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Governance and the Fight against Corruption in Africa

**Parliamentary documentation for the first meeting of the Committee
on Governance and Popular Participation**

1. Introduction

1. Corruption remains the most daunting challenge for most African countries. As evidenced by several studies and surveys, it is a major obstacle to economic progress, social welfare service delivery and good governance on the continent¹. It is estimated that, in 2004, the continent lost more than \$148 billion to corruption, or 25 per cent of its gross domestic product. In addition, 50 per cent of tax revenue and \$30 billion in aid for Africa ended up in corrupt hands². Thus, corruption has become a major issue of international concern not only in Africa, but also in the entire global system. Many African countries have adopted policy measures, enacted laws and established institutions to address the problem. Yet, corruption continues to be a lingering issue in the governance and economic life of most African countries.

2. This paper examines the linkage between governance and the fight against corruption in Africa, underscoring the nature and magnitude of the problem and how it is perceived by people on the continent, and the efforts made by international, regional and national institutions to combat it, and makes policy recommendations for addressing the problem.

2. Linkage between corruption and governance

3. There are many definitions and views of the concept of corruption. However, many scholars and practitioners define it as “the abuse of public authority or trust for illegal private gains”.³ This definition is not bereft of challenges; it tends to be less precise and narrow and does not consider the cultural context in which corruption takes place. Corruption could be best explained through its varied manifestations, including bribery, embezzlement, fraud and extortion, abuse of discretion, intimidation, nepotism, favoritism, kickbacks and patronage.⁴ Moreover, acceptance of unlawful gifts and commissions, illegal contributions, money laundering, identity theft, insider trading, abuse of power and white-collar crime are equally considered as acts of corruption.⁵ Several studies argue that bribery is the most commonly practiced form of corruption. “It entails beneficiaries using extralegal means of payment to acquire government favours and resource allocations.”⁶ In Africa, bribery, patronage, nepotism and clientelism are common forms of corruption whereas governance is conceived as the steering of State and society to achieve some generally agreed goals⁷.

¹ See, UNECA, *African Governance Report II*. Oxford: Oxford University Press, 2009.

² African Development Bank, 2006. *Combating Corruption in Africa: Issues and Challenges. Concept note paper for the 2006 Annual Meetings*, Ouagadougou.P.7.

³ See Transparency International and World Bank definition of corruption, “the abuse of public office for private gain”. The World Bank definition recognizes the existence of corruption both in the public and in the private sectors, and Langseth, et al, 1997. *The Role of National Integrity System in Fighting Corruption*. Washington DC: World Bank: P.3.

⁴ See Kyambalesa, Henery, 2006. “Corruption: Causes, Effects, and Deterrents” in *Journal of Africa Insight*. Vol.36, No.2 P.104 and African Development Bank, 2006. *Combating Corruption in Africa: Issues and Challenges. Concept note paper for the 2006 Annual Meetings*, Ouagadougou.P.2.

⁵ See Atuobi, Samuel, 2007. ‘Corruption and State Instability in West Africa: An Examination of Policy Options’. KAIPTC Occasional Paper. P.7; Wikipedia; Amundsen, Inge, 1999. *Political Corruption: An Introduction to the Issues*. Bergen: Michelsen Institute. P.3.

⁶ See Anti-corruption website, 2006. /<http://www.anticorruption.info/> and Rose-Ackerman(ed) *International Handbook on the Economics of Corruption*. Massachusetts: Edward Elgar Publishing Inc.

⁷ Said Adejumobi, “Democracy and Good Governance: Theoretical and Methodological Issues” in S. Adejumobi and A. Bujra (Eds.) *Breaking Barriers, Creating New Hopes: Democracy, Civil Society and Good Governance in Africa*. Trenton, New Jersey: Africa World Press, 2002.

Governance is also defined as “the tradition and institutions by which authority in the country is exercised for the common good”. This includes the process by which those in authority are selected, monitored and replaced (political dimension); the Government’s capacity to effectively manage its resources and implement sound policies (economic dimension); and the respect of citizens for the State’s institutions (institutional dimension)⁸. There is a cyclical linkage between corruption and governance. Bad governance breeds corruption, and corruption is symptomatic of and deepens bad governance. Corruption undermines governance by decreasing the capacity of the State to function efficiently, deliver services to the people, such as roads, electricity, pipe-borne water and other basic necessities of life, and distorts policymaking. The resources earmarked for development projects are either siphoned or misallocated. It affects the credibility and legitimacy of the State, erodes trust and confidence in public institutions; and creates tension and discord between individuals, groups and communities. In many conflict situations in Africa, corruption is cited as one of the major causes of bad governance, which gives rise to those conflicts. Evidently, corruption and good governance are incompatible. Wherever corruption flourishes, there is likely to be bad governance, and within a good governance system, corruption is most likely to be minimal, or significantly reduced.

3. Typologies of corruption

4. Corruption has been generally categorized in terms of its scale and magnitude as grand or petty corruption. Grand corruption usually involves high-profile political cases of corruption and sometimes the private sector. It refers to corruption perpetrated “by politicians and senior officials, in which their conduct sets the standard for the people under them, and moves down the line”.⁹ It is also “the purposeful and secretive violation of the standards of moral behaviour in a certain political community by politicians...”¹⁰ Grand corruption includes embezzlement of public funds, high-level political patronage and clientelism, with colossal material benefits¹¹. Electoral corruption is also included in this category. In Africa, many high government officials use political offices to amass personal wealth. For instance, more than \$420 billion is estimated to be held in Swiss banks by Africa’s political leaders and high-ranking officials¹². The second type of corruption which is prevalent in Africa is petty administrative or bureaucratic corruption. It is defined as the “use of public office for private benefit in the course of delivering a public service”.¹³ Such practice is common in socio-economic settings where personal incomes cannot, by and large, meet the basic needs of civil servants. This kind of corruption is experienced daily at places like hospitals, schools and local licensing offices. Common forms of administrative corruption include bribes to issue licenses, avoid or lower taxes, escape customs procedures, and win public contracts.¹⁴ Such corruption distorts the provision of public services as it leads to the unfair distribution of services

⁸ Daniel Kaufmann, “10 Myths About Governance and Corruption”, *Finance and Development*, September 2005, Vol. 42, No. 3, p. 41.

