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**REPORT ON THE ACTIVITIES OF THE AFRICAN UNION
ADVISORY BOARD ON CORRUPTION**

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ACRONYMS

ABC	:	Advisory Board on Corruption
ACHPR	:	African Charter on Human and Peoples' Rights
APRM	:	African Peer Review Mechanism
AU	:	African Union
AU – ABC	:	African Union - Advisory Board on Corruption
AUC	:	African Union Commission
AUCPCC	:	African Union Convention on Preventing and Combating Corruption
AU- CA	:	African Union Constitutive Act
CSO(s)	:	Civil Society Organisation(s)
CSP	:	Conference of State Parties
ECA	:	Economic Commission for Africa
ECCAS	:	Economic Community of Central African States
ECOWAS	:	Economic Community of West African States
EU	:	European Union
FBOs	:	Faith-Based Organizations
IMF	:	International Monetary Fund
NEPAD	:	New Partnership for Africa's Development
NGO(s)	:	Non- Governmental Organization (s)
SADC	:	Southern African Development Community
UN	:	United Nations
UNECA	:	United Nations Economic Commission for Africa
UNCAC	:	United Nations Convention on Anti-Corruption
UNDP	:	United Nations Development Programme

REPORT ON THE ACTIVITIES OF THE AFRICAN UNION ADVISORY BOARD ON CORRUPTION

EXECUTIVE SUMMARY

1. The African Union (AU) Advisory Board on Corruption (ABC, AU-ABC or the Board) was established by Article 22 of the African Union Convention on Preventing and Combating Corruption (AUCPCC), to, among others, “promote and encourage adoption and application of anti- corruption measures on the continent”. Achieving this cardinal objective in a continent where corruption is rife and endemic is not only a redoubtable exercise, but also one that must be pursued with the utmost dexterity.

2. The AU prioritizes the fight against corruption across the African continent, and it is not exaggerating to say that the corruption-challenge comes third to the premier and second organization’s quest to consolidate democratic governance and to rid Africa of the internecine conflicts that continue to blight the lives of millions of Africans. Needless to say that at the root of most of these conflicts lies the cancer of corruption, which has so deeply eaten into the fabric of every aspect of African societies that corruption is now generally regarded as a ‘way of life’ in Africa.

3. Established in 2009, the AU-ABC has recorded some progress, especially concerning the articulation of its mandates and designing the *modus operandi* for engaging with the AU and its Member States. However, the Board has also confronted some daunting challenges, not the least that almost ten (10) years after its adoption, only thirty-three (33) States have ratified the Convention, representing just about sixty percent of AU’s total membership. These challenges grossly undermine the ability of the AU-ABC to deliver on its mandate as obligated by the AUCPCC.

4. This report, which the Board is tasked to submit to the AU Executive Council on a regular basis, presents the efforts and activities, prospects and challenges, of the AU-ABC in its strive to implement its mandate. It also makes some suggestions as to how best to enhance the effectiveness and efficiency of the AU-ABC in order to achieve its mandate.

5. The report benefits from an expert meeting convened by AU-UNECA (United Nations Commission for Africa) in February 2012 in Ethiopia for the benefit of the AU-ABC, as well as other such meetings at which various stakeholders and interested parties were represented. Moreover, the report draws substantially on the knowledge and appreciation of individual efforts of various AU Member States towards combating corruption. Such efforts and activities include the adoption of domestic legislation and the establishment of national regulatory and enforcement frameworks such as, but not limited to, anti-corruption commissions.

6. The tasks of AU-ABC include coordinating activities of AU Member States in their fight against corruption. Clearly, undertaking such an enormous task in respect of the thirty-three Member States that have so far ratified the AUCPCC at the time of reporting implies that the Board would be in a position to physically visit these states, compile and

analyze information relating to regulatory mechanisms therein and conduct interviews with public officials of such Member States. The report finds that the AU-ABC desperately needs much more resources, both in terms of humans and materials, than are currently made available to it. Clearly if the Board has been unable to undertake necessary activities towards fulfilling its mandate with regard to State Parties to the Convention, it is wishful to expect it to deploy its attention and energy towards encouraging ratification by all AU Member States. Without mincing words, the AU-ABC will not be in a position to effectively implement its mandate under the current level of resources and supports available to it.

7. The report concludes that while there is no doubt that the AU-ABC is composed by members who have the requisite qualifications, relevant experiences and determination to implement the mandate of the AUCPCC, the body requires a much stronger support from the AU, as an institution, and from individual AU Member States, as well as from other stakeholders, including international organizations, civil society organizations (CSOs) and every component of society in order to combat corruption on the African continent. The paradox is that the responsibility to combat corruption in Africa lies primarily with African governments who are regularly blamed for corrupt governance but should also be trusted and commended for adopting the AUCPCC. African States should not only sign and ratify the AUCPCC, but also make sure that it is incorporated into their domestic law and effective and independent agencies are established to enforce it in order to intensify the fight against corruption.

I. INTRODUCTION

1.1 The African Union, Transparency, Good Governance and Development in Africa

8. From its inception, the AU¹ was committed to transparency, good governance and development of the African continent. This is clear from its objectives and principles. The objectives of the AU are *inter alia* to “promote democratic principles and institutions, popular participation and good governance”² and also to “promote sustainable development at the economic, social, and cultural levels as well as the integration of African economies”³. “Respect for democratic principles, human rights, the rule of law and good governance”⁴ and the “promotion of social justice to ensure balanced economic development”⁵ are also among the principles of the AU. In as much as it opposes good governance and undermines development as “literally the antithesis of development and progress”⁶, corruption poses a challenge and, to be sure, a great risk, to the objectives and principles of the AU.

1.2 State of Corruption and Governance in African Union Member States and Impact on Development in Africa

9. Despite its ubiquitous presence in the continent, corruption is neither a native of nor peculiar to Africa. It affects all human societies where it impacts negatively on the quality of governance and on peoples’ lives and livelihood as a whole.⁷ It differently affects all countries, whether developed or underdeveloped, democratic or undemocratic, rich or poor. However, for many reasons, corruption in Africa has reached cancerous proportions. It permeates entire societies.

