



Anti-Corruption Trust of Southern Africa (ACT-Southern Africa)

Report on the Status of Signature and Ratification of Anti-Corruption Treaties¹ by the Southern African Development Community (SADC) Member States.

Authored by Obert Chinhamo² and Gabriel Shumba³
Anti-Corruption Trust of Southern Africa (ACT-Southern Africa)
Care of the Zimbabwe Exiles Forum (ZEF)
Corner Prinsloo and Visagie Streets
Pretoria, South Africa
E-Mail:- info@actsouthernafrica.org Website:- www.actsouthernafrica.org

¹ Focusing on the SADC Protocol against Corruption, AU Convention on Preventing and Combating Corruption and the UN Convention against Corruption

² obert.chinhamo@gmail.com

³ gabmrech@yahoo.com

Report on the Status of Signature and Ratification of Anti-Corruption Treaties by the Southern African Development Community (SADC) States Parties.

Let no guilty man escape, if it can be avoided.... No personal considerations should stand in the way of performing a duty. (Ulysses S. Grant -1822–1885) ⁴

Executive Summary

The study was carried to find out ‘who has done what’ in as far as signing and ratifying anti-corruption treaties⁵ is concerned. The selected treaties have long since been open for signature, ratification and implementation.

The enquiry found out that the Southern African Development Community (SADC) Protocol against Corruption was signed by fourteen (14) SADC member states⁶ and ratified by nine (9)⁷ of them. Six (6) member states that have not ratified are Angola, the Democratic Republic of Congo, Madagascar, Mozambique, Seychelles and Swaziland.

The African Union (AU) Convention on Preventing and Combating Corruption was signed by twelve (12)⁸ SADC member states and ratified by eight (8)⁹. Seven (7) countries have not ratified and these are Angola, Botswana, the Democratic Republic of Congo, Malawi, Mauritius, Seychelles and Swaziland.

The United Nations (UN) Convention against Corruption was signed by thirteen (13)¹⁰ SADC member states and ratified by ten (10) of them. Botswana and the Democratic Republic of Congo have not signed the convention. In terms of ratification Botswana, Malawi, Mozambique Swaziland and Zambia have not ratified whilst the rest have ratified.

Considering the benefits of combating corruption, the following recommendations are made :

1. Signing and Ratification of anti-corruption instruments.

SADC member states are urged to sign and ratify the three anti-corruption treaties. The following is specifically recommended under the three instruments;

a. Southern African Development Community (SADC) Protocol against Corruption

Angola, the Democratic Republic of Congo, Mozambique, Seychelles and Swaziland are urged to ratify the Protocol.

⁴ Ulysses S. Grant (1822–1885), U.S. general, president. Endorsement to letter relating to the Whisky Ring, July 29, 1875. Quoted in Ulysses S. Grant, Louis A. Coolidge (1822). http://education.yahoo.com/reference/quotations/quote/35937;_ylt=AtQPQtwTk_Rw8utZGWYm_uhcCc0F (Accessed on 22 July 2007)

⁵ SADC Protocol against Corruption, the AU Convention on Preventing and Combating Corruption and the UN Convention against Corruption

⁶ Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe

⁷ Post council media briefing by Albert Muchanga, Deputy Executive Secretary confirmed that the Protocol Against Corruption was ratified by Botswana, Lesotho, Malawi, Mauritius, South Africa, Tanzania and Zambia. Namibia indicated that it has ratified the Protocol Against Corruption and have sent the instrument of ratification to the Secretariat. http://www.sadc.int/news/news_details.php?news_id=149 (Accessed on 24 July 2007). Zimbabwe's status of ratification was confirmed through the link <http://www.iss.co.za/pubs/Other/CorruptHandbookNov04/Contents.htm> (Accessed on 24 July 2007). This therefore confirms that Botswana, Lesotho, Malawi, Mauritius, Namibia, South Africa, United Republic of Tanzania, Zambia and Zimbabwe

⁸ Angola, the Democratic Republic of Congo, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe

⁹ Lesotho, Madagascar, Mozambique, Namibia, South Africa, Tanzania, Zambia and Zimbabwe.