⁹ World Bank, 1998. *Ethiopia: Anti-Corruption Report*. Washington DC: World Bank P. 13.

¹⁰ Robben, Katrien, 1998. “The Recent Debate on Curbing Political Corruption” in *Ethics and Accountability in a Context of Governance and New Public Management*. Amsterdam: IOS press P.220.

¹¹ See Atuobi, Samuel, 2007. ‘Corruption and State Instability in West Africa: An Examination of Policy Options’. KAIPTC Occasional Paper P.7 and the anti-corruption website, 2004. /<http://www.anticorruption.info>

¹² Doig, Alan and Theobald, Robin (eds), 2000. *Corruption and Democratizations*. London: Frank class P.4.

¹³ Anti-Corruption Website, 2004. <http://www.anticorruption.info>

¹⁴ African Development Bank, 2006. *Combating Corruption in Africa: Issues and Challenges*. Concept note paper for the 2006 Annual Meetings, Ouagadougou.P.2-3 and the Encyclopedia of Americana.

and resources.¹⁵ To summarize, the major difference between grand corruption and petty administrative corruption is that the former entails “controlling and manipulating the entire system to serve private interests, while the latter reflects specific institutional weaknesses within the system”.¹⁶

4. Perceptions of corruption in Africa

5. Measuring perceptions and beliefs about corruption rather than the corruption itself skirts the inherent difficulties involved in measuring corruption directly. Corruption is a secretive transaction by definition and as such it is very difficult, if not impossible, to measure in a reliable manner. In addition, since corruption is illegal, regularly and directly observing corrupt activity is almost always impossible. Several attempts have been made at quantifying the degree to which corruption is prevalent in a given society. The most commonly employed mechanisms for creating quantitative data on corruption are surveys and econometric analysis, or estimates based thereon. Some of the survey-based tools for measuring the perception of corruption are the ECA African Governance Report and the Transparency International Corruption Perception Index.

6. According to the 2005 ECA African Governance Report II (AGR II), corruption ranked as one of the three most serious national problems confronting African countries, the other two being poverty and unemployment. In the 2009 African Governance Report, corruption seems to have worsened in many African countries as perceived by the people. The popular verdict is that most of the governance institutions in Africa – executive, legislature, judiciary and the public service – are considered to be corrupt. Even the civil society is not immune from corruption. The selected cases of those institutions are instructive.

4.1 Parliament

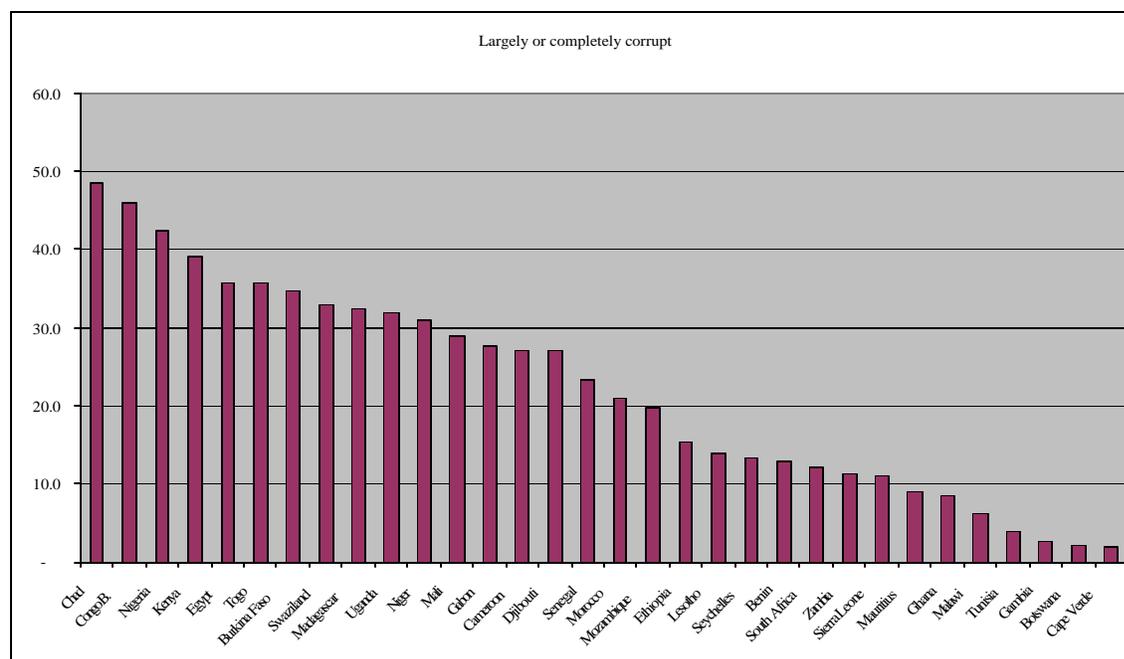
7. Parliaments are major democratic institutions as their members serve as direct representatives of the people. Active, well-managed parliaments can contribute to the promotion of accountable governance. However, the AGR II reveals that there is pervasive corruption in the parliaments of many African countries. In countries like Chad, Republic of the Congo, Nigeria, Kenya, Egypt and Togo, there is a perception by the consulted experts that corruption is prevalent in the legislatures, while in countries like Tunisia, the Gambia, Botswana and Cape Verde, there is a perception of low corruption in the parliaments. The figure below is instructive.

¹⁵ See Transparency International Global Barometer, 2007:16; Atuobi, Samuel, 2007. ‘Corruption and State Instability in West Africa: An Examination of Policy Options’. KAIPTC Occasional Paper P.7; Anti-Corruption Website, 2004; Rose-Ackerman (ed) *International Handbook on the Economics of Corruption*. Massachusetts: Edward Elgar Publishing Inc. P. xix.

¹⁶ African Development Bank, 2006. Combating Corruption in Africa: Issues and Challenges. Concept note paper for the 2006 Annual Meetings, Ouagadougou. P.7.

