

**United Nations Office on Drugs and Crime
Regional Office for Southern Africa**

**Southern African Development Community
(SADC)**

**Human Rights Trust of Southern Africa (SAHRIT)
Southern African Forum against Corruption (SAFAC)
European Union**



**United Nations Office on
Drugs and Crime
Regional Office for
Southern Africa**

CORRUPTION & ANTI-CORRUPTION IN SOUTHERN AFRICA

Analysis based on the results of the Regional Seminar on Anti-Corruption Investigating Strategies with particular regard to Drug Control for the SADC Member States

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*Edited by
Ugljesa Zvekic*

The opinions expressed are the sole responsibility of the authors concerned and in no way reflect the views of ODC, SADC, EU, SAFAC and SAHRIT.



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Table of Contents

As of 1 October 2002, the United Nations Office for Drug Control and Crime Prevention (ODCCP) was renamed the United Nations Office on Drugs and Crime (ODC). It is comprised of the United Nations International Drug Control Programme (UNDCP) and the Centre of International Crime Prevention (CICP).

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Acknowledgements	
Foreword Rob Boone	
Seminar's Report with Recommendations	1
Editor's Introduction Ugljesa Zvekic	4
Opening Address Prega Ramsamy	10
Chapter 1 Corruption in Southern Africa Ugljesa Zvekic & Lala Camerer	13
Chapter 2 Legislating Against Corruption in the SADC Charles Goredema	22
Chapter 3 Anti-Corruption Institutions and Practices in Southern Africa Roger Batty	40
Annex 1. Guidelines on legislation and enforcement	58
Annex 2. Guidelines for case study	61
Annex 3. Evaluation	63

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Foreword

Corruption is as much structurally conditioned as it is a personal-choice driven behaviour. This is why anti-corruption strategies and policies ought to seek to reduce structural opportunities for corruption as well as motivational factors to corrupt and/or to be corrupted. The criminal justice approach in combating corruption divorced from prevention and human development efforts will make a few headlines and will put a few behind the bars but cannot dismantle the economic, cultural and political forces driving a corruption zeal. Similarly, anti-corruption proclamations and mere economic growth cannot, on their own, dismantle a personal choice to get involved in a corrupt transaction be it for survival, greed or mere convenience. Thus, the integration of structural and motivational factors generating corruption requires even stronger and targeted integration of anti-corruption approaches and interventions.

This brief theoretical note should find its practical corollary in institutional arrangements needed to prevent, reduce and control corruption. Such arrangements require partnership and are needed at the national, regional and international levels. An attempt to exemplify a partnership approach at the regional level was the first Regional Seminar on Anti-Corruption Strategies with particular regard to Drug Control for SADC Member States held in Gaborone, Botswana from 23 to 26 October 2001 from which this volume ensues.

It is indeed my great pleasure to present this volume that analyses the corruption and anti-corruption situation in the Southern African region. As noted above, this joint publication emanates from a joint Seminar undertaken by the Regional Office for Southern Africa of the United Nations Office on Drugs and Crime, the SADC Secretariat, the Southern African Forum against Corruption (SAFAC), and the Human Rights Trust of Southern Africa (SAHRIT).

Corruption figures prominently in the mandates of each of the principal organizers of the Seminar. The SADC Protocol on Combating Illicit Drugs explicitly provides for activities to combat corruption as corruption is very closely associated with trafficking in illicit drugs. Furthermore, the most important regional anti-corruption legislation is the SADC Protocol against Corruption. SAFAC, by its very specific *raison d'être*, focuses its attention to strengthening the anti-corruption preventative, investigating and prosecutorial capacities in the region. SAHRIT, in addition to its most important role in the formulation of the implementation plan for the anti-corruption Protocol, also acts as the Secretariat to SAFAC. Moreover, it is a driving regional NGO for a civil society anti-corruption network in the Southern African region.

As regards our office (United Nations Office on Drugs and Crime in Southern Africa), the anti-corruption programme is one of the mandated priorities by the United Nations Commission for Crime Prevention and Criminal Justice. The UN Global Programme against Corruption develops and implements projects and initiatives at the country, regional and international levels. Partnership with the southern African anti-corruption organizations exemplifies our regional approach to the implementation of the Global Programme against Corruption, although our other joint initiatives cover a wide range of drug and crime related issues. It is worthy to mention that at this point in time negotiations are underway for the elaboration of the United Nations Convention against Corruption, which together with the United Nations Convention against Transnational Organized Crime adopted in November 2001, will represent a universal normative and policy framework for anti-corruption strategy and legislation. In this respect, it should be noted that the SADC Protocol against Corruption is without any doubt a very significant regional input into the formulation of the UN anti-corruption convention.

Our work at the Seminar was greatly facilitated thanks to a normative reference point in existence, that is, the SADC Protocol against Corruption, signed by SADC Heads of State and Governments on 14 August 2001. In a certain sense this Seminar was the first opportunity to examine critically the

national and regional capacities to implement the corruption Protocol. Its mere existence provides a strong indication that within the region there is a clear normative and political will to deal with corruption. Obviously, the conversion of this will into practice requires not only further political commitment, but also skills, capacity and integrity of institutions and people tasked to prevent, detect, investigate and prosecute corrupt entities and persons. Such capacities do exist but need further strengthening and in particular proper regional anti-corruption strategic and support mechanisms.

Both the Seminar and this volume, being a joint endeavour of the main role players in the southern African regional anti-corruption scene, represent an integration of efforts, knowledge and resources as well. Participation of international and regional experts together with delegates from all fourteen SADC Member States indeed provided a very special opportunity to contextualize the national efforts as well as the criminal justice approach to corruption within a broader developmental milieu. It is my hope that this volume will assist in furthering our knowledge about corruption and anti-corruption trends and issues in the southern African region. I also believe that the analytical information provided here will serve as a baseline for appreciating further developments aimed at promoting and putting into practice a comprehensive and partnership-based regional approach.

Rob Boone
Representative

United Nations Office on Drugs and Crime
Regional Office for Southern Africa

REPORT with Recommendations

Adopted by the

Regional Seminar on Anti-Corruption Investigating Strategies with particular regard to Drug Control for SADC Member States

Organised by

Southern African Development Community and the United Nations Office for Drug Control and Crime Prevention, Regional Office for Southern Africa in co-operation with Southern African Forum Against Corruption Human Rights Trust of Southern Africa

**23 – 26 October 2001
Gaborone, Botswana**

The Seminar consisted of a number of topical presentations on corruption by international and regional experts as well as case studies presented by the participants from all fourteen SADC member states. Background country information was also provided and a hypothetical case was discussed by working groups.

The case studies presented dealt with administrative/political corruption, economic corruption, corruption related to drug trafficking and corruption in the criminal justice system.

The cases focused mainly on the causes, techniques, policies and legislation (or lack of it), which resulted in the positive or negative outcomes. The case study approach offered an opportunity to recognise the links between corruption, drug trafficking and organised crime. Money laundering was identified as one of the typical instrument of concealing the illicit proceeds of crime.

The case studies clearly indicated that a corrupt transaction is often not a unique and isolated case but rather entails a network of actors and interests involved in different criminal activities.

The disclosure of individual cases of corruption may often lead at the discovery of larger cases of criminal activities particularly if it inspires the public to report such crimes and become involved in the prevention efforts.

The transparency, honesty on behalf of delegates in terms of presenting country case studies, even those that are *sub iudice*, was much appreciated. Indeed, effective regional and bi-lateral co-operation rests, above and beyond formal schemes, on the commitment and mutual trust among the criminal justice practitioners.

Regional level developments

From a comparative international perspective, there are certain clearly positive developments at the **regional level**. These regard the normative framework and the co-ordinating structures, some of which are in place, others being developed. They are all the building blocks to promote co-operation in the prevention, fight and reduction of corruption which is increasingly, as linked to organised crime and drug trafficking, becoming cross-national in origin and its many manifestations.

Normative framework

SADC Protocol on Combating Illicit Drugs, (Article 8) - ratified by all SADC Member States
SADC Protocol on Corruption - signed by all Member States
Forthcoming SADC Protocol on Mutual Legal Assistance in Criminal Matters
Forthcoming SADC Protocol on Extradition
UN Convention against Transnational Organised Crime – signed by most of the Member States and its ratification endorsed by the SADC Meeting of the Ministers of Justice/Attorneys-General (Johannesburg, South Africa, March 2001)

Regional co-ordinating structures:

SADC
SARPPCO – resolution recommended creation of dedicated anti-corruption agencies
SAFAC – association of such structures and associated members including civil society
SADC Drug Control Committee – mandate to oversee investigative action on link between drugs and corruption
Southern African Media Network against Corruption- formative stage
Creation of a regional civil society network (10th IACC, Prague – SAHRIT as a facilitator)

Regional Features

Countries of the region differ in many respects including size, population, GDP and legal traditions, a majority with common law system and a few with the civil law system. Some enjoy stability while a few experience conflict and unrest.