10. Corruption has not only become endemic and rampant in Africa, it has indeed become an acceptable way of life by its people.⁸ It is widespread and corrosive, affecting both the leaders and the followers. Yet, if African leaders are generally regarded as corrupt, it is beyond doubt that their corruptors are not only Africans, but also non-Africans. They include Western leaders, business people, multinational companies, and even foreign governments who tend to denounce corruption in Africa. Over the past years, international financial institutions such as the World Bank and International Monetary Fund (IMF) as well as non-governmental organisations (NGOs) and initiatives such as Global Witness, Global Integrity, Transparency International, the Extractive Industries Transparency Initiative, and Doing Business have produced numerous

¹ [Http://www.africa-union.org](http://www.africa-union.org).

² See AU Constitutive Act (2000/2001), Article 3 (g); Heyns C and M Killander (eds) *Compendium of Key Human Rights Documents of the African Union*, Pretoria: Pretoria University Law Press, 2006.

³ *Idem*, Article 3 (j).

⁴ *Idem*, Article 4 (m).

⁵ *Idem*, Article 4 (n).

⁶ ECA, *Assessing the Efficiency and Impact of National anti-Corruption Institutions in Africa*, December 2010, 3.

⁷ *Idem*, vii.

⁸ ECA, *Guidelines for Enhancing Good Economic and Corporate Governance in Africa*, Final Draft, May 2002, 13-14.

reports, rankings and indexes on corruption in Africa.⁹ Many African governments became hostile to those institutions regularly accusing them of corruption, bad governance, and human rights violations and turned a deaf ear to their denunciations considered alarming. However, the scourge of corruption could not go indefinitely unnoticed as combating corruption became an indicator of good governance and one of the conditionalities imposed on developing countries to obtain loans and other financial advantages from developed countries through the World Bank and IMF.

11. In the AU Constitutive Act (AU-CA), which was adopted in July 2000 and entered into force in May 2001, African leaders indirectly committed themselves to fighting corruption as good governance was clearly embodied among the objectives and principles of the AU.¹⁰

12. The Declaration on the New Partnership for Africa's Development (NEPAD), which was adopted at the first meeting of the Heads of State and Government Implementation Committee of NEPAD met in Abuja, Nigeria, in October 2001, also implicitly identified corruption as an obstacle to development.

13. The *Declaration on Democracy, Political, Economic and Corporate Governance* adopted by the AU Assembly of Heads of State and Government in Durban, South Africa, in July 2002, clearly identified corruption as the major obstacle to democracy, good political, economic and corporate governance.

14. Accordingly, African leaders undertook to “eradicate corruption, which both retards economic development and undermines the moral fabric of society.”¹¹ In support of good political governance, they agreed to ensure the effective functioning of parliaments and other accountability institutions, including parliamentary committees and anti-corruption bodies.¹²

15. In July 2003, the AU Member States finally adopted the AUCPCC. In the Preamble to this Convention, they acknowledged that “corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent” and there was a need for governments and all segments of civil society to “fight the scourge of corruption”.¹³

16. The adoption of the AUCPCC in 2003 served as evidence that corruption in Africa was not a foreign invention as African leaders finally recognised that it was a major obstacle to Africa's development and renaissance that therefore needed to be prevented or combated.

⁹ See <http://www.transparency.org>; www.afrobarometer.org; www.globalwitness.org; www.globalintegrity.org; www.doingbusiness.org; eiti.org.

¹⁰ AU Constitutive Act, Article 3 (g) and Article 4 (m).

¹¹ *Declaration on Democracy, Political, Economic and Corporate Governance*, paragraph 8, in Heyns and Killander op cit 295.

¹² *Idem*, paragraph 14.

¹³ African Convention on Preventing and Combating Corruption, 2003 (<http://www.au.int/SP/ANTICOR/resources>); Heyns and Killander op cit 305.

17. The questionnaire for the Country self-assessment for the African Peer Review Mechanism (APRM) developed in 2004 as the first and most important phase of APRM retained the AUCPCC as one of the regional standards and codes to be considered when assessing good governance in any AU Member State participating in NEPAD and that subscribed to the APRM.¹⁴

18. According to Economic Commission for Africa (ECA)'s Governance Report II, "corruption remains the single most important challenge to the eradication of poverty, the creation of predictable and favourable investment environment and general socioeconomic development."¹⁵

19. The ECA held that corruption continued to deepen poverty and stall the realization of the Millennium Development Goals in Africa.¹⁶ Corruption retards economic development and undermines the moral fabric of society.¹⁷ This is a major challenge to governance and development in Africa. It generates or aggravates poverty as well as underdevelopment. Many African countries are trapped in this cycle of corruption, poverty and underdevelopment.¹⁸ It is not only the executive which is corrupt, but also the legislature, the judiciary, and the civil service. Corruption does not spare the private sector either. On the contrary, the private sector has been found to be as corrupt as and sometimes more corrupt than the public sector. More often than not, the private sector has also proven to be far more clandestine about its corrupt practices – obviously sometimes due to the 'corporate veil' – and less amendable to anti-corruption measures.

20. Since its 2005 African Governance Report, the ECA has consistently denounced corruption as the major challenge to Africa's development.¹⁹ Corruption was even ranked first among the fourteen leading obstacles to good governance and state delivery in Africa.²⁰ The different reports of the APRM singled out corruption as the major obstacle to democracy, good political, economic, social and corporate governance and to Africa's development.

¹⁴ *Country Self-assessment for the APRM* (2004), paragraph 2.2, in Heyns & Killander op cit 305.

¹⁵ ECA, *Africa Governance Report II*, 2009, 12.

¹⁶ Idem.

¹⁷ Mangu, AMB, "Assessing the effectiveness of the African Peer Review Mechanism and its impact on the promotion of democracy and good political governance" (2007) 7, *African Human Rights Law Journal*, 361.

