judicial integrity and to prevent opportunities for corruption among members of the judiciary" and within the prosecution service where relevant. Such provision is not present in the AU convention.

The UNCAC also recognises the role of civil society in the participation of fighting corruption in Article 13.

Prevention measures also include measures to prevent money-laundering (Art. 14) which is not dealt with in the AU convention.

Criminalisation and law enforcement

Both conventions call for governments to establish or consider establishing a number of criminal offences. Most of these provisions are mandatory in the AU convention, while the UNCAC makes a number of offences non-mandatory, such as bribery of private sector decision makers, illicit enrichment, embezzlement by private sector employees, trading in influence and abuse of function.

AU convention

The AU convention requires state parties to criminalise a number of offences, including active and passive bribery committed by a public official or a private sector official, embezzlement by a public official, laundering of the proceeds of crime, trading in influence, illicit enrichment and concealment of funds resulting from acts of corruption. The convention does not provide for the offence of obstruction of justice, which is covered by UNCAC. Restrictions on immunity of public officials are also foreseen in the convention.

Unlike the UNCAC, the AU convention does not provide for long statutes of limitation nor requires liability of legal entities (companies).

In terms of sentencing, a significant gap in the AU convention is that it does not provide for sanctions or penalties (Carr 2014).

UNCAC

In addition to the offences that the AU convention requires to criminalise, the UNCAC calls for the criminalisation of bribery of foreign public officials and of public international organisations, abuse of functions as well as offence of obstruction of justice and attempt to commit an offence established in accordance with the convention.

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There are some particularly noteworthy provisions in the UNCAC, including 1) the requirement of civil, criminal or administrative liability of legal persons (Art 26); 2) the recognition of the need for long statutes of limitation (Art 29); and 3) the recognition of the right of entities or persons who have suffered damages from corruption to initiate legal proceedings for compensation (Art. 29).

In terms of sanctions, while remaining silent on types of sanctions, such as fine and imprisonment, Article 30 of the UNCAC sets mandatory requirements for sanctions that should take the gravity of the offence into account. The convention does not specify the severity of sanctions, which is left to state parties' domestic law (Carr 2014).

Further punitive measures foreseen by the UNCAC include suspension or reassignment of public officials, disqualification of persons from holding public office for a period of time, freezing, seizure and confiscation of the proceeds of corruption offences, and compensation for damages, among others.

As mentioned above, Article 11 of the UNCAC

outlines preventive measures relating specifically to the judiciary and prosecution services, calling state parties to "take measures to strengthen judicial integrity and to prevent opportunities for corruption among members of the judiciary" and within the prosecution service where relevant. The AU convention has no equivalent provision.

The UNCAC also refers to the existence of specialised independent institutions for combating corruption through law enforcement with requisite trained staff, which is also not dealt with in the AU convention.

International cooperation

Both conventions provide for cooperative measures. Article 43(1) of the UNCAC mentions that state parties "shall co-operate in criminal matters in accordance with articles 44 to 50 of this convention". It also calls for parties to consider assisting each other in investigations and proceedings in civil and administrative matters, addressing the problems encountered in the past, whereby states could provide legal assistance and cooperation in criminal matters, but not in civil cases.

Throughout the AU convention, various mandatory provisions also require international cooperation, establishing a framework for international cooperation to improve mutual law enforcement assistance within the region, including extradition, investigations, as well as confiscation, seizure and repatriation of the proceeds of corruption (Art. 15-19).

Extradition (Article 44 of the UNCAC and 15 of the AU convention), mutual legal assistance (Article 46 of the UNCAC and 18 of the AU convention), and seizure and forfeiture of assets (Article 31 of the UNCAC and 16 of the AU convention) are mandatory provisions under both conventions. In addition, the UNCAC extends such cooperation, although not mandatorily to "investigations of and proceedings in civil and administrative matters relating to corruption", as some states use civil or administrative proceedings to claim the proceeds of acts of corruption without requiring a prior criminal proceeding (Institute of Security Studies unpublished).

In Article 19, the AU convention refers to international cooperation with the countries of origin of multi-nationals to criminalise and punish "corrupt practices in international trade transactions" and to "work closely with international, regional financial organisations to eradicate corruption in development aid and cooperation programmes".