As all over the world, corruption exists in all countries of the region, although its perceived and experienced levels differ from country to country. Moreover, there are clear indications that there is a sizeable gap between the perceived and the experienced levels of corruption. Yet efforts against corruption must address both the perceptions as well as the experiences as they must address both the causes and the manifestations.

There is an increasing concern amongst all member states about corruption including governments, business, organised civil society and public at large. Consequently, there is also an increasing awareness that all concerned need to work together both at the national level (for example, through national anticorruption fora) as well as at the regional level through appropriate mechanism and networks.

Similarly, organised crime and drug trafficking and abuse are on the increase in the region. Increases in seizures and changing profile of drug couriers and modalities of drug concealment exemplify both the upward trend as well as the changes in actors and market-demand, partially as a response to the drug and law enforcement response and regional co-operation.

Links between organised crime, including drug trafficking, and corruption are clearly demonstrated at the international, regional and national levels.

National trends and responses

Political will to fight corruption and support anti-corruption efforts is imperative both at the national and regional levels.

While classical forms of corruption – bribery and fraud – are recognised in criminal codes of all the SADC countries there is a clear tendency of introducing specialised anti-corruption legislation to deal with broader manifestations of corruption.

It is noted that the majority of national laws deal only with public sector corruption while the SADC Protocol Against Corruption makes explicit reference to corruption in the private sector.

There is a prevailing trend towards the establishment of operationally independent anti-corruption agencies with special powers to investigate; some of these also have prosecutorial powers. Such anti-corruption agencies also have mandates regarding the prevention of corruption through public education.

In countries where there are no dedicated anti-corruption agencies there is a tendency towards establishing specialised anti-corruption units within existing traditional criminal justice structures. It was noted that within such arrangements good mechanisms for co-ordination are required.

Both approaches, however, cannot be successful without a well functioning, efficient and non-corrupt criminal justice system.

RECOMMENDATIONS

The challenge lies in the translation of international and regional legal obligations into domestic legislation.

An important stepping stone towards harmonisation of national legislation in keeping with the above regional obligations is development and adoption of legislation regarding money laundering and asset forfeiture. These may require additional implementation mechanisms.

Fighting corruption requires both criminal justice and civil litigation approaches to be used in a complementary manner.

It was noted that the range of sanctions for corruption related offences in some countries is limited (fines and jail sentences). There is an enormous diversity of penalties attached to corruption in domestic laws across the region. As more uniform definitions of corruption and sanctions are adopted, as under the SADC protocols and the UN Convention, a more harmonised approach will be achieved.

Innovative investigative techniques are required to fight corruption effectively.

It may be useful to consider investigative approaches which require different burdens of proof in order to secure either a criminal conviction or seizure of assets. Countries might consider amplifying the use of civil evidentiary standards.

Most countries appear to have no provision for effective protection of witnesses and whistle-blowers which is important for disclosure, evidence and admissibility at trial. Such provisions would be useful in order to encourage citizens to report corruption.

The media has a particular role to play in responsibly investigating, reporting and exposing corruption without undermining the credibility of anti-corruption efforts. Freedom and integrity of media must be protected and preserved.

Civil society organisations have a crucial role to play in the fight against corruption in terms of monitoring, raising public awareness, research and prevention. The integrity of these organisations is of paramount importance and all efforts should be made to preserve it.

Regional Seminar on Anti-Corruption Investigating Strategies with particular regard to Drug Control for the SADC Member States

Editor's Introduction

Ugljesa Zvekic

United Nations Office on Drugs and Crime, Regional Office for Southern Africa

Rationale

Corruption is not in any way a new development. Over the intervening millennia, corruption has served countless times as an illicit means of achieving wealth and obtaining privilege-of securing and sustaining political and economic power. So it is tempting to say that corruption is simply a part of the human condition. Yet, even by concluding that corruption has always been and will always remain with us, does not relieve us of a necessity to do something about it. The failure to address corruption does not make it go away. On the contrary, it reinforces the hand of those who seek profit outside the realm of law and the economy, and the simple, elementary rules and notions of equity and justice.

Corruption is not limited to any one part of the world. It is a reality in industrialized countries as in countries in transition and in developing countries. Nor is corruption restricted to the public sector only. There are many reports of ministers embezzling donor funds allocated to their ministries, allowances paid to officials and discounts given in goods purchases in anticipation of political influence for tenders and government contracts. Business is also involved in corruption: bribing customs, police, drug enforcement, tax and procurement officers in order to avoid tax payments, secure lucrative public contracts, access emerging markets or smuggle illegal commodities is just another avenue of corrupt transactions. Millions of people, often the poor who can least afford it, live in places where they must pay bribes for services they are entitled to and are considered a right under the law. These include driver's licenses, telephone lines, building permits, jobs, pensions, and the list seems endless.

Monopolies and abuse of power and position for private and/or particularistic gain and interest know no geo-political or cultural exclusivity.

Corruption is associated with organized crime, and in particular with drug trafficking. It appears that countries with a weak rule of law tend to exhibit higher levels of corruption and organized crime. This is why prevention, law enforcement and prosecution of corruption are as much issues of development as are the consequences of lower revenues; lower expenditure on citizens and lower quality of public service are all developmental issues.

In this rapidly globalizing world, the huge sums of money generated by drug trafficking generate a culture of corruption and violence. An internationalization of corrupt transactions and corrupt actors is well under way but so is the internationalization of anti-corruption efforts and responses. The challenges require concentrated efforts and coordination throughout the international community, including at the regional level and within each country.

Institutional background

Within the Southern African region corruption is of growing concern as a developmental issue. In conjunction with drug trafficking and other forms of transnational crime it undermines the regional capacity to provide for growth and the reduction of poverty. The confidence of citizens and foreign

investors in regional government's ability to provide for the rule of law and security is to a great extent related to "good and clean governance". It is with this in mind that the New Partnership for Africa Development (NEPAD) places so much emphasis on a need to "partner" in accountable governance: with globalization there is less and less scope for isolated governance. Transparency, accountability and anti-crime/anti-corruption have ceased to be local and domestic issues but are indeed international and regional developmental issues.

On a political and legislative level the SADC response to corruption culminated in the adoption and signing of the SADC Protocol against Corruption (14 August 2001). All 14 SADC Member States, demonstrating a clear political commitment and regional response to addressing corruption, signed the Protocol. As a regional body SADC joins other regional entities that have adopted the regional anti-corruption instruments such as the Organisation of the American States, the Council of Europe and the European Union. The SADC Protocol was also timely in view of the preparations of the new anti-corruption instrument proposed by the African Union and the United Nations Convention against Corruption.

Preceding the adoption of the SADC Protocol against Corruption, in June 2000 at a roundtable meeting of the regional anti-corruption institutions held in Gaborone, Botswana, twelve SADC Member States agreed to establish the Southern African Forum against Corruption (SAFAC). Its main objectives are to foster regional co-operation in combating corruption and facilitate operational co-ordination among anti-corruption entities in the region, including the civil society and other regional anti-crime entities such as the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO). It is expected that its Constitution will be soon adopted as well as its relationship with SADC institutionalized in order, inter alia, for SAFAC to play an active role in the implementation of the SADC Protocol against Corruption.

The Human Rights Trust of Southern Africa (SAHRIT), the regional non-governmental organization with headquarters in Harare, Zimbabwe, played a crucial role in facilitating the preparation of the SADC Protocol against Corruption and providing technical assistance to the SADC Legal Office. SAHRIT also played a fundamental role in the establishment of SAFAC and is acting as a temporary Secretariat of SAFAC. In addition, it has a very close working relationship with the United Nations Office on Drugs and Crime/ROSA as regards the monitoring of corruption trends in the region.