¹⁸ Idem 209.

¹⁹ ECA, *Assessing the efficiency and Impact of National Anti-Corruption Institutions in Africa*, December 2010, vii.

²⁰ See ECA, *Africa's Economic Report: Africa and the Monterrey Consensus: Performance and Progress of the Continent*, ECA: Addis Ababa, 2008; Garth le Pere and Francis Ikome, "The Future of Africa's Development", in Lundsgaarde, Erik (ed) *Africa Toward 2030. Challenges for Development Policy*, Palgrave: McMillan, 233.

21. Corruption was identified as one of the cross-cutting obstacles to good governance in Benin,²¹ Burkina Faso,²² Ghana,²³ Kenya,²⁴ Rwanda,²⁵ and South Africa.²⁶

1.3 Objectives, Methodology and Structure of the Report

1.3.1 Objectives

22. The main objective of this study is to report on the implementation of the AUCPCC by AU Member States in general and by States Parties to the Convention in particular and indirectly on the state of corruption in Africa since this Convention was adopted and came into force.

23. Incidentally, the report aims at sensitising the AU and its Member States on what needs to be done to fight corruption that hampers or aggravates poverty, development and democracy in Africa.

1.3.2 Methodology

24. In order to prepare for this report to be submitted to the AU, the ABC organised an *ad hoc* expert meeting in Addis Ababa, Ethiopia, in February 2012. This meeting was organised in cooperation and with the financial support of the ECA and attended by several Board's members, independent experts, representatives of other international organisations and academics interested in the topic. Following this meeting, two African academics were contracted as external consultants to draft this report, which is mainly based on a desktop research. The consultants had first to undertake a literature review on the state of corruption in Africa (including, in particular, ECA reports on governance in Africa and other relevant documents such as World Bank's Governance Indicators and Transparency International's Global Corruption Barometer Survey) and collected the documentation that provided them with an in-depth knowledge of the global environment of the ABC (AUCPCC, Baseline Questionnaire filled by States Parties on their compliance with the Convention, previous reports of Board's meetings, AU-ABC Programmes of Action for 2011 and 2012 and 2011-2015 Strategic Plan).

25. The experts also resorted to interviews with Board's members, staff Secretariat and selected stakeholders and participated in the *ad hoc* stakeholders' meeting that was jointly convened by the AU-ABC and the ECA in Addis Ababa, Ethiopia, in February 2012 to set up the process leading to the drafting of the ABC's report to be submitted to the July 2012 AU Assembly summit. This AU-ABC report to the Executive Council is mainly based on their findings and recommendations.

²¹ MAEP, *Rapport d'évaluation No 6 de la République du Bénin*, Janvier 2008, 273-291, paragraphs 904-994.

²² MAEP, *Rapport d'évaluation No 09 du Burkina Faso*, June 2009, pp 410-413, paragraphs 1052-1061;

²³ Mangu op cit 368, 376.

²⁴ Idem, 376, 379.

²⁵ Idem, 376.

²⁶ State of the Union *South Africa* Report 2010 (<http://www.stateoftheunionafrica.net>), 10-12.

1.3.3 Structure

26. This report consists of four other sections. The first section is the introduction. The second section deals with the AUCPCC and its implementation. The third section focuses on the AU-ABC and its role in the implementation of the Convention. The fourth section identifies the challenges to the implementation of this Convention. The report ends with the fifth section that contains findings and recommendations to the AU, its Member States, to the States Parties to the Convention and to the African society at large.

SECTION II: THE AU CONVENTION ON PREVENTING AND COMBATING CORRUPTION AND ITS IMPLEMENTATION

2.1 The AU Convention on Preventing and Combating Corruption

27. The major African instrument to prevent and combat corruption is the AUPCC and is implementing mechanism, which is the ABC. This Convention is binding on AU Member States that became parties thereto by signing and ratifying it. Given that the Convention was adopted even before the UN adopted its own convention, the AUPCC clearly underscores the urgency and importance that the Union attaches to the fight against corruption.

2.1.1 Scope and signing

28. The 28-Article AUCPCC was adopted by the second Ordinary session of the Assembly of the Union held in Maputo, Mozambique, on 11 July 2003.

29. According to its Article 23.1, the Convention was opened to signature, ratification or accession by the Member States of the AU. The AUCPCC was adopted by AU Member States at the Second Ordinary Session of the Assembly of the Union held in Maputo (Mozambique), on 11th July 2003.

2.1.2 Entry into force and ratification

30. The Convention entered into force on 5 August 2006, 30 days after the date of the deposit of the 15th instrument of ratification or accession. For each state party ratifying or acceding to the Convention after the date of the deposit of the 15th instrument of ratification, the Convention entered into force 30 days after the date of the deposit by that state of its instrument of ratification or accession.

2.1.3 State of ratification of the Convention by AU Member States

31. So far, thirty-three (33) Member States have ratified it and are parties to the Convention. This does not mean that the Convention can be enforced in these States

Parties, particularly in those common law countries that adopt a dualist approach to international law in terms of which Parliament still needs to domesticate the Convention or enact legislation giving it effect into its domestic law. Despite its ratification by 33AU Member States, the Convention has been domesticated only in a few of those countries.

2.2 The AU-ABC

2.2.1 Composition and organisation of the AU-ABC

32. The ABC is composed of eleven (11) members elected by the Executive Council from among a list of experts of the highest integrity, impartiality, and recognized competence in matters relating to preventing and combating corruption and related offences, proposed by the States Parties. The members of the ABC serve in their personal capacity and the duration of their mandate is two years, renewable once. The Council considers adequate gender and geographical representation.

33. The ABC adopts its own rules of procedure. It elects from among its members a Bureau comprising a Chairperson, a Vice-Chairperson and a Rapporteur. Members of the Bureau are appointed for a period of one (1) year. The Bureau ensures the planning and coordination of the activities of the ABC.