¹⁰ Angola, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe

b. African Union (AU) Convention on Preventing and Combating Corruption

Botswana, Malawi, Seychelles are recommended to sign the Convention whilst Angola, Botswana, the Democratic Republic of Congo, Malawi, Mauritius, Seychelles and Swaziland should ratify.

c. United Nations (UN) Convention against Corruption

Botswana and the Democratic Republic of Congo have not signed the Convention and are therefore called upon to do so whilst Botswana, Malawi, Mozambique, Swaziland and Zambia should ratify.

2. Implementation¹¹ of the anti-corruption treaties

- The countries that have ratified the instruments are recommended to take the necessary measures¹², including legislative and administrative measures to ensure the implementation of their obligations under the treaties. Signing and ratifying treaties without implementation does not help at all.
- If the countries have no or little capacity to operationalise the treaties, it is important that they say so, so that assistance could be given by the different stakeholders.
- The SADC Committee¹³, the Advisory Board on Corruption within the African Union¹⁴ and the Conference of the States Parties to the Convention¹⁵ should be supported by the treaty bodies, States Parties and other stakeholders to effectively execute their mandates.

3. Reporting on Progress made and sharing best practices

Countries that are doing well in combating corruption should write reports, document the best practices and share them with other countries and stakeholders. Sharing information will facilitate learning. Civil society should also be allowed to produce shadow reports for submission to the treaty bodies. Independent reports from diverse sources are needed to enrich the information base.

4. Technical assistance

Assistance should be provided to national governments to strengthen their capacity to comply with the requirements of the treaties. CSOs and development partners should also support the efforts by countries to implement the treaties. The same support should be extended to the SADC Committee, the Advisory Board on Corruption within the African Union and the Conference of the States Parties to the Convention

5. Monitoring the implementation of the treaties

National, regional and international review processes should be carried out to assess whether national governments have taken adequate action to implement the provisions of the treaties.

1. Introduction

This report has been compiled in response to enquiries by members of the public, students, the academia and government officials seeking information on the status of implementation of anti-corruption treaties¹⁶ and other legal anti-corruption instruments within the jurisdiction of the SADC. The treaties were developed by decision makers in response to intolerable and unwelcome levels of corruption in the world. They give guidance on the nature of corruption problems, how corruption problems will be addressed and the principles underlying the implementation. In order for the instruments to make sense and achieve the set objectives they must be signed, ratified and implemented.

¹¹ According to Transparency International (2006) implementation refers to "action by national governments including ratification, passage of laws implementing (treaty) provisions as well as administrative, regulatory and enforcement actions to carry out (treaty) provisions [Transparency International. 2006. Report on Follow-up Process for UN Convention Against Corruption] www.transparency-usa.org/documents/UNCACReportFinal6-13-06.pdf Accessed on 24 July 2007

¹² Some of the measures recommended include:- Corruption preventive measures, criminalization and law enforcement, International cooperation, Asset Recovery, Technical assistance and information exchange, actively participating in implementation mechanisms etc

¹³ Established through Article 11 of the SADC Protocol against Corruption

¹⁴ Established through Article 22 of the AU Convention on preventing and combating Corruption

¹⁵ Established through Chapter VII Article 63 of the UN Convention against Corruption

¹⁶ Also termed accord, convention, covenant, declaration, pact (Garner 2004:1540).

Transparency International points out that signing anti-corruption instruments is not enough since it “indicates their (countries) intent to become Parties”¹⁷. It must be committed to memory that signature alone is not sufficient since it is not legally binding until the treaty is ratified. Signatures merely declare that the state agrees with the principles of the treaty or convention¹⁸.

Ratification is the final establishment of consent by the parties to a treaty to be bound by it including the exchange or deposit of instruments of ratification (Garner 2004:1290). Instruments of ratification are the documents formally acknowledging the issuing of states confirmation and acceptance of a treaty, and exchanged by the treaty parties or deposited with a designated State or international organisation (Garner 2004:814).