In 1999, the United Nations Office on Drugs and Crime launched the United Nations Global Programme against Corruption carried out on the global, regional and country levels. The global level is focused on the development of the United Nations Convention against Corruption, while the regional level activities, such as those in Southern Africa, provide support to the regional anti-corruption capacities (e.g. SADC Protocol against Corruption; SAFAC; monitoring methodology with SAHRIT; networking with donors and civil society; etc.). On a country level (for instance in South Africa) technical assistance support is provided to national programmes against corruption, including: the assessment and monitoring of corruption trends and the efficacy of anti-corruption measures; anti-corruption legislation; dedicated anti-corruption agencies and co-ordination with other agencies with anti-corruption mandate; strengthening of government departments' internal capacity for risk management and anti-corruption mechanisms; public awareness and community anti-corruption work, etc.

It is within this context that the SADC Secretariat (Drug Control Office) and the United Nations Office on Drugs and Crime – Regional Office for Southern Africa organized the first Regional Seminar on Anti-Corruption Investigating Strategies with particular regard to Drug Control For SADC Member States (Gaborone, Botswana 23 – 26 October 2001). In view of the above-mentioned roles played by SAFAC and SAHRIT, both of them co-operated in the organization of the Seminar and supported it by providing a number of faculty staff.

By joining hands, these four major regional anti-corruption role players, with the support of one of the major SADC donors – the European Union - symbolize and exemplify the imperative for international and regional co-operation in the prevention and fight against corruption.¹

The seminar was opened by Dr. Prega Ramsamy, the SADC Executive Secretary (presented in this volume) followed by the opening statements from the representatives of the United Nations Office on Drugs and Crime/ROSA, the European Union, SAFAC, SAHRIT and the SADC Drug Control Office.

Summary Proceedings of the Seminar²

The principal organizers of the Seminar (SADC and United Nations Office on Drugs and Crime/ROSA) in consultation with SAFAC and SAHRIT developed a concept paper including the objectives of the Seminar and the guidelines for the preparation of the Seminar’s material. The preparatory documentation and the deliberations of the Seminar were made available and held in English, French and Portuguese.

The main objectives of the Seminar were to provide criminal justice officials from the participating countries with the opportunity:

- to share information on general causes and characteristics of corruption in the participating countries
- to share information on strategies used to fight corruption
- to identify and analyse problems encountered in the prevention, investigation, and prosecution of corruption, and
- to suggest effective practices for preventing and investigating corruption.

Each participating country selected a minimum of three officials with hands-on experience regarding corruption cases. Selected participants were the “middle-top management” investigators, prosecutors and magistrates/judges handling both operational and supervising functions. If investigative and prosecutorial functions for corruption cases are carried out by specialised institutions (such as a special prosecutor, inquisitorial magistrate, procurator or specialised anti-corruption agency), the composition of the country delegation reflected such institutional arrangements.

The Seminar was attended by all SADC Member States totaling 57 participants including the Seminar faculty.

The delegation from each of the participating countries was requested to:

- 1) prepare background information regarding the prevention, investigation, and prosecution of corruption within their respective country following the detailed guidelines (Annex 1);
- 2) prepare three detailed case studies referring to actual cases following the detailed guidelines (Annex 2). The result of an actual case need not be positive, as lessons can be learned and analysed most effectively by using actual cases where investigators and prosecutors were unsuccessful.

The Seminar utilized a “bottom up” or “inductive” approach, rather than “top-down” or “deductive” approach. The organisers selected a number of the case studies received by the participating delegations for discussion during the course of the Seminar. Each participating country presented one selected case study which was followed by discussion among the participants. In addition, a detailed hypothetical corruption case prepared by the Seminar faculty was discussed through the working groups to highlight issues involved in identifying, investigating, and prosecuting corruption as well as in providing for efficient regional co-operation.

The Seminar also covered relevant international experiences relating to the prevention, investigation,

and prosecution of corruption cases provided by international and regional experts from the United Nations, SAFAC, SAHRIT, the regional INTERPOL/SARPCCO Bureau, and the participating countries. Topics included: international and regional co-operation; the United Nations Global Programme against Corruption; international trends in corruption and anti-corruption; assessment and monitoring of corruption and anti-corruption measures; regional trends in drug trafficking, organized crime and corruption; ethics in public service in Africa; the SADC drug control programme; the SADC Protocol against Corruption; the objectives and a draft Constitution of SAFAC; the role of civil society; the role of the investigating journalism; asset forfeiture; civil procedure application in the area of corruption; the experience of the Hong Kong (China) Independent Commission against Corruption; the objectives and programmes of the International Law Enforcement Academy.

The general evaluation of the Seminar was positive and a number of useful suggestions were made regarding both the organisation of future seminars/training courses as well as possible technical assistance projects (Annex 3).

The participants to the Seminar adopted a **Report** with *Recommendations* (presented at the outset of this volume).

About this volume

This volume presents the results of the analysis based on the information received from the participating countries at the Seminar (background information, case studies and ensuing Seminar discussion). However, it has been amplified to include information which was not available at the Seminar.

As with any publication, it has limitations but is intended to present a recent analysis of corruption research and anti-corruption developments in the region as of October 2001. Its main limitation is thus that it is restricted to the information made available for the Seminar (October 2001) with, as noted above, some updates available at the time of the preparation of this volume.

This publication was guided by a number of universally accepted premises for providing for an understanding of corruption and responses to corruption. In summary these are:

- conceptual and definitional issues as well as perceptions and experiences with corruption and anti-corruption (issues of understanding);
- public recognition of the problem shared by the government and the populace (anti-corruption culture and climate);
- serious political will to deal with corruption (expressed will and the clean government);
- promulgation of an adequate anti-corruption legislative framework related to other anti-crime, administrative, financial and regulatory legislative frameworks (laws and regulations);
- adequate provision of committed resources to structures and processes devoted to the prevention and control of corruption (implementation), and
- monitoring, evaluation and critical reflection (checking and reforming).

Analysing each of the above in a determined context goes beyond presently available information. Therefore, what follows are just a few indications as regards each of the “anti-corruption requisites” on the regional level.

Issues of understanding

There are many definitions of corruption, its types and levels. There are also a number of surveys and other data collection techniques which address corruption through perceptions and experiences of different actors. The focus of Chapter 1 is to present the main findings related to corruption as perceived and/or experienced in the region.

Problem recognition

Available research-based information (commented upon further below) on the seriousness of the problem clearly reveals that there is no doubt that people of Southern Africa do consider corruption as a problem. Moreover, it is considered by the large majority as a serious problem. Thus, corruption is a **publicly recognised problem** in the region. Organised civil society also recognises it as a problem as indicated by the Africa Workshop held within the framework of the Tenth International Anti-Corruption Conference (Prague, The Czech Republic, October 2001) and the subsequent preparations for a Conference for Civil Society and Non-governmental Organisations involved in Anti-Corruption Work in SADC (2002).

Regional political structures recognise corruption as a problem, too. On the regional level this is most clearly expressed in the SADC Protocol against Corruption adopted and signed by all 14 SADC Member States (August 2001). The Protocol certainly indicates the **regional political recognition** of the corruption as a problem. The political support for the creation of SAFAC is just a further indication of the regional political recognition of the corruption as a problem.

Political will

SADC Protocol against Corruption is the most notable expression of the **regional political will** to prevent and combat corruption. The Protocol itself in the preamble recognizes the importance of the demonstrated political will by SADC leaders to give effect to anti-corruption strategies. Political will is further supported by the fact that the anti-corruption Protocol is the SADC instrument which took the shortest time to move through the SADC procedures. Moreover, its development involved a very close co-operation between the governments and the NGOs of the region. The adoption and signing of the Protocol is just one manifestation of a political will. Harder evidence as regards the political will be provided as the ratification of the Protocol initiates. At the time of writing only three SADC Member State ratified the Protocol.

Laws

The SADC Protocol against Corruption has as its primary objective to improve and harmonize anti-corruption policies and laws in and across the region and to facilitate regional co-operation. While all SADC Member States have certain anti-corruption criminal provisions, a detailed analysis of the existing national laws on corruption and their relationship with the requirements of the Protocol shows that there are still **major weaknesses** in the scope of coverage of the existing criminal law provisions, jurisdiction and complementary legislation. This means that the SADC Member States need to bring their domestic legislation in line with the Protocol and harmonize mutual legal assistance mechanisms. Some SADC Member States, however, do have legislative provisions which are already in line with the Protocol and some of them are already in the process of promulgating new anti-corruption legislation.