Figure 1: Expert opinion on corruption in the legislature

Share of experts surveyed, by country (percentage)



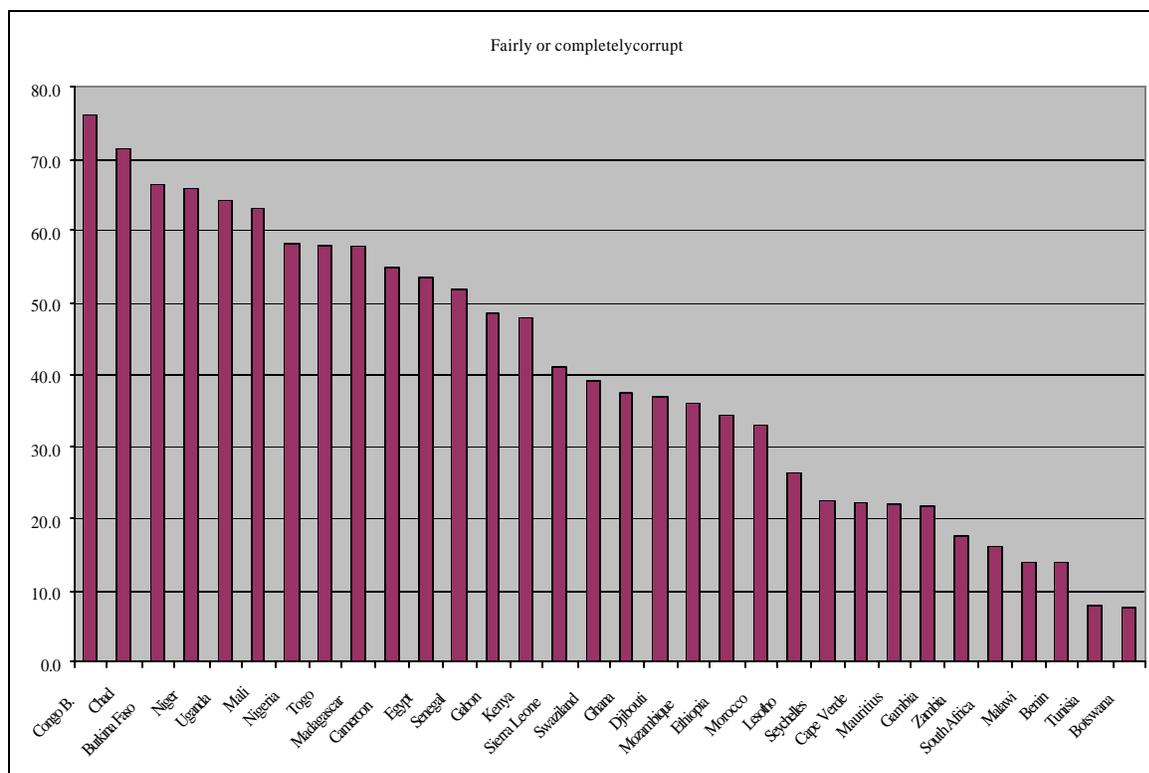
Source: UNECA, *African Governance Report II*. Oxford: University Press, 2009.

4.2 Executive

The executive, which constitutes the political authority in Africa and in which resides tremendous power and responsibilities, is considered by the people to be corrupt in many African countries. In countries like the Congo, Chad, Burkina Faso, Uganda, Mali, Nigeria, Togo, Madagascar, Cameroon, Egypt and Senegal, over 50 per cent of the expert respondents considered the executive to be completely or fairly corrupt. Only in Tunisia and Botswana did less than 10 per cent of the experts regard the executive as fairly or completely corrupt.

Figure 2: Expert opinion on corruption in the executive branch

Share of experts surveyed, by country (percentage)



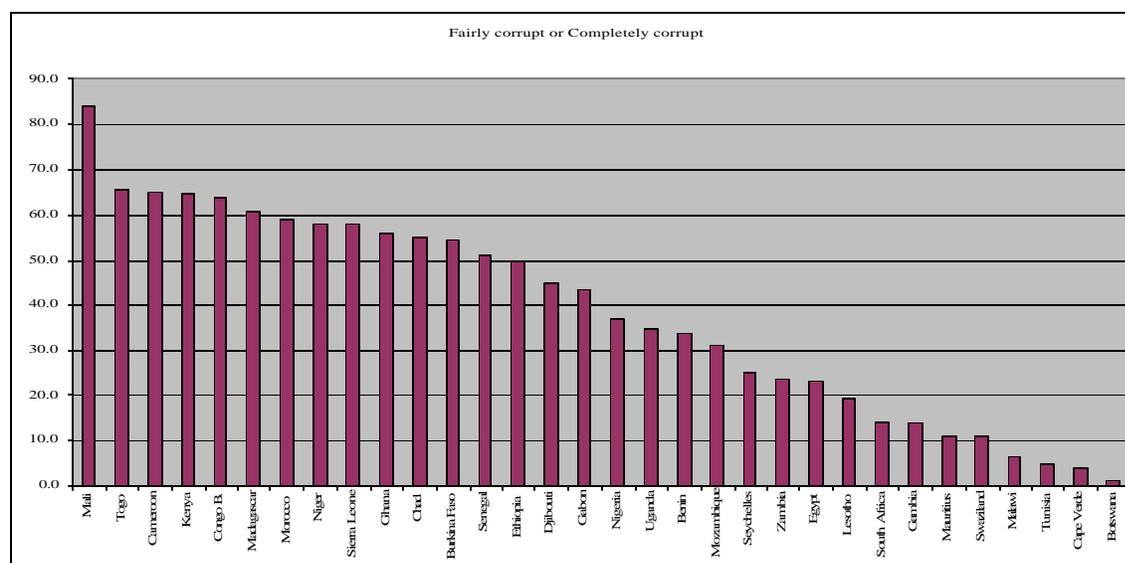
Source: UNECA, *African Governance Report II*. Oxford: University Press, 2009.

4.3 Corruption in the judiciary

9. The judiciary is one of the key institutions in the fight against corruption. Unfortunately, the level of perceived corruption within the judiciary is very high in surveyed States. The results of the ECA expert survey suggest that the judiciary is perceived to be very corrupt in most African countries. In 14 countries (Mali, Togo, Cameroon, Kenya, Republic of the Congo, Madagascar, Morocco, the Niger, Sierra Leone, Ghana, Chad, Burkina Faso, Senegal and Ethiopia), 50 per cent to 84 per cent of experts consulted felt that the judiciary is fairly or completely corrupt. Only in Botswana, Cape Verde, Malawi and Tunisia did less than 10 per cent of the experts rate the judiciary as less corrupt.