After the ratification process, the ratifying country commits itself to providing the means by which the treaty's principles will be implemented. These actions include the enactment of laws, initiating government programming, and other means to achieve the aims. The ratifying country is also expected to make occasional reports, updating on the actions that they have been taken to implement the principles of the treaties.¹⁹ These activities take place at the implementation level of the treaty. According to the Institute of Security Studies (2004) the process of implementation will require a revision of existing anti-corruption laws, the amendment of such laws or the introduction of new ones in order to accommodate the provisions of the treaties.²⁰

It is important to note at this juncture that the study has been tailored to give an update on the extent to which SADC member states have progressed towards the signing and ratifying of the said anti-corruption treaties. The national countries being studied are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe²¹. Seychelles has been roped in as part of this review since it is mentioned as having signed the SADC Protocol against Corruption²²

The principal purpose of this investigation is therefore to take stock of the progress made by the SADC member states and governments in as far as the signature and ratification of anti-corruption treaties is concerned.

The immediate aim of this research is to make available easy access to this information for our partners and others who may need it for research, advocacy and lobbying purposes. It should however be pointed out that this inquiry does not deal with the implementation of anti-corruption treaties into national laws, policies and practices. Foraging into the implementation of these treaties would require extensive review of national anti-corruption laws, policies and practices, which would demand a lot of time and resources. The treaties under review are the SADC Protocol against Corruption, the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption. According to the Institute of Security Studies (2004) the instruments “are of direct relevance to the Southern African countries” and that they “broadly complement each other”²³

2. Selected anti-corruption treaties.

The treaties were enacted as measures calculated to address some problematical corruption situations. They provide answers to the problems of corruption. They are an attempt to solve, diminish or prevent corruption in a specific ways. Before delving into the status of signature and ratification, it is essential to give an overview of the treaties concerned. As mentioned in the prelude, the report zeroes on the SADC Protocol against Corruption (hereinafter referred to as “The SADC-PaC”), the AU Convention on Preventing and Combating Corruption (hereinafter referred to as “The AU-CPPC) and the UN Convention against Corruption (hereinafter referred to as “The UNCAC). Transparency International summarized the significance of anti-corruption conventions using the following words;

¹⁷ http://www.transparency.org/global_priorities/international_conventions/conventions_explained/steps_taken (Accessed on 22 July 2007)

¹⁸ <http://www1.umn.edu/humanrts/edumat/presentations/United%20Nations%20Conventions.PPT> (Accessed on 22 July 2007)

¹⁹ <http://www1.umn.edu/humanrts/edumat/presentations/United%20Nations%20Conventions.PPT> (Accessed on 22 July 2007)

²⁰ <http://www.iss.co.za/pubs/Other/CorruptHandbookNov04/Contents.htm> (Accessed on 24 July 2007)

²¹ http://www.sadc.int/about_sadc/index.php (Accessed on 22 July 2007)

²² <http://www.sadc.int/english/documents/legal/protocols/corruption.php> (Accessed on 22 July 2007)

²³ <http://www.iss.co.za/pubs/Other/CorruptHandbookNov04/Contents.htm> (Accessed on 24 July 2007)

“Anti-corruption conventions and instruments are especially important in providing a framework for addressing cross-border issues. They also serve to establish valuable common standards for domestic institutions, policies, processes and practices, which are of assistance for anti-corruption efforts at national level. The standards and requirements for governments established by international agreements cannot easily be dismissed given their international backing”²⁴

The stakeholders who negotiated and adopted the treaties were concerned about the ‘end products’ of corruption on every facet of human life. The proponents of the SADC-PaC were “concerned about the adverse and destabilizing effects of corruption throughout the world on the culture, economic, social and political foundations of society”²⁵. The AU member states were also equally concerned about the “negative effects of corruption and impunity on the political, economic, social and cultural stability of African states and its devastating effects on the economic and social development of the African peoples”²⁶. Equally concerned were the UN member states who registered alarm about “the seriousness of problems and threats posed by corruption to the stability and security of societies”²⁷. The three bodies concur that corruption is a serious problem that should be eliminated from the face of the earth. To this end, efforts were made to set standards, which if implemented wholeheartedly, will help to combat the menace of corruption.