Implementation

The issue of implementation of any anti-corruption policy and legislation is rather complex. It covers such issues as, for example, the operationalization of the political will through political support and political determination to investigate, prosecute and adjudicate any person or institution suspected of being involved in corrupt practice or act (no political covering-up); budgetary provisions and independence adequate to enable the agencies dealing with corruption to do their work effectively and well; coalition among the Government, business, mass media and civil society in the prevention of corruption and monitoring of the effectiveness of adopted anti-corruption programmes and initiatives; etc. Chapter 3 provides a detailed account of the situation in the region with regard to the existence of structures and procedures to prevent, detect, investigate and prosecute corruption.

In this respect, too, the situation in the region varies from country to country but it appears that the prevailing tendency is to establish **dedicated anti-corruption agencies/units** as well as that the provision of **special investigating tools and powers** is essential for an effective criminal justice response.

Monitoring

Most of the attempts to measure and monitor corruption by variety of approaches and techniques have up to now focused on the phenomenon of corruption. This has resulted in two types of biases. Firstly, only the phenomenon was dealt with but not so much responses to it. Secondly, both the perceptions of as well as actual experiences with corruption are influenced by the responses to it. Therefore, a comprehensive measurement and monitoring of corruption must equally deal with the phenomenon (levels and types) as well as with the responses. As of today there is no regionally accepted and adopted standard methodology for the measurement and monitoring of corruption and anti-corruption. SAHRRIT in cooperation with United Nations Office on Drugs and Crime Regional Office for Southern Africa started to develop such an approach. It is hoped that the Protocol will enable a more systematic measurement and monitoring of corruption and anti-corruption trends in the region.

This publication starts with the presentation of the **Report** with Recommendations as adopted by the participants to the Seminar.

The Opening Address delivered by Dr. Prega Ramsamy, the SADC Executive Secretary, is presented as it outlines the main reasons and objectives for the organization of the Seminar, including the respective roles of the organizers.

The thrust of the volume consists of three chapters each focused respectively on:

First, an overview of trends in corruption based on a number of regional surveys on corruption (Chapter 1);

Second, a review of the existing corruption legislation in SADC member states in view of the main provisions of the SADC Protocol against Corruption. Needless to say, because of the public and international concerns with corruption, as well as the adoption of the SADC Protocol against Corruption, the legislative area is the most dynamic component of the anti-corruption efforts. Therefore, a number of countries are currently adopting new anti-corruption legislation; drafts available at the time when the analysis was carried out (February-April 2002) were also analysed. In that sense the analysis presented in Chapter 2 is not complete and it is limited to a particular point in time; and

Third, the analysis of the anti-corruption capacities and structures in the region, including a review of investigating tools and powers (Chapter 3).

The adoption and expected ratification of the SADC Protocol against Corruption by member states is the most important political and legislative milestone in the fight against corruption in the region. Its effective implementation is of paramount importance for furthering both the regional and each country's capacity to arrest negative trends in corruption.

It is hoped this volume will prove to be a useful contribution for appreciating the corruption and anti-corruption developments in the SADC region.

REGIONAL SEMINAR ON ANTI-CORRUPTION INVESTIGATING STRATEGIES WITH PARTICULAR REGARD TO DRUG CONTROL FOR SADC MEMBER STATES

**OPENING ADDRESS
DR PREGA RAMSAMY
THE EXECUTIVE SECRETARY OF SADC**

Chairperson,
Officials from the Delegation of the European Commission in Botswana,
Officials from the United Nations Office on Drugs and Crime,
Distinguished delegates from SADC Member States,
Ladies and Gentlemen,

I am indeed delighted to welcome you all at this opening session of the First Regional Seminar on Anti-Corruption Investigating Strategies with particular regard to Drug Control for SADC Member States. I also wish to extend my appreciation and thanks to the Government of Botswana for having kindly agreed to host this important SADC event.

This meeting, Chairperson, is taking place at a time when SADC is undergoing profound changes which will assist our Member States to grapple with the numerous challenges facing us. One of our challenges is the exposure of our society to illicit drugs in all its ramifications. It is for this reason that I have on numerous occasions expressed my full support to activities that will lead to drug control, including control and surveillance of substance abuse and illicit drug trafficking. The reasons for our involvement are quite straight forward: SADC stands for social and economic growth and development, and problems like drug abuse, and the associated problems of violence and economic crimes clearly hamper development processes, not only in SADC, but all over the world. In other words, these problems have the potential to affect social and economic development in the Region.

On the social and human development side, substance abuse seriously robs the abuser of his physical and mental health and energy, his ability to perform well at work or at school, leading to interrupted or ceased career and family life traumas. With regard to regional economic development, substance abuse tendencies among sections of our populations may send the wrong messages to potential investors who would not want a workforce with many workers that are so-called “troubled employees”, suffering under social and health burdens resulting from substance abuse either from their own abuse patterns, or from those among their family members or their communities. Furthermore, there is no sense of security when people roam the streets in a non-sober state of mind.

Notwithstanding what I have said, we need to take responsibility in providing services to those who have fallen victim to substance abuse, and prevent more people from becoming addicted. The perils that substance abuse may cause to individuals and families in our societies, not to mention the associated evils of corruption, money laundering and violent crimes, are the underlying reasons that have led our leaders in SADC to sign and subsequently ratify the SADC Protocol on Combating Illicit Drugs. This is proof of the commitment by our Heads of State and Government to root out the scourge of drug abuse and illicit drug trafficking in the Region.

As far as SADC is concerned, we are embarking on more and more activities on Drug Control. I must express my gratitude to the media in most Member States, which have attested to the activities organized by SADC with regard to drug control. I do wish to commend the media for the responsible way in which they have done drug reporting over the past year. It really supports the education and transparency drive that has been kindled in our Community.

The Programme that was formulated to implement the SADC Protocol on Combating Illicit Drugs, encompasses six main areas in which several sub-components are clustered. The main areas of intervention through the SADC Regional Drug Control Programme are regional capacity building and coordination, national capacity building and coordination, legal development, supply reduction, demand reduction and the relationship between illicit drugs and HIV/AIDS. This represents a balanced approach to drug control, in other words, both the supply side and the demand sides are considered to be equally important.

We are aware that the more interdependent and globalised the world becomes the more mutually vulnerable communities, countries and even regions have become. As we read everywhere, globalisation of the social and economic spheres has also brought about the globalisation of crime, implying that crime has become increasingly organized, transnational, and yes, incredibly ingenious. Each year, transnational criminal groups unlawfully organize the movement of about 1 million illegal immigrants; yielding in excess of US\$ 3 .5 billion. The third sub-project has no coverage at present.

The drug business alone has made a turnover of US\$ 500 billion per year in the late nineties, of which close to 20% has been laundered and is used as legal investment, as we see in the 2000 World Drug Report. All in all, about US\$ 600 billion in ill-gotten money is laundered in the world every year.

This Seminar is evidence of the serious way in which SADC endeavors to clamp down on corruption and its links with drug trafficking in the Region, as a continuation of a number of sequential activities against organized crime in the region. The same activity is planned with regard to money laundering next year. Just two months ago, the SADC Heads of State and Government signed the SADC Protocol against Corruption. This Protocol, inter alia, addresses the need for preventive measures, for the harmonization of policies vis-à-vis corruption, for confiscation of the proceeds of corruption, and the need for judicial cooperation and legal assistance among Member States to stamp out corruption. This seminar will be the first activity to address the provisions of this protocol as well. I made sure that the SADC Protocol against Corruption also receives prominence on your Agenda, although the aspect of corruption is covered comprehensively in the SADC Protocol on Combating Illicit Drugs as well.

This Seminar is also of critical importance in the wake of the increase in trans-border crime, organized crime, money laundering and even terrorism world-wide. As you are aware, transnational corruption is associated with organized crime, including the smuggling of weapons, precious materials, migrants, female for commercial sex purposes, combined with drug trafficking.

The causes of corruption are attributable to many factors including cultural and sociological factors. As a result, corruption reduction efforts should include law enforcement training, prosecutorial and public education measures as well as social control mechanisms. That is why we have legal provisions in place against people who want to bribe customs, tax and procurement officials in order to smuggle goods, or who want to avoid tax payments and secure lucrative public sector projects through scrupulous tender procedures.

Cross border money laundering and placement of ill-gotten gains in safe and secret foreign accounts also typifies the internationalization of corruption including as we have seen now terrorism. Nowadays, deals can be made and funds transferred overseas in a matter of seconds. Traditional control mechanisms can as easily be avoided as the new financial transfer technology is abused. Here, again, our sixth sense will be needed, which is our ability to detect right from wrong and to take a stance for what is right.