Figure 3: Expert opinion on corruption in the judiciary

Share of experts surveyed, by country (percentage)



Source: UNECA, *African Governance Report II*. Oxford: University Press, 2009.

10. These are not the only institutions riddled with corruption, as reported in the ECA African Governance Report II. The tax system, law enforcement agencies, the civil service and other public bureaucracies and the civil society all have varying degrees of corruption.

11. According to the African Governance Report, poor governance, lack of accountability and transparency, low level of democratic culture and tradition, deficiency of citizen participation, lack of clear regulations, low level of institutional control, extreme poverty and inequity could be cited as major causes of corruption in Africa. In addition, a blurred distinction between private and public interests, inadequate accounting and auditing, over regulated bureaucracy, deterioration of acceptable moral and ethical values, and inefficient civil service systems have also been mentioned as major sources of corruption in Africa.¹⁷

12. The report of Transparency International (TI) 2008 Corruption Perception Index shows a correlation with the surveys of the African Governance Report, 2005 and 2009. The report affirms that corruption remains a serious challenge in Africa, and the results of the fight against corruption are mixed. While countries like Benin, Mauritius and Nigeria scored significantly higher in 2008, Burundi and Somalia saw a significant worsening in their perceived levels of corruption. Of the 47 countries reviewed, 30 scored below 3, indicating that corruption is perceived as a serious challenge by the country experts and businessmen. Only three countries - Botswana, Cape Verde and Mauritius - scored above the mid-point level of 5.

¹⁷ UNECA, *African Governance Report I* Addis Ababa: UNECA, 2005; UNECA, *African Governance Report II*. Oxford: Oxford University Press, 2009.

Table. I: Transparency International, 2008 Corruption Perception Index (CPI)

Country	CPI/ Score, 2008	Regional Ranking	Global Ranking
Botswana	5.8	1	36
Mauritius	5.5	2	41
Cape Verde	5.1	3	47
South Africa	4.9	4	54
Seychelles	4.8	5	55
Namibia	4.5	6	61
Ghana	3.9	7	67
Swaziland	3.6	8	72
Burkina Faso	3.5	9	80
Madagascar	3.4	10	85
Senegal	3.4	10	85
Lesotho	3.2	12	92
Mali	3.1	13	96
Gabon	3.1	13	96
Benin	3.1	13	96
Tanzania	3.0	16	102
Rwanda	3.0	16	102
Zambia	2.8	18	115
Malawi	2.8	18	115
Niger	2.8	18	115
Mauritania	2.8	18	115
Sao Tome and Principe	2.7	22	121
Nigeria	2.7	22	121
Togo	2.7	22	121
Eritrea	2.6	25	126
Ethiopia	2.6	25	126
Mozambique	2.6	25	126
Uganda	2.6	25	126
Comoros	2.5	29	134
Liberia	2.4	30	138
Cameroon	2.3	31	141
Kenya	2.1	32	147
Côte d'Ivoire	2.0	33	151
Central African Republic	2.0	33	151
Gambia	1.9	35	158
Guinea-Bissau	1.9	35	158
Congo, Republic	1.9	35	158
Angola	1.9	35	158
Burundi	1.9	35	158
Sierra Leone	1.9	35	158
Zimbabwe	1.8	41	166
Congo, Democratic Republic	1.7	42	171
Equatorial Guinea	1.7	42	171
Chad	1.6	44	173
Sudan	1.6	44	173
Guinea	1.6	44	173
Somalia	1.0	47	180

Source: Transparency International, Corruption Perception Index, 2008.

13. The Southern African Democracy Barometer finds that "perceptions of official corruption are fairly extensive across the region (Southern Africa: Botswana, Zimbabwe, Zambia, Malawi, Lesotho and Namibia)." The results of its survey show that over half of all Zimbabweans considered "all/almost all or most" officials to be corrupt (with an average score of 3.2 on a scale from 1 to 4, where 4 reflects the belief that all officials are corrupt), while almost half of the Zambians questioned ranked the corruption of their officials at 2.9 out of 4 points. Even Namibian citizens, whose view of the level of corruptness of their officials was the most positive of all countries queried, scored an average 2.2 on a scale of 4.

5. International and regional instruments for combating corruption

14. In recent years, public interest in the issue of corruption has grown steadily in both the public and the private sectors. Concerns with corruption and the desire to curb it informed the recent adoption of a range of instruments at all levels. In any given region, several different anti-corruption instruments may apply. In this section, we discuss the main inter-governmental anti-corruption agreements that apply in Africa: the Civil Law Convention on Corruption, the United Nations Convention against Corruption, and the African Union Convention on Preventing and Combating Corruption. Highlights of selected subregional instruments for combating corruption are also provided.

5.1 International instruments

(a) The United Nations Convention against Corruption

15. The United Nations Convention against Corruption (UNCAC) is the main international framework put in place by United Nations Member States to combat corruption globally. The key objective of UNCAC is to bring a higher degree of uniformity in the formulation and application of anti-corruption rules and regulations across the world.

16. In its eight chapters and 71 articles, UNCAC prohibits all forms of corruption: active as well as passive, national as well as international, public as well as private, direct as well as indirect. It also obliges States Parties to implement a wide range of anti-corruption measures affecting their laws, institutions and practices, in order to promote the prevention, detection and sanctioning of corruption. It also urges States Parties to cooperate on these matters. Enacted in 2003, it obtained the 30 ratifications required for entry into force on 15 September 2005, but only came into force on 14 December 2005. The main features of the UNCAC are as follows:

- (i) Preventive measures: UNCAC seems to have the most extensive provisions on the ways, means and standards of preventive measures in the public and private sectors. These measures are to be adopted within anti-corruption bodies and/or agencies and the public sector and among public officials, covering public procurement and management of public finances, public reporting, the judiciary and prosecution services, the private sector, civil society and monetary laundering;
- (ii) Criminalization: UNCAC calls for the criminalization of a wide range of offences, including those relating to corruption in both the public sector and the private sector (private-to-public corruption);