Asset recovery

Both conventions cover the issue of asset recovery, but while the AU convention has a brief and general article referring to it (Art. 19/3), the UNCAC dedicates a full chapter to cover various aspects of the issue (Chapter V), including international cooperation provisions in the tracing, freezing, confiscation and recovery of stolen assets and makes it a "fundamental principle" of the convention. It also includes prevention provisions. Among them Article 52(5) and (6) are interesting, calling for the establishment of effective financial disclosure systems for appropriate public officials or requiring appropriate public officials to report interests in or signature or other authority over a financial account in a foreign country. The return of assets is made unconditional, not at the discretion of the confiscating state, among others. Asset sharing is not foreseen though reasonable expenses can be deducted.

As such, the UNCAC provisions on asset recovery are considered ground-breaking (Transparency International 2006), with measures aimed at 1) detecting (and preventing) transfers of the proceeds of crime; 2) mechanisms for tracing, freezing, and seizing proceeds; 3) mechanisms for confiscating the proceeds; and 4) mechanisms for the return of proceeds. It is the only treaty to include a provision on non-conviction-based confiscation or forfeiture in Article 54(1). Chapter V contains a broad range of provisions to this effect, such as (Transparency International 2006):

- know-your-customer procedures, particularly for politically exposed persons to whom enhanced scrutiny should apply
- recovery of property through international cooperation on confiscation
- freezing, or seizure of property in a requested state once competent authorities in a requesting state have issued orders
- a positive obligation placed on the

requested state to take measures to identify, trace and freeze or seize the proceeds of crime
- return of property to its prior legitimate owner
- endeavour to forward information without request (Art 56)

Recognising the complexity of the matter and stressing that asset recovery is one of the main objectives of the UNCAC, the Conference of State Parties to the UNCAC established an intergovernmental working group on asset recovery during its very first session in 2006 (UNODC).

Follow-up and review mechanism

AU convention

Provisions

The convention provides for a follow-up mechanism on progress made by each state party. The follow-up mechanism consists of an Advisory Board on Corruption (ABC) composed of 11 members elected by the AU Executive Council. The Advisory Board is required to submit a report to the Executive Council on a regular basis on progress made by each state party. Signatory countries are required to report to the board on their progress in implementing the AU convention within a year after coming into force of the convention and thereafter submit an annual report by national anti-corruption bodies prior to summit. State parties are required to provide for the participation of civil society in the monitoring process.

In practice

The AU convention review mechanism is still in its infancy and there is little publicly accessible information on how it works in practice. While the follow-up mechanism is supported by many African civil society groups, it is currently under-resourced and would need to be backed by a stronger political will to realise its full potential.

There has been slow progress in setting up this review mechanism. Since its inception in 2009, the ABC elaborated and submitted a self-assessment questionnaire to state parties to evaluate the level of domestication of the convention. The ABC also conducted a number of country visits to assess the level of implementation of the convention as well as advocate for ratification (Advisory Board on Corruption 2013). According to experts consulted within the framework of this query, very few countries have submitted their self-assessments to the ABC to date. While reports of some country visits can be accessed on the ABC website, there is very little publicly available information on state parties' self-evaluation processes and assessments.

In the absence of a publicly accessible reports and assessments of the review process, it is not possible to assess its potential and effectiveness in terms of promoting effective implementation of the convention across African States.

UNCAC

Provisions

The UNCAC chapter VII provides for an implementation mechanism under the auspices of the Conference of State Parties (CoSP). The responsibility of the CoSP includes reviewing the implementation of the convention by state parties, making recommendations to improve implementation, using information produced by other regional and international mechanisms. The establishment of a supplemental appropriate mechanism or body to assist in the effective implementation of the convention for the UNCAC was, if deemed necessary, any appropriate mechanism or body to assist in the effective implementation of the convention.

Such a mechanism was established in 2010 following the successful adoption of Resolution 3/1 at the 2009 UNCAC Conference of States Parties (COSP3) in Doha. Under the UNCAC review mechanism, compliance is reviewed through a process involving country self-assessments, a country visit by a review team, and the drafting of a review report submitted to the country under review for approval. More specifically, a country review process follows a number of phases (UNCAC Coalition website):

- Phase I: self-assessment: UNODC informs the state party that it is under review. The

state party identifies a focal point to coordinate the country's participation in the review and then fills out a standardised self-assessment checklist.