The international scenario of corruption is vast and complex. It involves the rich and the poor, the powerful and the powerless, the greedy and the survivors, the offenders and the victims. The victims, however, are often the reluctant participants in the corruption chain. The challenge facing most coun-

tries and the international community is the completion of the anti-corruption control chain. A country or Region is only as strong as the weakest link in the chain. The anti-corruption chain includes:

- integrity, efficiency and transparency of public administration and the criminal justice system;
- sound strategy and laws facilitating the prevention, detection, prosecution and conviction of corrupt actors and practices;
- seizure, forfeiture and confiscation of corruption proceeds; and
- strong public anti-corruption awareness and education, for civil society, the business community and the independent mass media.

As you will hear again and again at this Seminar, political will is the key to the fight against corruption. We have seen this political will demonstrated by Governments in the Region, such as the establishment of, for instance, the Directorate on Corruption and Economic Crime, here in Botswana. Furthermore, the regional political will has been demonstrated in the signature of the SADC Protocols that I have mentioned. A regional body, the Southern African Forum against Corruption, was also established, consisting of representatives from SADC Member States to implement the SADC Protocol against Corruption. The political will to fight corruption in the Region will furthermore be supported by legislation within the framework of the SADC Protocol on Combating Illicit Drugs, the Protocol Against Corruption and the UN Convention Against Transnational Organized Crime.

However, political will must also be complemented by appropriate civic education programmes against corruption, the participation of civil society and the media in strategies to combat corruption. For these initiatives to be worthwhile, political commitment will have to be sustained at the highest level. In fact, I am pleased to note that you as representatives of the SADC Member States and International Organisations are key in sustaining the political commitment of your Governments and Institutions in the fight against corruption, and I wish you well in your efforts.

In conclusion, I wish to sincerely thank our co-operating partners, the United Nations Office on Drugs and Crime, the Southern Africa Forum Against Corruption and the Southern African Human Rights Trust for your invaluable contribution in the organization of this Seminar, alongside the SADC Drug Control Office.

Please use this opportunity to contribute to drug control and the prevention of corruption in the SADC Region in your usual constructive manner, not only by taking part in the discussions here, but also by assisting in the coordination of follow-up activities in your home countries. Allow me at this stage to declare this Regional Seminar open and wish you fruitful deliberations.

1. An auxiliary meeting of donors/international/regional organization involved in anti-corruption at the regional level was held on 24 October 2001. It reviewed the respective roles and mandates. It was agreed to support and participate in the envisaged workshop of the regional anti-corruption NGOs (SAHRIT and ISS) as well as in the Strategic Programme Framework Conference to be organized by United Nations Office on Drugs and Crime/ROSA in consultations with SADC, SARPCCO and SAFAC.
2. Appreciation is expressed to Lala Camerer, Institute for Security Studies, South Africa, and United Nations Office on Drugs and Crime/ROSA Consultant for her role as the Seminar Sessions Rapporteur. This Summary is prepared on the basis of the Rapporteur's notes.

Chapter 1

Corruption in Southern Africa: A surveys-based overview

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Introduction

An understanding of the phenomenon of corruption is dependent upon data that is often incomplete or inaccessible. Due to its secretive nature and the difficulty of defining the scope of criminality, information is drawn primarily from citizens' perceptions. However, this is changing as survey instruments become more precise in detailing the nature of corrupt practices involving private citizens and the corporate world (both private and public).

This chapter draws upon the findings of several crime surveys to provide an overview of what is currently known about corruption within the Southern African region. The sources for this analysis include the International Crime Victim Survey (ICVS)¹, Transparency International's Corruption Perception Index, findings from the Afrobarometer², key informant interviews with stake-holders in SADC and a regional public opinion survey conducted by The Human Rights Trust of Southern Africa (SAHRIT) during 2000. It should be acknowledged at the outset that these surveys were not carried out in the same time period and they are not all based on the same research methodologies and sampling practices. Despite their limits, however, these surveys provide the most complete data on corruption in Southern Africa currently available for analysis.

While each survey is susceptible to criticism and praise, it is not the intention of this chapter to make normative assessments of survey style and technique. Rather, our goal is to provide an "informed" overview of what is currently known about corruption and the anti-corruption response in the SADC region by presenting a few selected issues included in these surveys. This document addresses the nature of perceived and experienced extent of corruption, including its seriousness from a local, regional and international perspective. Detailed findings on the sectoral location of corruption including the specific type of public officials involved, as well as information on citizens' views toward their governments' efforts to curb corruption are presented.

At present there is no regionally accepted standard methodology for the measurement and monitoring of corruption and anti-corruption. It is hoped that a standard survey instrument in the SADC region will soon be developed to assist in the implementation of the most important regional anti-corruption instrument: the SADC Protocol Against Corruption. This important recommendation derives from the overview of data presented in this chapter and will be examined in detail in the coming chapters.

The problem and seriousness of corruption locally and internationally

A recent SAHRIT³ survey examined the perceptions and experiences of Southern African respondents (n-1694) with regard to corruption in the SADC region. The data indicates that, overwhelmingly, corruption is believed to be a serious problem in the region (75%) and throughout the African continent (87%). Some 42% believed it is a serious problem in Europe and the USA as well.

The vast majority of respondents (93%) considered corruption a very/serious problem at the national (country) level, while 80% thought the same for their own local communities. This was true for all ages, men and women, rural and urban residents, as well as at all levels of education.

Table 1. Seriousness of corruption as the problem (SAHRIT survey)

Community	79.7%
Country	92.5%
SADC	74.1%
Africa	86.6%
Europe and US	41.8%

It is interesting to note that the SAHRIT survey found that when asked how often they experienced corruption in their local communities, over half (55%) of respondents reported that they had experienced corruption personally “all the time or many times”. Approximately 44% had just a slight or no experience with corruption at the community level.

In terms of the seriousness of corruption within the region, the Afrobarometer found that South Africans were most likely to be concerned about the issue: 10% believed corruption to be a “most important problem that government ought to address”. For citizens of other Member States covered by the survey these figures were considerably lower: 5% of Malawians followed by 4% of Zimbabweans stated that corruption is a “most important problem”. Only 3% and fewer of the respondents from Botswana, Zambia, Lesotho and Namibia considered corruption to be a serious problem.

From among 91 countries ranked by Transparency International according to the 2001 Corruption Perception Index, the bottom 48 belong either to the group of developing (and least developed) countries or to Eastern Europe and the Commonwealth of Independent States⁴. This tends to support the view that corruption is more diffused in the developing world and within emerging market economies. From a business/market perspective, this might translate into a lack of formal regulatory mechanisms supporting good governance as well as codes of ethics, value and orientation systems, etc.

Transparency International 2001 Corruption Perception Index⁵

Upper part of the list (CPI > 5.0, 36 countries) includes:

- 17 Western European countries
- New Zealand, Canada, Australia, USA
- Botswana, Namibia
- Singapore, Hong Kong, Japan, Taiwan, Malaysia
- Chile, Trinidad & Tobago, Uruguay
- Israel, Tunisia
- Estonia, Slovenia, Hungary

In the middle (CPI < 5.0 and > 3.0, 28 countries):

- Greece
- South Africa, Mauritius, Ghana, Malawi
- 9 Latin American countries
- 8 Central-Eastern European countries
- Jordan, Turkey, Egypt
- South Korea, Thailand, China

In 27 more countries the CPI is < 3.0

Table 2. Regional ranking based on TI Corruption Perception Index (elaborated by UNICRI)

Region	Average CPI score
Africa (including SADC)	3.10
Central-Eastern Europe & CIS	3.52
Asia	3.76
Latin America & Caribbean	3.80
SADC	3.95
Middle East-North Africa	5.00
Western Europe	7.93
North America, Australia, New Zealand	8.73

The International Crime Victim Survey (ICVS) presented data on citizens’ experience with public sector corruption in different parts of the world. The regional distribution shows a somewhat different ranking than the TI league table in that the citizens’ experience with public sector corruption is most notable in the Middle-East & North Africa, followed by Latin America, Africa (the whole of the continent) and the post-communist countries of Central and Eastern Europe. SADC region is ranked in the “lower third” on the corruption hierarchy, but features a considerably higher average score than the two regions of the developed world.