(a) Brief on the AU Convention on Preventing and Combating Corruption (AU-CPPC)

The African Union (AU) endorsed the AU-CPPC on the 11th of July 2003.²⁸ The Convention sets out standards aimed at promoting and strengthening the development by member states of mechanisms required to prevent, detect, punish and do away with corruption and associated offences. According to Article 2 of the Convention, it was made to achieve five objectives namely:-

- Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.
- Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
- Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.
- Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
- Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

Article 22 of the Convention establishes an Advisory Board on Corruption within the African Union. The Board is made up of 11 members elected by the Executive Council. It is responsible for supporting the AU member states to operationalise the AU-CPPC through advice to governments, promoting and encouraging adoption and application of anti-corruption measures proposed by the Convention, information about among others, functions stated in Article 22 (5-7).

The AU-CPPC was signed and ratified by 11 and 7 countries respectively, among the 14 SADC member states²⁹. Countries that have not signed are Botswana, Malawi and Seychelles. Countries that have not ratified are Angola, Botswana, Democratic Republic of Congo, Malawi, Mauritius, Seychelles and the Kingdom of Swaziland.

²⁴ http://www.transparency.org/global_priorities/international_conventions/conventions_explained#how%20help (Accessed on 24 July 2007)

²⁵ Preamble to the SADC Protocol against Corruption

²⁶ Preamble to the AU Convention on Preventing and Combating Corruption

²⁷ Preamble to the UN Convention against Corruption

²⁸ <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf> (Accessed on 26 June 2007)

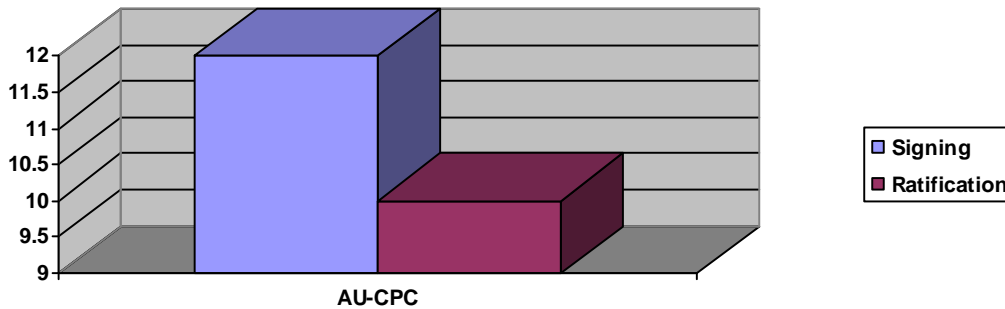


Chart 1- Status of signing and ratification of the AU Convention on Preventing and Combating Corruption

(b) Brief on the SADC Protocol against Corruption (SADC-PaC),

The Protocol was adopted by the SADC Heads of State in Malawi in 2001. It was signed by all the member states. In terms of Article 2 of the Protocol, the purpose is to:

- 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,
- 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.
- 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.

The Protocol provides for the establishment of a Committee to oversee the implementation of the Protocol by member states. Article 11 of the Protocol states that:

1. A Committee consisting of State Parties is hereby established to oversee the implementation of this Protocol.
2. Each State Party shall report to the Committee within one year of becoming a Party, on the progress made in the implementation of this Protocol. Thereafter, each State Party shall report to the Committee every two years.
3. The Committee shall, inter-alia, be responsible for the following:
 - a) gathering and disseminating information amongst State Parties;
 - b) organising training programmes as and when appropriate;
 - c) evaluating programmes to be put in place and a programme of co-operation for the implementation of this Protocol; and
 - d) providing any other related assistance to State Parties as and when appropriate;
 - e) reporting to Council on a regular basis on the progress made by each State Party in complying with the provisions of this Protocol.