- Phase II: peer review: Two reviewer countries – decided by lots – provide experts to form an expert review team. The team conducts a desk review of the completed self-assessment checklist. It may require further information from the focal laed to direct dialogue through conference calls, or a country visit if agreed by the country reviewed.
- Phase III: country review report and executive summary: The expert review team prepares a country review report (80–300 pages). The report is sent to the focal point for approval. In cases of disagreement, the reviewers and the contact point engage in dialogue to arrive at a consensual final report, which is published in full only with the agreement of the country under review. The expert review team produces an executive summary of this report (7–12 pages), which is automatically published on the UNODC website.

The review mechanism is currently in its first review cycle (2010-2015), covering chapter III on criminalisation and law enforcement and chapter IV on international cooperation. Approximately a quarter of the states parties are scheduled for review in each of the first four years, with the fifth year reserved for unanticipated delays or countries acceding during the review cycle. The second cycle (2015–2020) will cover chapter II on preventive measures and chapter V on asset recovery.

In practice

According to the Implementation Review Group (IRG)'s progress report, as of May 2013, the total number of States under review was 27 for the first year, 41 for the second year, and 35 for the third year (IRG 2013). In many cases, state parties under review required a longer time period to complete their self-assessment, but this often allowed for more complete information to be provided, easing subsequent steps of the review process. In the first two years of implementation, most but not all countries have agreed to country visits. Once finalised, the executive summary of the country review reports have been made available in all official languages as well as links to legislation available on the TRACK portal and the information validated by the respective states (IRG 2013).

The review process generally takes more time than initially envisaged due to a number of factors such as language issues, training needs, validation and approval processes, among others (IRG 2013). While executive summaries are automatically published on the UNODC's website, the publication of the full report is left to the discretion of the state party. Some, but not all countries, have published their self-assessments and full review reports. To date, only 30 countries out of the 70 reviewed have published their full review reports and fewer still have published their self-assessments but the number is rising (Dell 2012; UNCAC Coalition 2013). The published executive summaries and country reports are available here.

The UNCAC implementation review mechanism is mostly an intergovernmental procedure. As there are no provision for the mandatory publication and disclosure of the government self-assessment or the participation of civil society in the country visits, outside of government delegations, ordinary citizens have few opportunities to engage with the process and review the report (ISS 2012). The non-mandatory participation of civil society in the review process makes the mechanism weaker than the comparable compliance review processes supported by the OECD, the Organisation of the American States or the Council of Europe (U4 2013).

In its official statement in CosP Panama 2013, the European Union has welcomed "the willingness expressed by many non-governmental organisations to participate in the review processes as well as in the conference deliberations devoted to the implementation of the Convention". However, some governments have prevented inclusion of requirements for transparency and inclusion of civil society in national-level review processes. In practice, at the national level, participation tends to be limited to meeting with reviewers during the country visits. However, some case studies show that some countries have taken additional steps. Brazil, for example, circulated the self-assessment before finalisation to a small group of NGOs, but the time frame was too tight to allow an in-depth review. In Zambia, a NGO representative was included in a preparatory workshop but not at a later stage. Surprisingly, development partners in general

played a limited role in the review process (U4 2013).

Some of the challenges hampering civil society participation in the review process include, among others (U4 2013):

- a limited time frame for thorough preparation and information sharing
- a lack of public awareness about the review mechanism
- a lack of public interest in the process as a cause and a consequence of the lack of awareness
- a lack of integration of the review process into existing national anti-corruption efforts
- a lack of expertise within civil society organisations
- a lack of access to information
- the format of the tool and process not allowing for deeper analysis
- the lack of pre-active engagement of development partners with the process

Transparency and civil society participation have also been noted as a weakness, at the Conference of States Parties (CoSP). Although the rules of procedure of the CoSP allows for civil society to attend its plenary sessions, and UNCAC article 13 calls for civil society involvement in anti-corruption efforts, a number of governments have blocked civil society from participating in the review process.

Finally, while the UNCAC review process is much more advanced than the AU convention follow-up mechanism, there are also important challenges. It is very demanding, costly and only useful if there is follow-up, both in terms of checking on whether governments have followed the recommendations and also whether technical assistance has been provided to support efforts to bring performance into line with findings.