Table 3. Regional ranking based on ICVS (elaborated by UNICRI)

World region	% citizens requested to pay a bribe
North America, Australia, Japan	0.3
Western Europe	0.8
SADC	9.0
Africa (including SADC)	14.7
Asia	13.8
Central Eastern Europe & CIS	14.5
Latin America	18.2
Middle-East and North Africa	27.9

It should be noted that there is a level of correspondence between the perceptions and experiences of the citizens in southern Africa with regard to the spread of corruption at the international level. On both measures of corruption (SAHRIT and the ICVS) Africa ranks as a highly vulnerable world region while Western Europe and North America are the least vulnerable regions in the world. The positioning of the SADC region both by the citizens of southern Africa (perceptions and experiences) and the TI measure is better than that of Africa as a whole, but much worse than that of the industrialised parts of the world. Interestingly, yet the SADC region fares better than the region comprised of ex-communist states, Asia and Latin America.

Location of corruption by sectors

The Afrobarometer (July 1999 - June 2000) found that popular perceptions of government corruption are indeed extraordinarily high in some Southern African countries, but that there are important regional variations.

Approximately 62% of Zimbabweans believed “all/almost all/most of” their public officials were involved in corruption. This is far higher than perceptions of public official’s venality in South Africa (48%), Zambia (46%) or Malawi (40%). Less than one third in Botswana and about one fifth in Lesotho and Namibia held such negative views towards their public officials.

Table 4. Perceptions of corruption in the public sector (Afrobarometer)

	Zimbabwe	South Africa	Zambia	Malawi	Botswana	Lesotho	Namibia
Officials in the Government	69	50	51	43	32	28	20
Civil servants, or those who work in government offices and ministries	65	50	50	46	32	30	24
People in parliament	63	45	40	31	29	20	19
Officials in your local government	51	46	42	NA	20	11	17
Average across types of government	62	48	46	40	28	22	20

According to the latest Afrobarometer release (April 2002) about one-half of survey respondents thought that corruption among public officials was common (52%) but still a bit more than one-third considered it to be rare (35%). As with the previous findings, the perceived corruption of public officials was the highest in Zimbabwe (70%), on the one hand, and significantly lower in Botswana, Lesotho and Namibia (ranging from one quarter to one third of the respondents). Yet, by any standard even the “lower” manifestations in those countries cannot be considered “low”. It appears that there is a widespread belief among the citizens of southern Africa that the public sector is indeed typically vulnerable to corruption.

The majority of regional respondents in the SAHRIT survey believed that corruption was more prevalent in the public sector (65%) than either the private (8%) or non-governmental organisations (3%). Still, a quarter expressed the view that corruption exists equally in the public, private and NGO realms. The majority of respondents in the SAHRIT survey felt that corruption was much more prevalent in urban communities (67.7%) than in rural areas (8.8%), while a bit less than one quarter believed it was present equally in both urban and rural areas. Furthermore, 58% of respondents indicated that men – especially urban, formally educated - are more likely to be corrupt than women (7%). Yet, one third believed men and women to be equally vulnerable to corruption.

The Institute for Security Studies 2001 (Gastrow 2001) survey of police agencies in the SADC region on organised crime found that five of the nine agencies who responded to the survey believed organised criminal groups were involved with corruption in public sector. Four agencies mentioned that such groups were involved in corrupt practices in the business sector as well.

Amongst the regional respondents to the SAHRIT survey, a strong correlation was found between perceived corrupt practices and current economic performance. More than three quarters of respondents felt that major economic problems in their communities/countries were caused by corruption. Only one third reported no such a connection.

For developing and underdeveloped countries, the economic consequences of corruption and the penetration of organised crime are highly damaging to the political and economic systems. Corruption and organised crime undermine the gains of democratic transition in numerous ways. Among the most significant problems caused by such criminality is a breakdown in the delivery of basic services to the poor and the deterrence of potential foreign investment. Corruption delays the consolidation of democracy and restricts economic growth.

Using information collected from the participants (criminal investigators and prosecutors) in the Regional Seminar on Anti-Corruption Investigating Strategies, with particular emphasis on the Drug Control for SADC Member States (Gaborone, Botswana, October 2001), as a basis, the following were identified as the corruption prone sectors (for details see, Chapter 3)

Corruption Prone Sectors

Customs	Licenses and permits
Procurement	Judiciary
Narcotics trafficking	Revenue Collection
Police	Health
Immigration and Border Controls	Employment
Education	

Public sector officials perceived to be corrupt

The Afrobarometer found that across the seven countries, local government or parliamentarians are seen as less corrupt than national government officials and civil servants. This suggests that citizens tend to make distinctions between levels of government when identifying the presence of corruption.

For example, in Lesotho some 30 % indicated that “all or most civil servants” are corrupt, while just 11% claimed this to be true within their local governments. Similar, though more subtle differences in citizens’ views of corruption in the differing levels of government can be seen in Malawi and Zimbabwe. Only in South Africa and Namibia do citizens appear to hold a relatively undifferentiated view of corrupt practices in the national or local governments.

The SAHRIT regional survey⁶ revealed that politicians (72.6%) and police officers (72.4%) are perceived as the most prone to corruption. It should be noted that quite a substantial percentage of the respondents (above 60%) considered other civil servants, including immigration and customs officials and business people as prone to corruption. Even the “lowest” rungs on the ladder of corruption hierarchy are regarded by many as being “corrupt”: 43% of respondents considered the judiciary to be corrupt, and almost a third of SADC citizens considered the division of society least associated with corruption – the traditional leaders – as being “corrupt”.

Table 5. Corruption by occupational categories as perceived by citizens (SAHRIT survey)

Politicians	72.6%
Police Officers	72.4%
Civil Servants	64.9%
Immigration/Customs	63.5%
Business people	61.2%
Tender/Contract officials	50.9%
Judges	42.7%
Teachers	37.1%
Traditional leaders	27.4%

Personal experience of citizens with public sector corruption

Perceptions of corruption seem to be only tenuously linked with actual experience. The Afrobarometer data revealed that, on average, perceptions of government corruption were four times higher than the average actual experience with corruption in Namibia. In Botswana, perceptions were forty times higher than actual experience with corruption. Whatever their size, these discrepancies suggest that perceptions may be shaped more by news media reports of a small number of high profile incidents, or the accounts of friends’ or neighbours’, or an overall low level of confidence in the ethics of the public sector than any direct personal experience. However, the Afrobarometer did find that citizens in Zimbabwe (12%) were more likely to actually experience corruption on average than citizens in Namibia (6%), South Africa and Zambia (4%), Malawi and Lesotho (3%) and Botswana (1%).

Table 6. Personal Experience with Government Corruption in Southern Africa (Afrobarometer)

	Zimbabwe	Namibia	South Africa	Zambia	Malawi	Lesotho	Botswana
A job	10	3	2	5	5	6	1
A government maintenance payment, pension payment or loan	13	4	2	3	4	2	1
Electricity or water	11	7	7	3	3	1	1
Housing or land	14	8	4	3	3	2	1
Average experience with corruption	12	6	4	4	3	3	1

As the data table above suggests, citizens are prone to victimization when seeking employment (getting a government job or in getting government assistance in finding employment) in the countries of Botswana, Malawi, Zambia, and Lesotho. Government distribution of housing and land seems to offer the greatest potential for corruption in Namibia and Zimbabwe. In South Africa, citizens are most at risk when trying to obtain electricity and water.

The International Crime Victim Survey also asked citizens whether they experienced corruption first hand at the city level. As Table 7 indicates, responses were varied:

Table 7. Experience of corruption in Southern Africa (ICVS: elaborated by UNICRI)

Southern Africa	Year	Victimisation rate %
Gaborone (Botswana)	1997	2.9
Gaborone (Botswana)	2000	0.8
Harare (Zimbabwe)	1996	7.2
Johannesburg (South Africa)	1996	7.6
Johannesburg (South Africa)	2000	2.9
Lusaka (Zambia)	2000	9.9
Maseru (Lesotho)	1998	19.2
Mbabane (Swaziland)	2000	16.5
Windhoek (Namibia)	2000	5.4

Because the Afrobarometer and the ICVS surveys do not coincide in terms of question content, the time period in which surveys were carried out, and other methodological concerns, it is very difficult to compare the levels of corruption identified by these surveys. Furthermore, it is unjustifiable to draw conclusions based on the results of only one survey. Thus, it is suggested that the SADC Member States agree to and adopt a standard methodology for measuring the nature and extent of public perceptions and experiences with corruption.

Government Anti-Corruption Initiatives

Often anti-corruption reform is prompted by a change in government. The Afrobarometer (1999-2000) measured citizens' perceptions on present day government corruptibility as compared to the views toward the previous regime. In Zimbabwe, Malawi, South Africa and Zambia a majority of respondents believed the current regime to be more vulnerable to corruption than the previous government. Yet, in Namibia and Lesotho the opposite was true. In Botswana, responses were divided. While 22% believed the current government to be more corrupt than the past regime, 22% disagreed, asserting that the current regime is less corrupt. Approximately 34% of respondents in Botswana were not able to articulate whether there was any difference.