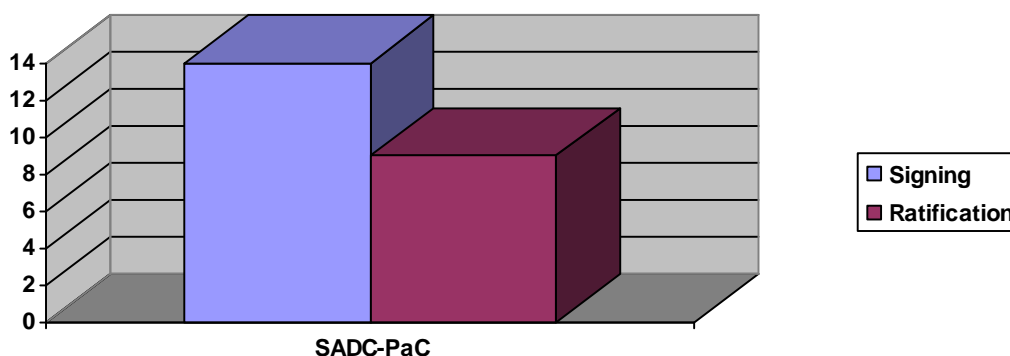


Chart 2- Status of signing and ratification of the SADC Protocol against Corruption

All the 14 SADC States Parties signed the SADC-PaC but Angola, the Democratic Republic of Congo, Lesotho, Mozambique, Seychelles and Swaziland are yet to ratify the instrument.

(c) Brief on the UN Convention against Corruption (UNCAC)

The Convention³⁰ was adopted by the General Assembly on the 31st of October 2003. It was open for signature from the 9th to the 11th of December 2003 in Meridah Mexico and thereafter at United Nations Headquarters in New York until 9 December 2005.³¹ It highlights the need to prevent corruption and to establish criminal and other offences to cover a wide range of acts of corruption. In terms of Article 1 of the Convention, the purpose is:

- To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- To promote integrity, accountability and proper management of public affairs and public property.

Chapter VII of the UNCAC sets out mechanisms for implementation. A “Conference of the States Parties to the Convention” is charged with the responsibility to “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”³² Article 65 requires that:

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

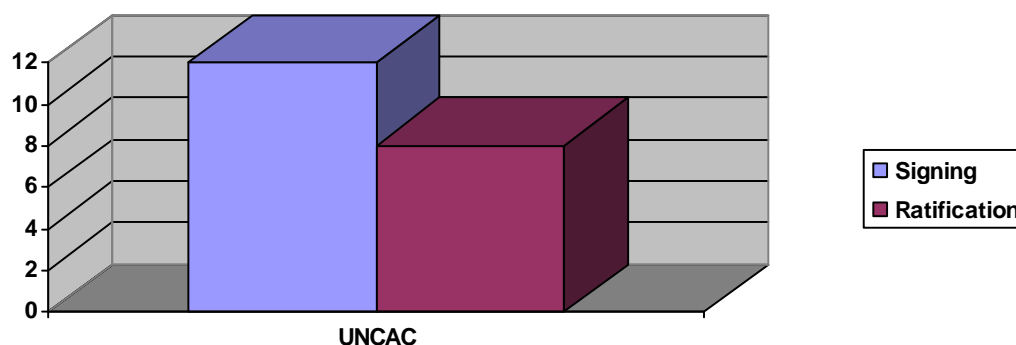


Chart 3 Status of signing and ratification of the UN Convention against Corruption

Two countries³³ in the SADC region have not signed the Convention. Nine countries ratified the convention with the exception of Botswana, Malawi, Mozambique, Swaziland and Zambia³⁴.

3. Status of Ratification by SADC member states

The table below was compiled based on the status of signing and ratification obtained from the African Union and United Nations websites and other publications.

No	Country	SADC Protocol against	AU Convention on	UN Convention against
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³⁰ http://www.unodc.org/unodc/en/crime_convention_corruption.html (Accessed on 23 July 2007)

³¹ Article 67 of the UNCAC

³² Article 63 (1) of the UNCAC

³³ These are Botswana and the Democratic Republic of Congo.