2. COMMON FEATURES AND DIFFERENCES: OVERVIEW OF THE PROVISIONS

This table offers a comparison of the main provisions contained in the United Nations Convention against Corruption and the Africa Union Convention on Combating and Preventing[2]. For the sake of concision, it does not transcribe whole articles but provides a summary of the relevant articles.

COMPARATIVE ASSESSMENT OF THE PROVISIONS OF THE UNCAC AND THE AU CONVENTION		
Prevention		
Issue	**UNCAC**	**AU Convention**
Anti-corruption policies	• Article 5: Development of effective anti-corruption policies, practices (mandatory)	• Article 2: Coordination and harmonisation of the policies and legislation between state parties for the purposes of prevention, detection, punishment and eradication of corruption (mandatory)
Preventive anti-corruption body	• Article 6: Existence of a body or bodies responsible for preventing corruption having necessary independence and resources (mandatory)	• Article 5: Establish, maintain and strengthen independent national anti-corruption authorities or agencies (mandatory)
Codes of conduct	• Article 8: Promotion of integrity, honesty and responsibility among public officials (mandatory) through, inter alia, codes or standards of conduct that prevent conflicts of interests, accompanied by sanctions for non-compliance (not mandatory) • Article 12: Promotion of the development of standards to safeguard integrity in the private sector, including through codes of conduct (not mandatory)	• Article 7: Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitise and train public officials on matters of ethics (mandatory)
Recruitment and treatment of public officials	• Article 7: Provision to adopt systems for the transparent and efficient recruitment of public officials on the basis of the objective criteria of merit, equity and aptitude; to provide sufficient training and remuneration to public officials (not mandatory)	• Article 7: Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service (mandatory)

[2] *This table is based on an unpublished comparative analysis of the AU Convention on Preventing and Combating Corruption (2003) and the UN Convention against Corruption by the Institute of Security Studies (20015) as well as Transparency International's "Anti-Corruption Conventions in Africa: What Civil Society Can Do To Make Them Work?" (2006)*

Issue	UNCAC	AU Convention
Political party financing	• Article 7: Provision to take measures to enhance transparency in the funding of candidatures and in the funding of political parties (not mandatory)	• Article 10: Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties, and incorporate the principle of transparency into the funding of political parties (mandatory).
Access to information	• Article 10: Provision to adopt measures to facilitate access to information (mandatory)	• Article 9: Give effect to the right of access to any information that is required to assist in the fight against corruption (mandatory)
Public procurement and management of public finances	• Article 9: Establishment of appropriate systems of procurement based on transparency, competition and objective criteria and measures to promote accountability and transparency in the management of public finances (mandatory)	• Article 5: Create, maintain and strengthen internal accounting, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services (mandatory) • Article 7: Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service (mandatory)
Participation of society	• Article 13: Provision to take measures to promote the active participation of individuals and groups outside the public sector in the fight against corruption (mixed)	• Article 11: Establish mechanisms to encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights (mandatory). • Article 12: Civil society to be fully engaged in the fight against corruption; to be enabled to hold governments to the highest levels of transparency and accountability in the management of public affairs; to participate in the implementation and monitoring of the convention (mandatory)
Private sector	• Article 12: Provision to adopt measures regarding the maintenance of books and accounts, financial statement disclosures, and accounting and auditing standards in the private sector (mandatory)	• Article 11: Prevent and combat acts of corruption and related offences committed in and by agents of the private sector, encourage participation by the private sector in the fight against unfair competition, respect of the tender procedures and property rights and prevent companies from paying bribes to win tenders (mandatory)