- (iii) International cooperation: UNCAC provides an international cooperation framework that can improve mutual law enforcement assistance, notably in extraditions and investigations. These are some of the most important provisions of the Convention;
- (iv) Assets recovery framework: the Convention has an elaborate global assets recovery framework covering both developed and developing countries (chapter V, articles 52-59);
- (v) Technical cooperation and information exchange: the provisions on technical cooperation and information exchange are keys to any international convention such as UNCAC. In this respect, UNCAC takes account of the need for enhanced financial, technical and material assistance to developing countries and countries in transition to help them implement the Convention. Without such assistance, most developing countries would not be in a position to implement UNCAC;
- (vi) Implementation mechanisms: Chapter VII, articles 63 and 64 provide for an implementation mechanism under the auspices of the Conference of States Parties; and
- (vii) Other equally important international instruments promoted by the United Nations in the area of corruption and organized crimes are:
 - The United Nations Convention against Organized Crime;
 - The United Nations Declaration against Corruption and Bribery in International Commercial Transactions;
 - The Code of Conduct for Law Enforcement Officials;
 - The International Code of Conduct for Public Officials.¹⁸

(b) The Civil Law Convention on Corruption

17. The Civil Law Convention on Corruption, which was adopted by the Council of Europe on 4 November 1999, was the first attempt to define common international rules in the field of civil law and corruption. It requires each party to the Convention to provide in its internal law effective remedies for persons who have suffered damage as a result of corruption, in order to enable them to defend their rights and interests, including the possibility of obtaining compensation.

18. The Convention requires each State party to provide in its internal law for the right to bring to civil action in corruption cases. It also deals with the issue of State responsibility for acts of corruption by public officials, although it does not indicate the conditions for the liability of a State party, but it leaves each party free to determine in its internal law the conditions under which the party would be liable.

¹⁸ See the reports of the United Nations Secretary-General on United Nations standards and norms in the field of crime prevention and criminal justice (E/CN.15/1996/16) and on the use and application of the Code of Conduct for Law Enforcement Officials, together with the Basic principles on the use of force and firearms by law enforcement officials (E/CN.15/1996/16/Add.2).

19. This Convention also aims to protect the interests of whistle blowers by obliging States parties to take the necessary measures to prevent the victimization of employees who report in good faith and on the basis of reasonable grounds their suspicions of corrupt practices.

(c) The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development

20. Member States of the Organization for Economic Cooperation and Development (OECD) and five non-member countries (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic), adopted a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 21 November 1997. As of 12 March 2008, 37 countries, including South Africa, had signed and ratified the Convention.

21. Article 1 on the offence of bribery of foreign public officials indicates that “Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorization of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.”

5.2 Regional and subregional instruments

(a) The African Union Convention on Preventing and Combating Corruption

22. The African Union Convention on Preventing and Combating Corruption was adopted by the 2nd Ordinary Session of the Assembly of the Union in Maputo, Mozambique, on 11 July 2003. As of 7 July 2008, out of the 53 member States, 43 had already signed the Convention; 27 had ratified it and 27 had deposited the ratification instruments. The Convention entered into force on 5 August 2006.¹⁹

23. In addition to establishing practical modalities for the implementation of the provisions contained in UNCAC, the AU Convention contains provisions that should guarantee access to information and the participation of civil society and the media in the monitoring process. Also noteworthy is an article in the Convention that seeks to ban the use of funds acquired through illegal and corrupt practices to finance political parties. The Convention also calls on States Parties “to 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” (article 7:1).

¹⁹ African Union, Status List Per Treaty, Code: 0026, African Convention on Preventing and Combating Corruption.

(b) The Southern African Development Community Protocol against Corruption

24. The Southern African Development Community (SADC) was established in 1980, and was transformed from a coordinating conference into a development community in 1992. SADC has 14 States as members, including Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. The SADC Protocol against Corruption is the first subregional anti-corruption treaty to be adopted in Africa. It was adopted at the Summit of the SADC Heads of State and Government held in Malawi, in August 2001. The purpose of this Protocol is three-fold:

- (i) To promote and strengthen the development, by each of the State Parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector;
- (ii) To promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the public and private sectors; and
- (iii) To foster the development and harmonization of policies and domestic legislation of the State Parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.

25. Article 3 of the Protocol on acts of corruption contains an extensive list of acts of corruption to which it is applicable, and which draws almost directly from article 4 of the AU Convention on Preventing and Combating Corruption, 2003. These are:

1. The solicitation or acceptance, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
2. The offering or granting, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
3. Any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
4. The diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official received by virtue of his or her position for purposes of administration, custody or for other reasons;

5. The offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
 6. The offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision-making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of the influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
 7. The fraudulent use or concealment of property derived from any of the acts referred to in this Article; and
 8. Participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this Article.
26. The Protocol provides a range of preventive mechanisms, which include the following:
- Development of a code of conduct for public officials
 - Transparency in public procurement of goods and services
 - Easy access to public information
 - Protection of whistle-blowers
 - Establishment of anti-corruption agencies
 - Development of systems of accountability and controls
 - Participation of the media and civil society
 - Use of public education and awareness as a way to introduce zero tolerance for corruption.

27. To cover the aspects of transnational corruption, the Protocol addresses the issue of proceeds of crime by allowing for their confiscation and seizure, thereby making it more difficult for people to benefit from proceeds of corruption. In addition, the Protocol makes corruption or any of its related offences extraditable offences, so that it is difficult for criminals to use one of the SADC member States as a safe haven. The Protocol can also be used as a legal basis for extradition in the absence of a bilateral treaty on extradition.

(c) The Economic Community of West African States Protocol on the Fight against Corruption

28. The Economic Community of West African States (ECOWAS) is a subregional organization of 15 West African States established in 1975. The members of the organization are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, the

Niger, Nigeria, Senegal, Sierra Leone and Togo. The ECOWAS Supplementary Protocol on Democracy and Good Governance of December 2001 constitutes the framework for addressing the problem of corruption in the subregion. The Protocol obliges ECOWAS member States to promote the norms of separation of powers, respect for the rule of law and due process, independence of the judiciary, freedom of the members of the bar, and freedom of the press, as some of the safeguards against corruption and bad governance.

29. Article 38 of the Supplementary Protocol specifies clearly the obligation of member States to fight corruption in the subregion: "Member States undertake to fight corruption and manage their national resources in a transparent manner, ensuring that they are equitably distributed.