34. The Bureau may represent the ABC and on behalf of the latter, it may conclude partnerships and cooperation arrangements with other organizations or regional or international institutions pursuing similar goals after informing the African Union Commission (AUC). The Bureau of the ABC is assisted by the Executive Secretariat that works under the supervision of the Rapporteur.

35. The Executive Secretariat was established to furnish substantive, professional, administrative, and logistical support to the ABC. Specifically, it organizes all meetings of the ABC and the Bureau. It maintains registry of all documents and correspondence of the ABC, and renders a general record-keeping function relating to its activities. It also provides the necessary technical support to ABC members in the achievement of their missions. The Secretariat is managed by an Executive Secretary. An organizational structure conforming to the general policies and guidelines of the AU has been adopted and is composed of professional, technical and administrative staff.

2.2.2 Functions

36. The ABC was established as the follow up mechanism of the African Convention. According to Article 22 (5) (a-i) of the AUCPCC the functions of ABC are to:

- a) Promote and encourage adoption and application of anti-corruption measures on the continent;
- b) Collect and document information on the nature and scope of corruption and related offences in Africa;

- c) Develop methodologies for analysing the nature and extent of corruption in Africa, and disseminate information and sensitize the public on the negative effects of corruption and related offences;
- d) Advise governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions;
- e) Collect information and analyse the conduct and behaviour of multi-national corporations operating in Africa and disseminate such information to national authorities designated under Article 18 (1) hereof;
- f) Develop and promote the adoption of harmonized codes of conduct of public officials;
- g) Build partnerships with the African Commission on Human and Peoples' Rights, African civil society, governmental, intergovernmental and non-governmental organizations to facilitate dialogue in the fight against corruption and related offences;
- h) Submit a report to the Executive Council on a regular basis on the progress made by each State party in complying with the provisions of this Convention;
- i) Perform any task relating to corruption and related offences that may be assigned to it by the policy organs of the African Union.²⁷

2.2.3 Establishment

37. The first Board was appointed for the period 2009-2011 by the 14th Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 29th to 30th January 2009 (Doc. EX.CL/Dec.425 (XIV)). It was inaugurated on 26th May 2009 and its mandate ended in January 2011. A new Board was elected on 31st January 2011 for two years by the Assembly during its 18th Ordinary Session held in Addis Ababa, Ethiopia (Doc.EX.CL 652 (XVIII)) for the period from 2011 to 2013²⁸.

First Advisory Board (2009 – 2011)

No	Names	Position	Country
01	Mr. Mazou Seidou Adamou	Board Member	Niger
02	M. Nabil HATTALI	Board Member	Algeria
03	Mr. Simon Pierre Nzobabela	Board Member	Congo
04	M. Costantinos Berhe TESFU	Board Member	Ethiopia
05	Ms. Frene Noshir GINWALA	Board Member	South Africa
06	M. Leonidas HAVYARIMANA	Board Member	Burundi

²⁷ AUCPCC, Article 22.5.

²⁸ [Http://www.au.int/SP/ANTICOR/about/board-members](http://www.au.int/SP/ANTICOR/about/board-members).

07	Ms. Henriette Tall DIOP AU ABC	Board Member	Senegal
08	Mr. James Kahoza	Board Member	Uganda
09	Ms. Dorothy N. ANGOTE	Board Member	Kenya
10	Mr. Paulos Kalomho Noa	Board Member	Namibia
11	Dr. Jane Ansah	Board Member	Malawi

Second and Current Advisory Board (2011 – 2013)

No	Names	Position	Country
01	Mrs Julie Onum-Nwariaku	Chair Person	Nigeria
02	Mr. Nabil Hattali	Vice-Chair Person	Algeria
03	Dr. Edward G. Hoseah	Rapporteur	Tanzania
04	Mrs Dorothy N. Angote Muya	Board Member	Kenya
05	Dr. Jane M. Ansah	Board Member	Malawi
06	Mr. M'Pèrè Diarra	Board Member	Mali
07	Mrs. Henriette Diop Tall	Board Member	Senegal
08	Dr. Joe Tony Aidoo	Board Member	Ghana
09	Dr. Frene N. Ginwala	Board Member	South Africa
10	Ambassador Leonidas Havyarimana	Board Member	Burundi
11	Dr. Costantinos B. Tesfu	Board Member	Ethiopia

2.2.3 Activities

38. Since its inception in January 2009, the AU-ABC has undertaken several activities. These activities include the following:

- Elaboration and adoption of the Board's internal rules and regulations;
- Elaboration and adoption of a code of conduct for Board's members;
- Adoption of programmes of action for 2010 and 2012;
- Development and adoption of 2011-2015 Strategic Plan;
- Reports to the Executive Council on Board's meetings held in May, December 2009, March and July 2010.²⁹
- Advocacy Missions to encourage ratification and follow up self-assessment baseline questionnaire: May - December 2012

SECTION III: THE AU-ABC AND IMPLEMENTATION OF THE CONVENTION

39. An effective implementation of the ABC's mandate depends largely on the methodology it adopts and the resources available to it. The resources required by the Board are not only to enable it recruit staff and run its office facilities in Addis Ababa, but more importantly, to enable the ABC to deploy missions, as appropriate, to the AU

²⁹AU-ABC, *2011-2015 Strategic Plan*, Final Version, June 2011, 23.

Member States in furtherance of its mandate. In an ideal situation, the AU-ABC should be able to undertake necessary, even if limited, field trips to selected comparable regional bodies from where it could learn, first hand and on-site, how such bodies go about implementing their own mandates.

40. It is common knowledge that national anti-corruption commissions, just as national parliaments, do undertake such trips, especially during their formative periods. However, due to limited resources, the ABC has not been able to benefit from this kind of exercise.