³⁴ United Nations Office on Drugs and Crime, http://www.unodc.org/unodc/crime_signatures_corruption.html (Accessed on 26 June 2007)

No	Country	Corruption		Preventing and Combating Corruption ³⁵		Corruption ³⁶	
		Signature	Ratification/Accession	Signature	Ratification/Accession	Signature	Ratification/Accession
1	Angola	14.08.2001	No	22.01.2007	No	10.12.2003	29.08.2006
2	Botswana	14.08.2001	14.08.2001	No	No	No	No
3	DRC	14.08.2001	No	05.12.2003	No	No	13.07.2006
4	Lesotho	14.08.2001	29.07.2003	27.02.2004	26.10.2004	16.09.2005	16.09.2005
5	Madagascar	? ³⁷	? ³⁸	28.02.2004	06.10.2004 ³⁹	10.12.2003	22.09.2004
6	Malawi	14.08.2001	27.09.2002	No	No	21.09.2004	No
7	Mauritius	14.08.2001	04.01.2002	06.07.2004	No	09.12.2003	15.12.2004
8	Mozambique	14.08.2001	No	15.12.2003	02.08.2006	25.05.2004	No
9	Namibia	14.08.2001	*ratified but date not yet verified	09.12.2003	05.08.2004	09.12.2003	03.08.2004
10	Seychelles	14.08.2001	No	No	No	27.02.2004	16.03.2006
11	South Africa	14.08.2001	15.05.2003	16.03.2004	11.11.2005	09.12.2003	22.11.2004
12	Swaziland	14.08.2001	No	07.12.2004	No	15.09.2005	No
13	Tanzania	14.08.2001	20.08.2003	05.11.2003	22.02.2005	09.12.2003	25.05.2005
14	Zambia	14.08.2001	08.07.2003	03.08.2005	30.03.2007	11.12.2003	No
15	Zimbabwe	14.08.2001	08.10.2004	18.11.2003	17.12.2006	20.02.2004	08.03.2007

Table 1 of the Status of signing and ratification of the AU-CPPC, SADC-PaC and the UNCAC.

Key

- x - Not signed / ratified.
* - Status not known

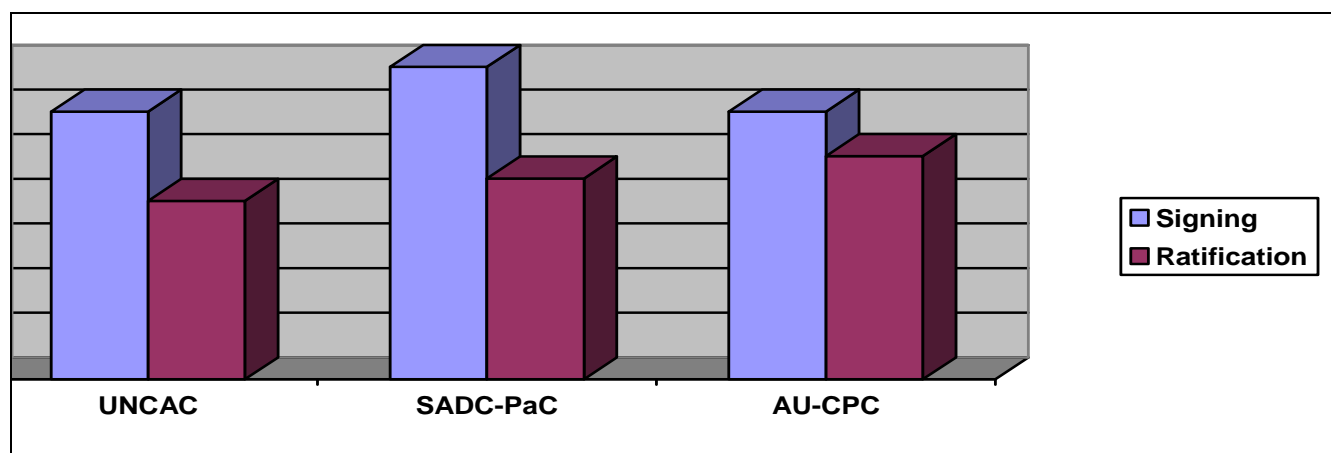


Chart 4- Status of signing and ratification of the AU-CPPC, SADC-PaC and the UNCAC.