30. In this regard, member States and the Executive Secretariat undertake to establish appropriate mechanisms to address issues of corruption within the member States and at the community level"²⁰.

31. The ECOWAS Commission has since taken practical steps to establish a mechanism for cooperation and information-sharing amongst national anti-corruption institutions in the subregion.

(d) The East African Association of Anti-corruption Authorities

32. The anti-corruption authorities of Kenya, Uganda and the United Republic of Tanzania launched the East African Association of Anti-Corruption Authorities on Friday, 9 November 2007 at the Kenya Integrity Forum in Nairobi, Kenya. The three authorities, namely, the Kenya Anti-Corruption Commission, the Inspectorate of Government of Uganda, and the Prevention and Combating of Corruption Bureau of the United Republic of Tanzania, made a milestone achievement in the East African Community by joining forces to fight corruption within the subregion. The anti-corruption agencies of Rwanda and Burundi are also expected to join the association.

33. According to the constitution of the association, the authorities will cooperate more to prevent and combat corruption in the subregion by developing tools and mechanisms that will promote, facilitate and regulate cooperation among the East African States in the fight against corruption. They will also assist in the extradition of any person charged with or convicted of corruption and other related offences carried out in the territory of an East African Community partner State and whose extradition is requested by that partner. Individuals who commit corruption offences and seek a "safe haven" in neighbouring countries will no longer be protected thanks to this cooperation mechanism.

34. The authorities will also accord one another mutual legal assistance regarding the detection, investigation, prosecution, identification, tracing, freezing, seizure, confiscation and repatriation of property, instruments or proceeds obtained or derived from corruption.

²⁰ See ECOWAS Supplementary Protocol on Democracy and Good Governance, December 2001, p. 20.

6. National initiatives to combat corruption in Africa

35. Before analysing the nature, operations and achievements of national anti-corruption institutions in Africa, it is necessary to clarify the phenomenon under consideration. The most important definitional characteristic of an anti-corruption institution is that it is an organization specifically created and dedicated to combating corruption.

36. From the review of the literature, arguments for the establishment of an independent anti-corruption institution in a country are based on the dramatic inability of existing government institutions to effectively fight and curb corruption. In addition, one of the main reasons for the establishment of an independent anti-corruption agency is the markedly low efficiency of and lack of public trust in existing State institutions, especially supervisory, law-enforcement and court structures.²¹ Whatever the case may be, the fight against corruption is considered to be central to the broader goal of a more effective, fair, just and efficient governance system, which in turn is associated with greater economic development.²²

37. From as far back as the 1960s, African countries have been adopting laws and statutory provisions to curb the insidious nature and the damaging effects of corruption on their welfare and that of their people. Some of the oldest anti-corruption institutions in Africa include the Nigerian Public Accounts Committee and the Tanzanian Permanent Commission of Enquiries, both established in 1966; the Côte d'Ivoire Anti-corruption Law, and the Ethiopian Special Anti-corruption Squad, both established in 1977. However, the success of these institutions has been limited.²³ Along with today's anti-corruption agencies, these institutions are widely criticized for lacking independence, because they are funded by their respective Governments, where power largely rests in the hands of a few elite politicians.

38. More recently, unprecedented efforts have been made to raise awareness of corruption as a central component of the broader good governance agenda in Africa, under the New Partnership for Africa's Development initiative and as a prerequisite for financial and budgetary assistance from development partners. As a result, several countries have established or are currently considering the creation of an independent institution charged with the overall responsibility of combating corruption.

39. Africa has a wide variety of institutions with different names, different forms of organization, and different kinds of legal authority, with sometimes inconsistent and incompatible missions, which can be described as anti-corruption institutions. However, their functions can be performed also by bodies which do not explicitly carry that title. Examples include criminal justice commissions, administrative control authorities, serious fraud offices and ombudsmen. In some countries, the function may be shared between one or more organizations, as is the case with the Commission for Human Rights and Administrative Justice and the Serious Fraud Office in Ghana.

²¹ Lala Camerer, "Prerequisites for Effective anti-corruption: Ombudsman's Office and Anti-corruption agencies", Institute for Security Studies (ISS), South Africa, 2003.

²² Jeremy Pope, "Elements of a successful Anti-corruption Strategy: Curbing Corruption Toward a Model for Building National Integrity".

²³ African Development Bank, Combating Corruption in Africa, 2003.

40. Whatever the complexities of denomination, it is important to note that there is no single comprehensive definition, no agreed list identifying such bodies, no single form of organization, and no single common set of purposes. Nevertheless, most such organizations usually undertake at least one or more of the three core functions below:

1. They are enforcement bodies charged with enforcing the criminal law on corruption. For many anti-corruption institutions, the core function is investigation of suspected criminal offences, and the assembling of evidence for use in prosecution, either by the anti-corruption institution itself or by the Attorney General, the Director of Public Prosecutions, or any other appropriate body;
2. They perform a range of other non-legal functions with no investigative or prosecution powers. A number have important roles in corruption prevention, which may include offering advice and making recommendations to public bodies on how to limit opportunities for corruption by reforming structures and procedures; and
3. They help raise public awareness of corruption. This may involve direct communication using the mass media and/or becoming involved formally in the public education system. This educational awareness-raising role can also involve political, legal and business groups as well as NGOs and civil society organizations.

41. The overall objective of these kinds of institutions is to prevent, investigate and prosecute corrupt practices. Their basic modus operandi are: (a) to create an aware society where corruption will not be condoned or tolerated by promoting ethics and anti-corruption education, in cooperation with relevant bodies; (b) to prevent corruption offences and other improprieties; and (c) to expose, investigate and prosecute corruption offences and impropriety, in collaboration with relevant bodies. Other initiatives range from codes and standards of conduct for public officials to civil service reforms. The following are selected examples of national anti-corruption measures in Africa.

42. In **Algeria**, fighting corruption is a priority for the Government. An anti-corruption bill adopted by the Governing Council in January 2005 was later passed by parliament in June 2005. The law reinforces existing legislation for Algeria to comply with the United Nations Convention against Corruption, which it ratified on 25 August 2004. The law contains five main provisions for promoting transparency in government and public procurement, and also introduces new crimes such as illicit enrichment. It reinforces existing penal sanctions and allows for the creation of a national organization to design and implement a national anti-corruption strategy.