3.1 Resources

41. The ABC lack sufficient capacities and resources to perform its mandate. It is poorly equipped in terms of personnel, infrastructure, and financial resources needed to undertake all its activities. The ABC's secretariat is made up of three personnel -an Executive Secretary, a Senior Governance Officer, and an administrative Assistant. A decision of the AU Executive Council recommended that the Secretariat should be constituted by at least 7 staff as follows:

- Secretary to the Board
- Senior Policy Officer for Legal & Political Matters
- Senior Policy Officer for Economic Matters
- Administration & Finance Officer
- Office Assistant & Documentalist
- Bilingual Secretary
- Driver Messenger

42. This report establishes that the Secretariat requires at least 10 staff to fully function. Thus, it is proposed that future development of the Secretariat should include:

- One (1) Librarian
- One (1) IT-Specialist
- One (1) Junior Officer
- One (1) Receptionist

43. It is highly desirable to immediately appoint the two policy officers envisaged by the Executive Council Decision especially since the Secretariat currently has no researchers who could undertake even the most basic forms of document analysis. Furthermore, the Secretariat only has three computer units, which cannot adequately cater to its present constitution (ABC members and staff) let alone when the secretariat is fully constituted.

44. As far as its financial resources are concerned, the third ABC report of the activities submitted to the Executive Council during the AU Summit from 16th June to 1st July 2011 in Malabo, Equatorial Guinea, revealed that the ABC was allocated a budget of \$US 525.000,00 in 2011 with a maximum permissible 5% increase for the year 2012.

45. However, in recognition of the fact that most of the 2011 budget was spent on staff cost and ABC meetings, the AU increased the ABC's budget in 2012 to \$1.3 million. This, indeed, is a remarkable improvement from the previous year and should enable the ABC to undertake more activities towards implementing its mandate. The report notes, however, that part of the budget increase came from the donor community.

46. The AU Convention provides for the appointment of ABC members for a period of two years, renewable once, which is a shorter mandate as compared to other regional enforcing mechanisms.

47. The AU Convention also provides that the ABC should report to the Executive Council on a regular basis without any precision on the progress made by each State Party in complying with the provisions of the Convention.

48. In its 2011-2015 Strategic Plan, the ABC identified several weaknesses related to its resources. These weaknesses included inadequate human capacity to implement the mandate, insufficient financial and material resources, and insufficient human resources within the ABC Secretariat, insufficient long term partnerships, inadequate office space, and short term for the Board's members.³⁰

3.2 Implementation of the Mandate of the Board

3.2.1 Promote and encourage the adoption and application of anti-corruption measures on the Continent

49. As at the moment, only 33 Member States of the AU have ratified the Convention with even less having undertaken domestic implementation of the treaty. This situation drastically limits the ability of the AU-ABC to implement its mandate. For the AU-ABC to fulfil its mandate, it will necessarily have to embark on visits and outreach exercises not only to the States Parties of the Convention but others. Promotion should include holding meetings, public sensitization events and so on in various States Parties to the Convention. It might also be necessary for the Body to liaise with and, in some occasions, rely on local NGOs and civil society to help it in ventilating the work of the ABC in their various countries.

50. All this requires substantial resource mobilization that the ABC does not currently possess. Thus, based on its limited human, material and financial resources, the AU-ABC has done little to promote and encourage the adoption and application of anti-corruption measures in Africa.

³⁰ AU-ABC, *2011-2015 Strategic Plan*, Final Version, June 2011, 20-21.

3.2.2 Collect and document information on the nature and scope of corruption and related offences in Africa

51. The ABC needs to collect more and document information and scope of corruption and related offences in Africa. The purpose of this exercise is to enable the ABC track the scope of corruption in Africa, an information that is vital to the ABC's understanding of what it needs to promote and why. Also, information is essential for in order to enable the ABC develop its strategies for implementing other aspects of its mandate. The ABC has taken some steps to collect and document such information through the Baseline Questionnaire sent to States Parties to the Convention. However, only thirteen out of the 33 AU Member States that ratified the Convention have responded so far. Also, the ABC has not been able to subject the collated documents and information to some kind of comparative analysis from which it can then synthesize the common trends and points of divergence in those States Parties. Such analysis is crucial to build a coherent and complete picture of the nature and scope of corruption in Africa. For instance, it will be easy, in that way, to know which of the obligations do AU States Parties prevalently approve and which do they not.

52. In its third report to AU Executive Council, the ABC complained there are several reports supposedly generated from research, which have put some very alarming data on the nature and scope of corruption on the continent...Africa needs to carry out its own home-grown research to authenticate or dispute the existing reports. This responsibility is thrust on the ABC by the Convention.³¹

53. Arguably, due to the deplorable lack of resources already noted the ABC has so far failed in carrying out or commissioning such home-grown research which should not just aim at verifying the existing reports, but also aim at producing information on the nature and scope of corruption in Africa. The interest for such an autochthonous research is philosophically self-evident: *de minimise*, such an exercise will remove the deep mistrust and suspicion that usually hail externally-generated data and findings.

54. The net implication of that on AU Member States is that they may be better persuaded to accept the devastation caused by corruption if they know such information emanates from African institutes, academic centres, and NGOs and not from people sitting in some offices thousands of miles away from Africa. However, the opposite may also be true since most African leaders who rely on foreign support tend to give more credit and listen to foreign, especially Western experts, than to their own experts they hardly trust. One hopes that with the emphasis on the need for home-grown research, this is going to change.

³¹ AU-ABC, *Third Report to the Executive Council*, 11.

3.2.3 Develop methodologies for analysing the nature and extent of corruption in Africa, and disseminate information and sensitize the public on the negative effects of corruption and related offences

55. The AU-ABC still needs to develop methodologies for examining corruption in Africa and disseminate information and sensitize the public on the negative effects of corruption and related offences. Undertaking this particular mandate involves the recruitment of people with technical knowledge of how to conduct analysis of this nature. One of the priorities for 2011 and 2012 was to raise awareness on the Convention and on the visibility of the ABC.³² Raising awareness is a pivotal aspect of the ABC's mandate. It is not that Africans are not aware of the disasters caused to their lives by corruption. The thrust of this sensitization is to awaken them to the work of the ABC and on why everyone needs to take the fight against corruption seriously. However, given the limited resources available to the ABC, it will be important for it to target its message to grassroot entities such as CSOs and Faith-Based Organizations (FBOs) whose work reach a greater number of people through regular and inexpensive means (for instance, preaching and speaking against corruption in such places as Mosques, schools and Churches).

