

# **The African Union Legal regime for combating corruption: a critical assessment, 2003-2010**

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## **Abstract:**

Corruption has been a constant feature in human society since time immemorial. In Africa, corruption is estimated to cost the continent about US\$150 billion per annum. After the Second World War, international regimes have become a common feature of the workings of the international system, especially in the financial sector. Such regimes regulate the conduct of states and other actors to ensure that there is an orderly way of conducting affairs, especially business, so that the conduct of one actor does not unduly prejudice the interests of others due to the interdependency of the international system. For some time now, corruption has been a big issue in the international arena especially after the enactment of the Foreign Corrupt Practices Act of 1977 (United States), which led to the current international anti-corruption movement. Since the end of the Cold War, the world has witnessed an evolution of an international anti-corruption regime. This is evidenced by a deluge of anti-corruption instruments (treaties, statutes, acts or constitutions or declarations) adopted at international, regional, sub-regional and national levels. Consequently, states and non-state actors have been under a lot of internal and external pressure to abide by this regime. The overall goal of this regime is to prevent and combat corruption and facilitate equal access to opportunities and enjoyment of human rights. While noting that Africa has suffered the brunt of corruption and also poor governance ratings, this paper seeks to interrogate and assess the efficacy of the African response to this new anti-corruption regime. Thus the paper examines the legal, policy and institutional framework that the African Union (AU) has put in place for preventing and combating corruption. The paper seeks, inter alia, to critique the African Union Convention Preventing and Combating Corruption in the light of its philosophical foundations, strengths, weaknesses, structure, and strategy. The paper seeks to examine the phenomenon of corruption and anti-corruption in Africa in the context of the following issues: the philosophical framework; the role of treaties in fighting corruption; the roles of various actors and organs in the fight against corruption; whether international organizations, such as the AU, can regulate the conduct of their member states, to implement anti-corruption instruments, and what it takes to have a successful integrity system. While undertaking the study, a descriptive research design was used. Data was collected from primary and secondary sources. Primary data (from leading anti-corruption actors and practitioners in Africa) was collected using non-probability and extreme case sampling techniques. The data was then analysed using quick impressionist summary and thematic analysis. With regard to the conceptual framework, the study is informed by legal positivism and shows that laws enacted by competent authorities have to be obeyed if corruption is to be eradicated. Some tenets of functionalism and international legal regime theories are also employed to show the benefits that arise from inter-state co-operation in fighting corruption. The paper concludes that enhanced

implementation of anti-corruption treaties will lead to reduced corruption levels and relatively low corruption perception levels. Fighting corruption is not an event but a process, involving many actors, organs and a combination of anti-corruption strategies. It is imperative to review the AU anti-corruption structures and strategy to address any inherent weaknesses. And since corruption is a socio-economic problem, about 70% of anticorruption activities and resources should concentrate on prevention as opposed to enforcement and adjudication. Finally, the principles of autochthony and legitimacy should be employed in the design and implementation of anti-corruption laws, policies, programmes and institutions, especially for countries emerging from long years of corrupt administration and bad governance.