43. On 5 January 2005, the Government adopted a new law pertaining to money laundering and terrorist financing to comply with international standards and measures against organized crime. The new law requires the use of cheques, wire transfer, or any other non-cash form of payment for any transaction valued above 50,000 dinar (USD 685). It also requires banks to verify the identities and addresses of clients before opening bank accounts or completing any transactions. The legislation gives wide-ranging powers to the banking commission of the Bank of Algeria (the central bank). The Transparency International Corruption Perception Index (CPI) for 2005 ranked Algeria number 97 out of 159 countries. Algeria is also a signatory to the OECD Convention on Combating Bribery of foreign Public Officials in International Business Transactions.

44. **Cameroon** was once classified as one of the most corrupt countries in the world successively in 1998 and 1999, according to Transparency International. As a result, the Government adopted a series of legal instruments to combat corruption, including the establishment of the 1998 ad hoc committee against corruption, headed by the Prime Minister, and the creation in 1999 of the anti-corruption observatory (decree no. 001/PM of 4 January 2000). In addition, every ministry/department has an anti-corruption unit which reports to the minister and to the national observatory. Transparency Cameroon is also undertaking anti-corruption campaigns through cartoons in newspapers and posters. Despite these measures and according to Transparency International, Cameroon continues to be perceived as one of the most corrupt countries in the world, with a corruption index of 2.3 in 2008, ranking 141st globally and 31st in Africa.²⁴ In response, the Government decided again to create a national anti-corruption agency of financial investigation (decree no.: 2005/187 of 31 May 2005) and a national anti-corruption commission (decree no.: 2006/088 of 11 March 2006), along with an auditor general's office in the Supreme Court.

45. In **Burkina Faso**, the Government puts emphasis on preventive measures to combat corruption and financial crimes. In this respect, the following institutions have been put in place: the general inspectorate of the State, created in 1988 and reformed in 1990 and which is the overall authority in the fight against corruption in the country; the general inspectorate of finance; the general service inspectorate; the general directorate of financial control; the national ethics committee; and the high anti-corruption authority. Anti-corruption activities are also undertaken by civil society organizations. In this respect, a national network against corruption was established on 20 December 1997 by a coalition of civil society organizations operating in the country. The main objectives of the network are: (a) to undertake awareness campaigns on the issue of corruption; (b) to ensure that legal instruments are implemented and applied effectively; (c) to receive and investigate allegations of corruption; (d) to ensure that the Government undertakes effective measures to prevent and combat corruption within the country and in its international business activities involving third countries; and (e) to ensure that the voice of civil society is heard in the fight against corruption.

46. In **Burundi**, a variety of tools and mechanisms exist for preventing and fighting corruption, including the following: (a) the Constitution, which is the backbone on which all the other national tools on the prevention of and fight against corruption are built; (b) the law on measures to prevent corruption and breach of law, which is meant to prevent and repress corruption and infractions in public and private organizations and civil society; (c) the law on the creation, organization and functioning of the court of accounts; (d) the law on the establishment and functioning of the court of anti-corruption; (e) the law related to the creation and functioning of the anti-corruption brigade specialists; and (f) the decree related to the organization and functioning of the general inspectorate of the State, whose mission is to inspect and control the functioning and management of public services and public enterprises or private associations under its authority. The country has an anti-corruption court, which is the only competent body to recognize corruption-related infractions, as well as a court of accounts, which assists parliament in the control and the execution of the finance law. Apart from the above entities, there are others related to civil society associations such as the observatory on the fight against corruption and economic embezzlement, the Burundian consumers'

²⁴ Transparency International, 2008 Corruption Perception Index.

association, and the observatory of government. All these are considered to be private national mechanisms for the prevention of and fight against corruption.

47. In **Egypt**, recent parliamentary inquiries concerning corruption cases (e.g. the ferry disaster on the Red Sea) and a more active press and civil society underline the growing public concern with the level of corruption in the country. For the Government, corruption remains a big challenge in Egypt. According to the World Bank, Egypt is one of the most corrupt countries in the Middle East and North Africa. Among the measures adopted by the Government is the ratification of UNCAC in February 2005. With this ratification, Egypt has emerged as a leader in the Middle East in the promotion of reform in this area. Furthermore, a money laundering combating unit was established in June 2004. There are also four national institutions within Egypt that are considered effective anti-corruption enforcement bodies, including the Administrative Authority Council, considered a "powerful monitoring agency." Other bodies include the Central Auditing Agency, the Administrative Prosecution Authority, and the Public Prosecution Fund.

48. **South Africa**, in responding to the problem of public sector corruption, has initiated a variety of anti-corruption measures culminating in the adoption of a comprehensive public service anti-corruption strategy in 2002. This strategy has served as a blueprint for consolidating and reinforcing the anti-corruption legislative and regulatory framework, as well as strengthening the institutions mandated to monitor, investigate and prosecute corruption. A cornerstone of the strategy has been the development of partnerships between the Government, civil society and the private sector. To that effect, two national anti-corruption summits (1999 and 2005) and a tripartite national anti-corruption forum (2001) have been organized. Cooperation has also been extended to regional and international stakeholders with the ratification of a range of international conventions. The anti-corruption legislative and regulatory measures adopted since 1994 include the Code of Conduct for Members of Parliament (1997); the Executive Members' Ethics Act²⁵; the Code of Ethics for Members of the Cabinet and Deputy Ministers (2000); the Promotion of Access to Information Act 26; the Protected Disclosures Act 27; the Public Service Code of Conduct²⁸; the Financial Intelligence Centre Act 29; and the Prevention and Combating of Corrupt Activities Act.³⁰

49. Aside from the court system, South Africa has also established and developed a range of specialized anti-corruption agencies, including the Office of the Public Service Commission; the Office of the Public Protector; the National Prosecuting Authority; and the Prevention and Combating of Corrupt Activities Act.³¹

50. In **Mauritius**, corruption has become a major issue in recent years. For this reason, new anti-corruption laws have been enacted to raise awareness and to explain the consequences of corrupt practices in every sphere of the society. The Prevention of Corruption Act of 2002, which is a landmark in the fight against corruption and a comprehensive piece of legislation, was enacted to provide for the prevention and punishment of corruption and fraud. An independent commission against corruption has been set up to educate the public about corruption and to detect or investigate

²⁵ Act 82 of 1998

²⁶ Act 2 of 2000

²⁷ Act 26 of 2000

²⁸ As amended in 2001

²⁹ Act 38 of 2001

³⁰ Act 12 of 2004

³¹ Ibid.

any act of corruption. To strengthen the fight against corruption, other laws have been enacted, such as the Financial and Anti-money Laundering Act, the Banking Act of 2004, which allows any member of the independent commission to apply to a judge in chamber for the disclosure of information; and the Public Procurement Act of 2006 providing for the establishment of a modern procurement system and procedures offering more transparency and accountability.