3.2.4 Advise governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions

56. The Baseline Questionnaire is “a major means of collecting the relevant data on corruption and of assessing the performance of Member States on the implementation of the Convention and to advise them”.³³ Only thirteen states have responded. This has limited the capacity of the ABC to advise African governments on how to deal with the scourge of corruption and related offences in their domestic jurisdictions.

57. Apart from the Baseline Questionnaire, the ABC should devise other means of obtaining information from government. The fact that only thirteen of thirty three States have bothered to respond to the questionnaire, and some only after one year, shows clearly that this is a good but not necessarily a sufficient strategy. Certainly, some of the information supplied might have been overtaken by the time the questionnaires are submitted given the great lapse of time. It is up to the ABC to think about what other possible methods it may want to adopt to complement the questionnaire. Perhaps one method might be for it to seek information from NGOs, CSO's and other public entities in States Parties which might be able to give such information on the state of corruption in their countries. After all, corruption is not a crime that is hidden from the public view in Africa.

³² AU-ABC, *2011-2012 Strategic Plan*, 36.

³³ AU-ABC, *Third Report to the Executive Council*, 11.

3.2.5 Collect information and analyse the conduct and behaviour of multi-national corporations operating in Africa and disseminate such information to national authorities designated under Article 18(1) of the Convention

58. As already noted, corruption is ubiquitous. Foreign governments, multi-national and trans-national corporations and even non-governmental organisations are all involved and contribute to the scourge of corruption in Africa. The number of multi-national corporations operating in Africa has been on a steady increase, but so has been their influence on several African governments, especially in countries with large extractive economic bases, such as oil and gas, gold, diamond, and so on. The ABC also needs to collect information and analyse the conduct and behaviour of multinational and transnational companies and disseminate such information to national authorities. As with everything else, the stark lack of resources has not enabled the ABC to fully deliver on its mandate.

3.2.6 Develop and promote the adoption of harmonized codes of conduct of public officials

59. The ABC has not embarked as yet on the process of harmonising codes of conduct of public officials that would help prevent or combat corruption in Africa according to the AU Convention. In order for such a process to yield desired results whenever undertaken, it is pertinent, first and foremost, that all or a great majority of AU Member States ratify the AUCPCC and enact national legislation for its implementation.

3.2.7 Build partnerships with the African Commission on Human and Peoples' Rights, African Civil Society, governmental, intergovernmental and non-governmental organizations to facilitate dialogue in the fight against corruption and related offences

60. The ABC already interacts with the African Commission and should also do it with the African Court on Human and Peoples' Rights. It also interacts directly with AU Member States through the Baseline questionnaire and visits to promote the implementation and the ratification of the Convention. Indirectly, it interacts with them through the AU and the Executive Council to which it reports on its activities.

61. However, it cannot win the fight against corruption alone. As the ABC articulates in its 2011-2015 Strategic Plan:

“Development partners are mainly involved in capacity development of stakeholders fighting against corruption, either through technical or financial support. They also support policies and programs through policy dialogue and political mobilization. In addition to this, they share lessons learnt from the experiences of their own and other countries in building systems and tools to fight corruption and reinforce good governance.”

62. The ABC needs to entertain constructive and constant dialogue and build partnerships not only with African governments considering their prominent role in fighting corruption at the national and regional levels, but also with African CSOs, intergovernmental and NGOs. If the dialogue with the governments of AU Member States, including those that have acceded to and ratified the Convention is difficult, it is even more difficult with CSOs and NGOs because the ABC needs more resources to engage them. Most of them are not even aware of the existence of the Convention and of the ABC.

3.2.8 Submit a report to the Executive Council on a regular basis on the progress made by each State Party in complying with the provisions of the Convention

63. Since its establishment in 2010, the ABC has reported regularly to the AU through the Executive Council. Previous reports only related to its internal activities. This is probably the first comprehensive report on the progress made by State Parties in complying with the provisions of the Convention.

64. One of the priorities for 2011-2012 was to “support the implementation of the Convention, specifically on the level of ratification” and to raise awareness at the level of AU Member States on the importance of the Convention and its ratification in order to combat corruption on the continent.³⁴ This work has to be done through ABC’s visits to those 22 AU Member States that have not ratified as yet the Convention in order to convince them to do so. These visits are unlikely to be paid to all those states considering the modest financial and human resources of the ABC. On the other hand, without a common political will shared by African leaders, these ABC’s visits, even if they are undertaken, are unlikely to result in the ratification of the Convention by those 22 AU Member States that have failed to ratify it thus far.

3.2.9 Perform any other task relating to corruption and related offences that may be assigned to it by the policy organs of the African Union

65. The AU policy organs may request the AU-ABC to perform other tasks relating to corruption and related offences. The adoption of the 2011-2015 Strategic Plan was accordingly encouraged by the AU Executive Council.

3.3 Monitoring by the Advisory Board of the African Convention on Preventing and Combating Corruption in Africa

66. Arguably, as a follow up mechanism to the implementation of the AUCPCC, its primary function is to monitor States Parties’ compliance with this Convention. This

³⁴ AU-ABC, *2011-2012 Strategic Plan*, 36.

oversight function has not been performed fully as yet due to lack of resources of the AU-ABC. By not responding to the Baseline Questionnaire, states parties have not helped the ABC to perform its monitoring function.

SECTION IV: CHALLENGES TO THE IMPLEMENTATION OF THE AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

4.1 Challenges faced by the AU-ABC in performing its mandate vis-à-vis AU Member States

- Lack of strong political will among African leaders to accede to, ratify, and comply with the Convention;
- AU-ABC's lack of sufficient human, material and financial resources to carry out its mandate;
- AU-ABC's lack of visibility;
- AU-ABC's lack of information on the state of corruption and its impact on development in Africa;
- Challenges related to the enforcement of other AU legal instruments.