4. Recommendations

³⁵ African Union, <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf> (Accessed on 26 June 2007)

³⁶ United Nations Office on Drugs and Crime, http://www.unodc.org/unodc/crime_signatures_corruption.html (Accessed on 26 June 2007)

³⁷ Status not known

³⁸ Status not known

³⁹ Deposited instruments of ratification on 09/02/2005

The following recommendations are made to the SADC member states, Civil Society Organisations (CSOs) and development partners.

a. Signing and Ratification of anti-corruption instruments.

SADC member states are urged to sign and ratify the three anti-corruption treaties. The following is specifically recommended under the three instruments;

- **Southern African Development Community (SADC) Protocol against Corruption**
Angola, the Democratic Republic of Congo, Mozambique, Seychelles and Swaziland are urged to ratify the Protocol.
- **African Union (AU) Convention on Preventing and Combating Corruption**
Botswana, Malawi, Seychelles are recommended to sign the Convention whilst Angola, Botswana, the Democratic Republic of Congo, Malawi, Mauritius, Seychelles and Swaziland should ratify.
- **United Nations (UN) Convention against Corruption**
Botswana and the Democratic Republic of Congo have not signed the Convention and are therefore called upon to do so whilst Botswana, Malawi, Mozambique, Swaziland and Zambia should ratify.

b. Implementation⁴⁰ of the anti-corruption treaties

- The countries that have ratified the instruments are recommended to take the necessary measures⁴¹, including legislative and administrative measures to ensure the implementation of their obligations under the treaties. Signing and ratifying treaties without implementation does not help at all.
- If the countries have no or little capacity to operationalise the treaties, it is important that they say so, so that assistance could be given by the different stakeholders.
- The SADC Committee⁴², the Advisory Board on Corruption within the African Union⁴³ and the Conference of the States Parties to the Convention⁴⁴ should be supported by the treaty bodies, States Parties and other stakeholders to effectively execute their mandates.

c. Reporting on Progress made and sharing best practices

Countries that are doing well in combating corruption should write reports, document the best practices and share them with other countries and stakeholders. Sharing information will facilitate learning. Civil society should also be allowed to produce shadow reports for submission to the treaty bodies. Independent reports from diverse sources are needed to enrich the information base.

d. Technical assistance

Assistance should be provided to national governments to strengthen their capacity to comply with the requirements of the treaties. CSOs and development partners should also support the efforts by countries to implement the treaties. The same support should be extended to the SADC Committee, the Advisory Board on Corruption within the African Union and the Conference of the States Parties to the Convention

⁴⁰ According to Transparency International (2006) implementation refers to "action by national governments including ratification, passage of laws implementing (treaty) provisions as well as administrative, regulatory and enforcement actions to carry out (treaty) provisions [Transparency International. 2006. Report on Follow-up Process for UN Convention Against Corruption] www.transparency-usa.org/documents/UNCACReportFinal6-13-06.pdf Accessed on 24 July 2007

⁴¹ Some of the measures recommended include:- Corruption preventive measures, criminalization and law enforcement, International cooperation, Asset Recovery, Technical assistance and information exchange, actively participating in implementation mechanisms etc

⁴² Established through Article 11 of the SADC Protocol against Corruption

⁴³ Established through Article 22 of the AU Convention on preventing and combating Corruption

⁴⁴ Established through Chapter VII Article 63 of the UN Convention against Corruption

e. Recommendations to African Union (AU), the Southern African Development Committee and United Nations (UN).

▪ **Monitoring and Support to member states.**

Institutional arrangements established to oversee the implementation of the treaties should be supported to ensure that they support State Parties in operationalising the instruments. For instance, under the SADC Protocol against Corruption, Article 11 establishes a Committee responsible overseeing implementation of the Protocol. Article 22 of the AU Convention sets up an Advisory Board on Corruption. Chapter VII Article 63 of the UNCAC provides for a Conference. It is pivotal for the SADC, AU and UN to support the said structures so that they carry out their functions effectively.

▪ **Need to research on why some states and governments are not signing and ratifying the treaties.**

There is need to understand why some states and governments are not signing, ratifying and implementing anti-corruption instruments. The information is important for planning purposes as well as for working out strategies for engaging states to formally commit themselves.

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