Table 8. Perceptions of Government's Vulnerability to Corruption: Now and in the Past (Afrobarometer)

	Zimbabwe	Malawi	South Africa	Zambia	Namibia	Lesotho	Botswana
More Corrupt	56	50	44	44	26	25	22
The same	13	13	25	17	21	17	13
Less Corrupt	19	29	27	27	41	36	22
Don't Know	10	7	4	11	10	21	34

Recognising that political will provides the foundation for any effort to combat corruption, a SAHRIT survey also explored the citizens' views on the government's commitment to combat corruption. By far the majority (64%) of regional respondents felt that their governments were only slightly committed or not committed at all to fighting corruption. Just over a third (34.2%) felt that they were very/ committed to combating corruption.

Another indicator of public confidence in government anti-corruption initiatives is based on citizens' willingness to report corrupt practices to law enforcement officials. Because instances of corruption often involve at least two parties, rates of reporting corruption are generally low. Usually it is the party that was not satisfied with the outcome of the transaction that decides to report the case.

In order to increase these reporting rates, a set of protective and confidence building mechanisms need to be developed. Such measures might include a whistle-blowing and victim/witness protection program. As Chapter 2, describes, these are not in place in most of the SADC member states. Further, citizens must trust the police and other dedicated anti-corruption entities if they are to feel comfortable reporting corrupt practices. If a perception exists that the police force and the criminal justice officials are corrupt or the anti-corruption agency is ineffective or dependent on other government agencies for its existence, which is often the case, reporting levels will remain low.

The ICVS data confirm that the levels of reporting corruption are rather low among the SADC member states. Rates range from 5% in Swaziland, to 9% in Namibia and 12% in Lesotho and 14% in Zambia. However, it should be noted that 41% of all indicated cases of corruption in South Africa were reported and that all such case were reported in Botswana. Moreover, it can be noted that in most SADC countries, the main reporting agency is the police. In countries where there are dedicated anti-corruption entities, the number of citizens reporting cases of corruption is on the rise (e.g. South Africa, Zambia and in particular Botswana where two thirds of the cases were reported to the Directorate on Corruption and Economic Crime).

The recognition of corruption as a problem in the SADC region in public statements by political and civic leaders as well as its prioritisation as an issue of immediate concern is arguably indicative of tangible political will to effect change in the region. There is more talk about corruption in society and much more effort and pressure on the part of regional governments to address the issue openly and vigorously. However, it must be remembered that just as with many other social phenomena, once corruption becomes part and parcel of the open political agenda, it may seem more widespread than is actually the case.

Concluding remarks

The current data on the incidence of corrupt practices in government and civil society, or the public perception of such practices, is limited and frequently draws upon different sources, methodologies and samples, which make it difficult to fully examine the extent of these practices as they affect the SADC community. As noted earlier, there is still no standard approach adopted within the SADC region to deal with people's perception and experiences with corruption.

Notwithstanding these severe limitations, certain conclusions can be drawn:

1. Corruption is increasingly perceived as a serious problem in the region, though it remains secondary to the issues of poverty and HIV/AIDS. While recorded levels of public perception of corruption and first hand experience with corrupt practices are not the highest in the region, South Africans remain the most concerned in the SADC region (see below 3).
2. From an international perspective (based on two international sources i.e. the ICVS and TI), SADC as a region fares much better than Africa as a whole. Two SADC countries, Botswana and Namibia, belong to the upper group of the TI least corrupt countries within Southern Africa. Malawi and Mauritius belong to the middle group on the TI corruption league table. This is very much in line with the SADC's citizens' perception and experience with public sector corruption.
3. There appears to be a *huge gap between perceived levels of corruption and actual experience with corruption*. There are many explanations for such discrepancies, but these should not detract from the importance of addressing the high levels of perceived corruption. Confidence in the transparency of government is of particular importance for any democracy.
4. Citizens perceive parliamentarians to be less corrupt than government officials and local government officials are believed to be less corrupt than national officials.
5. However, citizens also feel that public servants are more corrupt than those working in other sectors. Business leaders are also considered corrupt by more than half of those surveyed. While, traditional leaders are perceived to be the least corrupt, a significant number of respondents still perceives corruption among tribal leadership ranks as well.
6. The public sector is seen as disproportionately more vulnerable to corruption than the private sector. Moreover, urban areas are considered especially prone to corruption; and men are regarded as more susceptible to corrupt practices than women. More research is needed on private sector corruption.
7. For citizens, corruption within the public sector appears to be centered in law enforcement and the delivery of basic services such as water and electricity and housing. For criminal justice personnel, corruption resides in customs, procurement, police (including drug law enforcement) and immigration/border control.
8. Citizens on average feel that their governments are not sufficiently committed to combating corruption. *Despite low reporting rates of corruption, the existence of dedicated anti-corruption entities (if perceived as non-corrupt, efficient and independent) has improved public willingness to come forward with information on criminal activity*. The complex discourse on citizen confidence in the government's capacity for bringing about anti-corruption reforms must be rooted within the context of the political history of each country concerned. Public and political recognition of corruption as a problem does tend to create an impression that corruption is on the rise.
9. Much criticism is directed against surveys based mainly on the perceptions (and to a limited extent people's experience) of corruption. Indeed, the data they provide is limited and to a certain extent biased. *The development of a standard SADC approach to the measurement of corruption and the monitoring of anti-corruption reforms is a priority*. However, public perceptions will remain part of any standardized methodology, as citizen input provides an important measure of anti-corruption efforts and trends. Once the gap between the perception of corruption and any direct experience of it (which today appears to be high) decreases, it will present an indicative measure in itself of the levels of success and effectiveness of anti-corruption policies, programmes and interventions.

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1. Since 1989, the International Crime Victim Survey (ICVS), under the auspices of the United Nations Interregional Crime and Justice Research Institute (UNICRI), has been conducted in some 70 countries worldwide. While its findings were based on a representative national sample in most developed countries, within developing nations data was drawn primarily from a representative sample (approximately 1000 people) from capital cities. As regards the southern African region, the ICVS has been conducted in Botswana, South Africa, Zimbabwe, Namibia, Lesotho, Swaziland and Zambia. This survey is unique in that it provides for a measurement of the magnitude of crimes of corruption based on the direct experience of citizens and then targets this information to public officials. In other words, it attempts to capture the magnitude of bribery by public officials, which is regarded as the most widespread and conventional form of corruption.
 2. The Afrobarometer is a pioneering international collaborative effort to measure public opinion in Africa. Composed largely of analysts and institutions in a dozen African countries, it uses state of the art scientific methods to assess citizen attitudes toward democracy, economics and civil society. Between mid 1999 and mid 2001, surveys of nationally representative samples of citizens were conducted in Botswana, Ghana, Lesotho, Malawi, Mali, Namibia, Nigeria, South Africa, Tanzania, Uganda, Zambia and Zimbabwe. Over 21,000 people were interviewed in total, with most country samples consisting of 1200 respondents.
 3. During May – June 2000, a survey of 57 questions on the perceptions and experiences of corruption in the SADC region was conducted by researchers working in 14 SADC countries using a uniform questionnaire developed by SAHRIT. An initial representative sample of 2510 individuals aged 18 years or older was selected to provide meaningful data from across the region. The sample was stratified according to the percent female/male and rural/urban population in the region resulting in an initial sample that included 831 rural women, 448 urban women, 801 rural men and 430 urban men.
 4. According to the classification of "Countries in the major world aggregates" presented in the UNDP Human Development Report 2001, page 259.
 5. The Transparency International Corruption Perception Index is a "poll of polls" which ranks countries (91 during 2001) in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index drawing on 14 different polls and surveys (based on 1999-2001 data) from seven independent institutions carried out among business people and country analysts including surveys of residents, both local and expatriate.
 6. Respondents were asked how they would describe, with respect to corruption, nine different groups in their own country.