Issue	UNCAC	AU Convention
Revolving doors	• Article 12: Provision to impose restrictions on professional activities of former public officials or on the employment of public officials by the private sector after resignation or retirement (not mandatory)	• Not dealt with
Asset declaration	• Article 7: Provision to adopt systems to prevent conflicts of interests (not mandatory) • Article 8: Provision to adopt measures requiring public officials to make declarations regarding outside activities, employment, assets, gifts and benefits for which a conflict of interest might arise (not mandatory) • Article 52: Provision to establish effective financial disclosure systems for appropriate public officials and to require public officials to report authority over a financial account abroad to the authorities (not mandatory)	• Article 7: Require all or designated public officials to declare their assets at the time of assumption of office, during and after their term of office in the public service (mandatory)
Criminalisation and law enforcement		
Issue	**UNCAC**	**AU Convention**
Bribery of national public official	• Article 15: Criminalisation of active and passive bribery (mandatory)	• Article 4: Criminalisation of active and passive bribery (mandatory)
Bribery of foreign official and officials of public international organisations	• Article 16: Criminalisation of active and passive bribery of foreign public officials and officials of public international organisations (mandatory)	• Not dealt with
Embezzlement, misappropriation or diversion of property by a public official	• Article 17: Establishment of the criminal offence of embezzlement, misappropriation and other diversions (mandatory)	• Article 4: Diversion by a public official 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 (mandatory)
Embezzlement in the private sector	• Article 22: Criminalisation of embezzlement in the private sector (not mandatory)	• Article 11: Adopt legislative and other measures to prevent and combat acts of corruption and related offences committed in and by agents of the private sector

Issue	UNCAC	AU Convention
Abuse of functions	• Article 19: Criminalisation of the intentional abuse of function or position (not mandatory)	• Article 4: 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 (mandatory)
Trading in influence	• Article 18: Criminalisation of active and passive trading in influence (not mandatory)	• Article 4: Any undue advantage to or by any person who is able to exert any improper influence over the decision making of any person performing functions in the public or private sector (mandatory, subject to domestic law)
Illicit enrichment	• Article 20: Criminalisation of intentional illicit enrichment (not mandatory)	• Article 4: Criminalisation of illicit enrichment (mandatory) • Article 8: Establishment of the offence of illicit enrichment of state parties and provision of assistance and cooperation to the requesting state with respect to the offence (mandatory, subject to domestic law)
Bribery in the private sector	• Article 21: Criminalisation of active and passive commercial bribery (not mandatory)	• Article 4: Criminalisation of active and passive by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else (mandatory)
Money laundering and concealment	• Article 23: Criminalisation of the laundering of the proceeds of crime (mandatory) • Article 24: Criminalisation of the concealment of retention of property resulting from any offence listed in this convention (not mandatory)	• Article 4: The use or concealment of proceeds derived from any of the corruption acts covered by the convention (mandatory) • Article 6: The conversion, transfer or disposal of property, the concealment or disguise of the true nature, source, location, disposition, movement or ownership of property, the acquisition, possession or use of property knowing that such property is the proceeds of corruption (mandatory)
Participation and attempt	• Article 26: Participation in any capacity, such as an accomplice, assistant or instigator, in an offence established in accordance with this convention (mandatory) as well as the attempt and preparation of such an offence (not mandatory)	• Not dealt with

Issue	UNCAC	AU Convention
Obstruction of justice	• Article 25: Criminalisation of the obstruction of justice (to interfere in the giving of testimony or production of evidence, to induce false testimony, to interfere in the exercise of law enforcement) in relation to the commission of any offence listed in this convention (mandatory)	• Not dealt with
Liability of legal persons	• Article 26: Establishment of the criminal, civil or administrative liability of legal persons for the participation in the offences listed in this convention (mandatory)	• Not dealt with
Statute of limitations	• Article 29: Establishment of a long statute of limitations period for the commencement of proceedings for any offence listed in this convention and establishment of a longer period or suspension of the statute of limitations in cases of evasion (mandatory, where appropriate)	• Not dealt with
Prosecution and sanctions	• Article 30: Establishment of appropriate sanctions with consideration to the gravity of the offence, the right to defence, immunities, etc. (mandatory)	• Not dealt with
Freezing, seizure and confiscation	• Article 31: Establishment of measures to enable the identification, tracing, freezing, seizure or confiscation of the proceeds of crime and of the property and equipment used in offences established in this convention (mandatory)	• Article 16: Establishment of measures to enable the identification, tracing, freezing, seizure, confiscation and repatriation of the proceeds of crime (mandatory)
Specialised authority	• Article 36: Establishment of a state body specialised in combating corruption through law enforcement (mandatory) • Article 46: Designation of a central authority in charge of receiving and executing requests for mutual legal assistance (mandatory)	• Not dealt with
Bank secrecy	• Article 40: Establishment of appropriate mechanisms to overcome obstacles that arise from the application of bank secrecy laws (mandatory) • Article 46: Provision for states not to decline to render mutual legal assistance on the ground of bank secrecy (mandatory)	• Article 17: Empower its courts to order the confiscation or seizure of banking, financial or commercial documents, and enter into bilateral agreements to waive banking secrecy and allow competent authorities the right to obtain from banks and financial institutions, under judicial cover, any evidence in their possession (mandatory)