4.2 Challenges faced by States Parties in implementing the Convention and best practices

67. Lack of political will of African leaders to domesticate the Convention. Corruption is admittedly a highly sensitive issue and one which engulfs virtually all arms of governments in Africa. It is therefore no surprise that there is little appetite among African States to ratify the AU Corruption Convention and where they do, to implement it domestically, a constitutional step that is necessary in some countries where treaties are not automatically incorporated into the local laws. Even in countries with monist tradition – where treaties, once ratified are incorporated into the domestic law - the executive often find ways of ensuring that treaties that they do not look upon favourably receive less attention and meet severe blockades at the implementation level.

- The report finds that virtually all States Parties to the convention who returned the Baseline Questionnaire administered by the AU-ABC, are yet to implement the convention in certain areas; namely (a) adoption of legislative and other measures to ensure that the proceeds of illegal and corrupt practices are not used to fund political parties; (b) incorporation of the principle of transparency into funding of political parties; and (c), declaration of assets by public officials. It is obvious that all these issues relate to the funding of political parties, including of the elections that brought into powers the very governments that ratified the treaty and those that will implement it. Yet, in other aspects such as criminalization of the crime of corruption for the general public, provided this does not affect party funding, State Parties

to the convention have been more forthcoming in implementing the convention.

- Lack of institutionalisation of the values of democracy, rule of law and good governance. Not all African countries embrace democracy, and more recently, there has been an upsurge of military coups and 'sit-tightist' syndrome. These undemocratic governments have a much higher propensity for using corruption and patronage to maintain themselves in power, than do their democratic counterparts. The report finds that the attitude of undemocratic States Parties towards implementing the Convention is noticeably different to those of democratic parties in terms of political will.
- States Parties' failure to implement the Convention and comply with its provisions. Despite evidence that some States Parties to the Convention have taken measures which reflect some of the provisions of the convention in their systems, there is a general failure to implement the Convention on a large scale.
- States Parties' and anti-corruption mechanisms' failure to report to the AU-ABC on the implementation of the Convention. An effective implementation of the AU-ABC mandate of monitoring States Parties' compliance with the Convention requires the latter, under Article 22(7) to report within a year progress made on the implementation of the Convention and, thereafter, for their national authorities to report, at least once a year, measures taken by them to the ABC. This provision is not being complied with.

4.3 Challenges faced by the AU in getting its member states to comply with the Convention

- The AU has various challenges of its own. It has fewer human and material resources than it requires assisting its Member States, especially those that are less endowed, to implement the convention. Implementing the AUCPCC entails several measures which include providing training and capacity-building exercises for Member States. With its well-known resource-challenge, the AU has been unable to render even the most basic of such assistance to its most deserving members.
- Unlike the UN Corruption Convention, which is applicable to international organizations, including the UN itself, the AUCPCC does not apply to the AU. While as an international organization the AU, of course, has its own internal audit processes and procedures, the non-applicability to itself of a Convention that it wishes to apply to its Member States may inspire little encouragement from those states. The fact that there is no provision in the Convention which applies to international organizations may therefore undermine the authority of the AU to rally round its Member States on the Convention. It might therefore be worthwhile for the AU to undertake an

amendment of the Convention so as to make it applicable to itself and regional economic communities across the continent. This will most likely remove any “Orwellian feel” about the Convention.

- Lack of effective enforcement mechanism. The responsibility of the AU-ABC is to promote and monitor compliance with the Convention, not to enforce it. Thus, as with any other multilateral treaties adopted by the AU, enforcement rests solely with that organization. As it currently stands, the AUCPCC makes no provisions for sanctions against violators. Whereas the Convention provides for mutual cooperation and assistance among Member States, especially in relation to detection and extradition. It says nothing about where governments of State parties violate the treaty. Thus, as it stands, the Convention enables States Parties to punish their or foreign nationals who commit crimes prohibited by the Convention; it does not give any power to the AU to penalise any State Party to the Convention which is breach of its obligations. Article 2(c) of the UN Convention against Corruption defines “public officials” to which the Convention applies, to include “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization”. On the contrary, Article 1 (9) of the AU Convention does not include officials of public international organizations in the category of “public officials”.
- The AU Convention does not provide for a Conference of States Parties (CSP), which, as with the one provided for by Article 63 of the UN Convention, could to help “improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation”. This is a critical omission in that CSP plays a vital role in the implementation of a convention of this nature. Such a body will serve as an oversight mechanism under the auspices of the AU. Whereas the AU-ABC promotes and coordinates States Parties’ implementation measures, the CSP among other things, can take steps towards enhancing the implementation of the Convention. It can also take far-reaching decisions in terms of enforcement. The CSP is usually a body of States Parties to the Convention, making it therefore an august body in the life of the convention. Under the UN Convention, the Secretary General of the UN shall convoke the CSP in the first year after which the CSP will regularly meet on its own. Without the CSP, the AU robs itself of a vital mechanism for improving implementation of the Convention by its Member States.
- Building partnerships with other governmental, intergovernmental, and CSOs in order to promote dialogue in combating the scourge of corruption as a societal problem. The AU should therefore engage them in this fight against corruption.

SECTION V: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

68. Good governance features prominently among the objectives and principles of the AU as a key to democracy, development and African renaissance. Since the creation of the AU, African leaders have admitted that corruption is the major challenge to good governance in Africa and is therefore to be prevented or combated in all spheres and by all means. The *NEPAD Declaration, the APRM and the Declaration on Democracy, Political, Economic and Corporate Governance* all condemn corruption. The strongest condemnation of the scourge of corruption came with the adoption of the AU Convention of 2003 that entered in force in 2009 and established the ABC as its following-up mechanism.

69. Despite some progress made and good practices experienced here and there, the roots of the scourge remain solid and all reports from national and international organisations point to the fact that the state of corruption has been worsening.

70. On the other hand, the political will to combat corruption demonstrated by African leaders when they adopted the AU Constitutive Act, NEPAD and APRM Declarations, and when they adopted the AUCPCC and established the ABC has waned. Just over half of AU Member States have ratified the Convention.