51. **Mozambique** has taken a number of initiatives in an effort to fight corruption. New anti-corruption laws have been enacted and institutions have been set up. Aside of criminal laws on corruption, and the anti-corruption statute itself (no. 6/2004 of 17 June), other relevant anti-corruption legislation include the standards of service in the public sector (decree no. 30/2001 of 15 August); the general statute governing public servants (decree no. 47/95); the statute governing public managers (decree no. 28/2005 of 23 August); and norms related to administration model and administration of the treasury (law no. 9/2002 of 12 February). All these are intended to bring sanity in financial management and to curb the wastage of resources. The country has also ratified three international conventions against corruption, namely the UNCAC, on 26 December 2006; the African Union Convention on Preventing and Combating Corruption and Related Offences; and the Southern African Development Commission Protocol on Combating Corruption.

52. Recent efforts to address corruption in **Nigeria** include the Government's declaration of zero tolerance of corruption. Since 1999, the country has made the anti-corruption programme a part of its national economic reform scheme through the national economic empowerment and development strategy. To fight corruption more specifically, the following laws have been enacted: (a) the Independent Corrupt Practices Commission (ICPC) Act, 2000, and (b) the Economic and Financial Crimes Commission (EFCC) Act, 2004. In addition, the authorities have put in place a strategy targeting specific areas or personalities that are well known to be involved in corruption in order to generate maximum impact among the citizens. This strategy has led to the conviction of high-ranking former officers such as provincial governors, inspector generals of police and the Senate President.

53. The war against corruption in **the United Republic of Tanzania** has gained momentum in recent years. In order to promote and guarantee good governance, peace, justice and stability, the country's Constitution provides for the establishment of a human rights and good governance commission and a secretariat of the Leadership Code. There is also the Leadership Code of Ethics Act of 1995, which applies to judicial officers and all senior government officers in the judiciary and in the civil service. In criminal matters, the Prevention and Combating of Corruption Act No. 11 of 2007 establishes the Prevention and Combating Corruption Bureau to detect, investigate and prosecute corrupt offenders in the courts of law. The law encompasses a wider range of corruption offences, including bribing of foreign officials, abuse of office, and influence peddling. In the employment arena, corruption is prohibited by the professional ethics codes of the respective professions and by the Constitution.

7. Conclusion

54. Pervasive corruption signals that the State is functioning poorly. Anti-corruption laws and institutions are in place in most African countries, but it is widely believed that these institutions are ineffective. Critics perceive a wide gap between the anti-corruption rhetoric of Government and the impunity enjoyed by public officials. Part of the problem may lie in the fact that, first, anti-

corruption institutions are often established to appease international actors, as most African countries are highly aid-dependent and anti-corruption requirements have become central to aid conditionalities. Second, while aid conditionalities have placed some constraints on executive actions, the flow of revenues from the exploitation of natural resources, particularly oil and diamonds, continues to be the object of extensive grand corruption.

55. There are many political and administrative reasons why anti-corruption institutions are ineffective. First, establishing an anti-corruption institution needs high-level political support as well as the necessary political conditions under which it can operate successfully. Even if the determination to tackle corruption is strong, it often diminishes as the realities of office, the vested interests in the status quo, and the pressure of more immediate tasks bear on the actions of the Government. More than public statements and conferences condemning corruption, political will concerns the commitment of political leaders to take action on a specific policy objective – in this case fighting corruption – and to ensure that the necessary elements for such a policy to succeed have been put in place. Without the necessary political support to provide the resources, powers, independence and accountability mechanisms required for such an institution, it would not materialize. Second, anti-corruption initiatives are often not associated with a serious attempt at reform, but more with a Government's reaction to a scandal or, in the case of many developing countries, external pressure from donors. Third, many Governments may genuinely start anti-corruption campaigns, but these campaigns fizzle very quickly because they are often not inclusive enough.

56. Because corruption is tied to other features of government structure, reducing corruption without a more fundamental change in the behaviour of public institutions is unlikely to be successful in promoting good governance and hence economic development. The three main principles of any national anti-corruption initiative are: (a) to increase the risk and cost of being corrupt; (b) to build integrity such that the rules of the game and the behaviour of the players change; and (c) to ensure the rule of law. Consequently, action needs to be taken in four areas:

1. The basic institutions of good governance need to be strengthened, particularly the judiciary, which is the guardian of laws and integrity;
2. The capacity and integrity of enforcement agencies need to be enhanced. The best law has no value if it is not enforced. The best judges and magistrates are wasted if cases are never brought before them. Similarly, good investigations are wasted efforts if the police or prosecutors are themselves corrupt;
3. The Government needs to put in place a solid set of preventive tools. Codes of conduct and strong independent oversight bodies can help ensure that acceptable standards of behaviour are followed in both the private and the public sectors; and
4. The public needs to be educated on the advantages of good governance. It must also be clear that the public itself bears a large share of responsibility for insisting on honesty and integrity in government and business sectors. Members of the public need to learn not to let anybody buy their votes; not to pay bribes themselves; to report incidents of corruption to the authorities; and to teach their children the right values, for instance, that integrity is good and corruption is bad.

57. Although civil society is generally weak in Africa, there are a few cases, notably in Senegal, Ghana and Nigeria, where responses to corruption have had a political impact. The proliferation of private media has also helped expose cases of corruption and sustain pressure for government accountability. This suggests that stemming corruption requires strong oversight institutions, including parliaments, law enforcement agencies, independent media and a vibrant civil society. When these institutions are weak, corruption spirals out of control with horrendous consequences for ordinary people and for justice and equality more generally. An effective fight against corruption would also require increased, rapid and well-functioning international cooperation in criminal matters.