Issue	UNCAC	AU Convention
Immunity from process	• Article 30: Establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional priviledges	• Article 7: Any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials (mandatory, subject to domestic law)
Judicial independence	• Article 11: Take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary (mandatory)	• Not dealt with
Protection of witnesses and victims	• Article 32: Protection of witnesses, victims and experts that testify concerning offences listed in this convention, against retaliation and intimidation (mandatory)	• Article 5: Adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities (mandatory)
Whistleblowers	• Article 8: Provision to facilitate the reporting by public officials of acts of corruption to appropriate authorities (not mandatory) • Article 33: Provision to protect any person who reports in good faith and on reasonable grounds to competent authorities any facts related to offences listed in this convention (not mandatory)	• Article 5: Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals (mandatory)

International cooperation		
Issue	**UNCAC**	**AU Convention**
Extradition	• Article 44: Provision to grant extradition of a person for the offences listed in this convention; to establish the offences listed in this convention as extraditable offences; in the case of an impossibility to extradite, to take a person into custody and prosecute the case. This article contains provisions to guarantee fair treatment and to protect individuals against discrimination of sex, race, religion, nationality, ethnicity or political opinion (mandatory)	• Article 15: Extradition to be granted for the offences of this convention and included in the internal laws of state parties as crimes requiring extradition (mandatory). In the case of impossibility to extradite, provision to take a person into custody and prosecute the case (mandatory)
Mutual legal assistance and law enforcement cooperation	• Article 46: Provision to afford other member states the widest measure of mutual legal assistance in judicial actions in relation to the offences covered by this convention. This article contains provisions acknowledging the potential need for confidentiality, dual criminality requirements, the transfer of detained persons, situations where mutual legal assistance may be refused and the responsibility for the costs (mandatory) • Article 48: Provision to closely cooperate to enhance the effectiveness of law enforcement (mandatory) • Article 49: Provision to establish joint investigations (not mandatory)	• Article 18: Provision of the greatest possible technical cooperation and assistance in dealing immediately with requests from anti-corruption authorities and cooperate among themselves in conducting and exchanging studies and research on how to combat corruption and related offences and to exchange expertise (mandatory)
Technical assistance	• Article 60: Provision to develop training programmes and afford each other the widest measure of technical assistance, training (not mandatory)	• Article 18: Cooperation of state parties among themselves, where possible, in providing any available technical assistance in drawing up programmes, codes of ethics or organising, where necessary and for the benefit of their personnel, joint training courses (mandatory)

Issue	UNCAC	AU Convention
Money laundering	• Article 14: Measures to prevent money laundering: institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions to deter and detect all forms of money-laundering, including requirements for customer and beneficial owner identification, record-keeping and the reporting of suspicious transactions (mandatory), cooperate and exchange information at the national and international levels (subject to domestic law) and establish a financial intelligence unit (not mandatory)	• Not dealt with
Asset recovery		
Issue	**UNCAC**	**AU Convention**
Detection of proceeds	• Article 52: Provision to require financial institutions to conduct due diligence on their customers, to maintain records (mandatory); provision to require financial disclosure for relevant public officials (not mandatory)	• Article 19: Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin
Mechanisms for recovery	• Article 53: Measures for direct recovery of property through civil actions establishing title to or ownership of property acquired through the commission of an offence listed in this convention, or through court orders to pay compensation or damages (mandatory) • Article 54: Measures for recovery through international cooperation in confiscation (mandatory) • Article 55: International cooperation for the purposes of confiscation through measures to identify, trace and freeze or seize proceeds of crime (mandatory) • Article 57: Measures for the return and disposal of assets (mandatory)	• Article 19: Encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin

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