71. Even fewer States Parties have domesticated the Convention and complied with its provisions. Nearly half of African leaders have proven so far reluctant to ratify the Convention and even more reluctant to domesticate it and implement international and regional frameworks “because they might circumscribe their access to wealth and shut down the conduits of public resources”.³⁵ The ECA was right that “although many African countries have ratified the UN Convention and the AUCPCC, their commitment to those documents remains more formal than substantive”.³⁶ The ABC has to report regularly to the Executive Council on progress made by states parties in complying with the Convention.

72. Aware of little progress made by the AU in enforcing its Convention and by States Parties in complying with its provisions, the AU Assembly requested the ABC to report on the compliance with this Convention, the challenges faced and how they could be overcome at its July 2012 meeting that inaugurates the second decade of its existence. Accordingly, this Report ends with the recommendations below on how better to combat the scourge of corruption, promote good governance and development and unleash an African renaissance that are hampered by corruption.

³⁵ ECA, *Africa Governance Report II*, 2009, 214.

³⁶ *Idem*, 213-214.

5.2 Recommendations on how to improve governance by preventing and combating corruption in Africa

5.2.1 Recommendations to the AU with regard to the ABC

- Preventing and combating corruption in Africa and following up on the implementation of the Convention by AU Member States parties thereto require sufficient capacities and resources that the ABC has been lacking thus far. The ABC is poorly equipped in terms of personnel, material and financial resources needed to undertake all its activities. The AU should therefore consider providing it with an adequate budget and equipping with skilled human resources, material and financial resources while also considering capacity building of its members.³⁷
- While the ABC plans to raise fund from different sources, this is a rather unfortunate development on many fronts. First, the ABC should concentrate its time and energy on implementing its mandate. Given that ABC members only have a two-year once renewable term, this practically puts enormous constraint on it. Secondly and more worryingly, sourcing for funds from various sources may have negative impact on the work of the ABC and compromise both its independence and integrity. Corruption is a very devious and sensitive vice. A body dedicated towards its eradication should never be starved of funds, with the unpalatable consequence that it goes, cap in hand, to the very entities against whom it might, one day, find to be responsible for some of the most gruesome incidents of corruption on the continent.
- As far as its financial resources are concerned, the current level of ABC finances is reasonable, although, with the much-needed expansion of its Secretariat staff strength, there will be need to increase the budget accordingly. The AU's resources are too little and a sizeable proportion of those derived from contributions by international partners and donors most of which are often tied to specific areas where the donors have particular interest. Nevertheless, the finances of the ABC must be sufficient enough to enable it make success of its mission. Lack of adequate funding of anti-corruption bodies, especially one that is tasked with a continental goal, not only risks undermining the integrity of the Convention, but it also raises questions about the seriousness of its mission. The ABC should be one of the best funded mechanisms/organs of the AU considering that its functions cut across every single action of the Union and its

³⁷ AU-ABC, 2011-2015 *Strategic Plan*, 20.

Member States. The AU would send a strong signal of its commitment to fighting corruption by ensuring a realistic funding level for the ABC at all times.³⁸

- The AU may consider revising the Convention to provide for:
 - The appointment of the ABC members for a period longer than two years as is the case for other enforcing mechanisms to give them a reasonable length of time to perform their mandate;
 - The submission of a report of the ABC to the Executive Council on a yearly basis and not just on a regular basis on the progress made by each state party in complying with the provisions of the AUCPCC.

5.2.2 Recommendations to AU Member States and States Parties to the Convention

- The AU should request all its Member States to accede to the AUCPCC, ratify and domesticate it for those that have not done so to show they are really serious about the fight against corruption in Africa in general and in their individual countries in particular.
- Since there are countries that have only signed and ratified, the AU should request them to domesticate it and make it enforceable at the domestic level to ensure that corruption in all its forms is criminalised and its authors persecuted accordingly.
- States Parties to the Convention should be invited to comply and report to the ABC and allow the ABC to report to the AU in return by responding to the Baseline Questionnaire. The third ABC report revealed that up to April 2012, only 10 out of 31 states parties have responded to the Baseline Questionnaire that was sent to them in December 2010. These countries were Congo, Ghana, Malawi, Namibia, Rwanda, Sierra Leone, Tanzania, Togo, and Zambia. South Africa, the 10th state party to respond only did it in March 2012, which is more than a year later. The AU should call on the States Parties to respond in order to help the ABC deliver on its mandate and assess the level and report on States Parties' compliance with the Convention.

³⁸ AU-ABC, *Third Report*, paragraphs 12 & 13.

5.2.3. Recommendations to the AU Member States, Civil Society and other Stakeholders

- According to the African Governance Report (2005), corruption is “the most serious national problem confronting African countries”.³⁹ It aggravates poverty and underdevelopment. This is a major societal phenomenon affecting all the sectors of life and areas of governance, whether political, socio-economic, cultural or corporate governance. Corruption is a monster, a “leviathan”. To prevent and combat it, the ABC should be empowered to build and strengthen partnerships with other AU institutions such as the African Commission and Court on Human and Peoples’ Rights, with African CSOs at the regional and national levels, and with governmental, intergovernmental and non-governmental organisations.
- Almost ten years after its adoption and four after its entry in force, the Convention is still to be promoted among the African people. Yet, popular ownership resulting from such promotion is critical in the fight against corruption in Africa. Consequently, it is important and indeed urgently necessary for the AU, CSOs, NGOs, and other stakeholders to assist the AU-ABC in undertaking outreach and sensitizing the African peoples to the campaign against corruption. While the earmarking or setting out of a day by the AU to highlight the devastation caused by corruption, fighting corruption in Africa is an everyday affair. It is one mission that every single member of the society must be enlisted to support.

³⁹ See ECA, *Assessing the Efficiency...* vii; ECA, *African Governance Report I (AGR I) 2005*, Addis Ababa: ECA.

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