Chapter 2

Legislating Against Corruption in the Southern African Development Community

An analytic comparison of current and proposed legislation and the SADC Protocol against Corruption

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Introduction

The SADC member states signed and adopted a Protocol Against Corruption on 14 August 2001. By that date most of them had legal instruments of some form against corruption. The Protocol's primary objective is to improve and harmonize anti-corruption laws in and across the region. In view of an increasing awareness of the linkages between corruption and organised crime, and a developing consensus on the efficacy of international/regional responses to economic crime, symbolized by the United Nations convention Against Transnational Organised Crime (2000) and the United Nations Global Programme against Corruption as well as the elaboration of a United Nations Convention against Corruption, the SADC Protocol against Corruption is indeed the major proactive step forward against corruption in the Southern African region. In terms of Article 7 of the Protocol, state parties undertook to 'develop and harmonize their policies and domestic legislation for the attainment of the purpose of (the) Protocol.' This report is based on an analysis of existing regional laws against corruption. It compares these laws with the stipulations of the Protocol, and assesses the extent of consistency or disharmony. On account of the number of legal frameworks requiring examination, a thematic analysis was considered most appropriate. The report begins with an outline of the major themes in the Protocol, and then considers the laws of state parties against these themes.

Features of the SADC Protocol against Corruption

The overarching themes guiding this report can be drawn from the Protocol objectives. The four prominent objectives are:

- To prevent, detect and prosecute corruption in the public and private sector
- To promote and facilitate co-operation among state parties in support of prevention, detection and prosecution of corruption in all sectors
- To provide a framework for harmonizing policies and legislation against corruption
- To set standards by which to periodically measure, through peer review, the performance of member states in combating corruption.

Several provisions in the Protocol, which could roughly be called sub-themes, support each objective. These are briefly outlined below.

Objective 1: Prevention, detection and prosecution of corruption in the public and private sector

Sub themes

Each member state should develop a detailed framework for combating corruption in both the public and private sectors. State parties must adopt pro-active measures to pre-empt and prevent corruption.¹ In respect of the public sector, Article 4(1) (a) – (c) of the Protocol prescribes that member states should stipulate standards and codes of conduct for the public service (presumably along the

lines of the International Code of Conduct for Public officials, adopted by the UN General Assembly resolution on Corruption, as GA 51/59 on 28 January 1997).

All member states should create, maintain and strengthen effective anti-corruption institutions.

Objective 2: Promotion and facilitation of co-operation among state parties in support of prevention, detection and prosecution of corruption in all sectors

Sub themes

Member states should discourage the existence of safe havens for the corrupt, by assuming jurisdiction over such persons on the basis of territoriality, nationality, or the presence of suspects within national borders.

Treaties between and among member states should implicitly or specifically recognize corruption as a basis for extradition. Alternatively, the Protocol may be regarded as the basis for extradition in the absence of specific treaty arrangements.

If extradition is declined on the basis that the requested state has jurisdiction over the suspect, that state is obliged to prosecute.

State parties should afford each other legal assistance in the investigation and securing of evidence, as well as in other steps preparatory and ancillary to legal proceedings.

Since resource levels are uneven, state parties should extend to each other mutual technical co-operation to facilitate prevention, detection, investigation and prosecution of corruption.

Objective 3: Provision of a framework for harmonizing policies and legislation against corruption

Sub themes

While bilateral or multilateral arrangements may expand the forms of corruption covered by the terms of the Protocol, state parties should adopt the descriptive conceptualization of corruption in Article 3 of the Protocol as a minimum standard.

State parties should develop and harmonize policies and laws to attain the objectives of the Protocol.

Objective 4: Setting standards by which to periodically measure, through peer review, the performance of member states in combating corruption.

Sub themes

Individual state parties are obliged to periodically report progress in implementation to a larger committee composed of representatives from each of the state parties.

The Committee, which is accountable to a Council of Ministers, is also required to provide a database accessible to member states and assist with training, and programme evaluation.

Comparative Overview

Objective 1: Prevention, detection and prosecution of corruption in the public and private sector

Article 3 of the Protocol, which is descriptive in nature, characterizes corruption in the following

manner:

- soliciting for or acceptance of a bribe by a public official;
- offering or granting a bribe to a public official;
- performance or non-performance by a public official of duties in order to gain undue personal benefits or to benefit a third party;
- diversion by a public official, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his or her position for purposes of administration, custody or for other reasons, for personal benefit or that of a third party;
- soliciting for or acceptance of a bribe by a person working for an entity in the private sector to induce improper conduct;
- offering or giving a bribe to any person to induce that person to exert any improper influence over the decision making of another, subordinate or superior, performing functions in the public or private sector;
- requesting, receiving or accepting such a bribe or promise of a bribe (even if no influence is successfully exerted)
- fraudulent use or concealment of the proceeds of corruption (asset/ money laundering);

The Protocol also penalizes participation in corrupt transactions as an agent, instigator, accomplice, or accessory after the fact.

It should be noted that, in respect of the public sector, Article 4(1) (a) – (c) of the Protocol further prescribes the stipulation of standards and codes of conduct for the public service.

In what follows below an audit is presented of the current situation and developments in the SADC Member States viz-a-viz a detailed framework for combating corruption in both the public and private sectors, which includes pro-active and pre-emptive measures to prevent corruption as required by Article 4. Related to this is the creation and maintenance of effective anti-corruption institutions.

Angola

Except for a brief reference to corruption as an undesirable practice in the Penal Code, Angola has no specific legislation against corruption. A High Authority Against Corruption (HAAC) was established in 1995, but at the time of writing, no appointments to this body had been made.

A law against Economic Contraventions, passed in 1999, deals specifically with public sector corruption. It has provisions making undue commissions unlawful. The law mentioned, therefore needs further development before it is in full compliance with the prescriptions of the Protocol.

Botswana

Botswana has two main statutes to address corruption. The Penal Code is largely confined to public sector corruption. The more recent Corruption and Economic Crime Act of 1994 has superseded it as the standard provision against corrupt activity.

Part IV, of the Act, which is similar to Division II of the Penal Code, makes certain conduct by public officers punishable as corruption. It adopts as a common denominator the concept of 'valuable consideration' as a commodity exchanged for corrupt activity, and defines the concept in wide, all encompassing terms. Thus, valuable consideration means tangible and intangible assets, such as money or interest in property. It also encompasses 'any office, employment or contract (and) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part' and the extension of favours.

Section 24(1) of the Act, dealing with corrupt behavior by or of a public officer, provides that:

A public officer is guilty of corruption in respect of the duties of his office if he directly or indirectly agrees or offers to permit his conduct as a public officer to be influenced by the gift, promise, or prospect of any valuable consideration to be received by him, or by any other person, from any person.

In respect of official transactions, section 25 of the Act renders a public officer guilty of corruption if he or she 'accepts, or agrees or offers to accept, for himself or for any other person any valuable consideration as an inducement or reward for doing or forbearing to do anything in respect of any matter in which the public officer is concerned in his capacity as a public officer.'

Sections 26 and 27 are intended to pre-empt post-action reward situations, in which bribery may be obscured as a 'tip'. To that extent, the Act goes further than the prescriptions of the Protocol.

Section 28 applies to the private sector as well as the public sector. It creates an offence, where an agent *corruptly accepts, or agrees or offers to accept from any person, for himself or any other person any valuable consideration as an inducement or reward for doing or forbearing to do any act in relation to his principal's affairs or business.*

The Corruption and Economic Crime Act also deems as an offence, bribery in the form of assistance to public procurement. In terms of section 29(1) of the Act, a person is guilty of corruption if he directly or indirectly accepts or agrees or offers to accept for himself or for any other person any valuable consideration as an inducement or reward for or otherwise on account of his giving assistance or using influence for purposes of promoting, administering, executing or procuring a contract with a public body.

A person who agrees or offers to accept for himself or for any other person any valuable consideration as an inducement or reward for withdrawing a tender, or refraining from tendering, for any contract with a public body for the performance of any work, the provision of any service, or the supply of any article, material or substance violates section 30(1). This offence is directed at the pernicious practice of bid rigging in procurement.

Section 31(1) renders a member or employee of a public body guilty of corruption by virtue of conflict of interest, where he or an immediate member of his family has a direct or indirect interest in any company or undertaking with which such body proposes to deal, or if he has a personal interest in any decision which such body is to make, and fails to disclose the nature of this interest.

The Corruption and Economic Crime Act (section 34) contains an 'unexplained assets' provision, which deems the failure to explain assets not commensurate with present or past known sources of income proof of corruption. The provision applies to any person, within and outside the public sector, and entitles a special Directorate on Corruption and Economic Crime to investigate such a person, if reasonably suspected of living beyond his/her known means, or possessing assets out of proportion to known sources of income.

Section 34(2) has equivalents in Hong Kong and Swaziland. In Malawi and Zambia, similar provisions apply only to public officers. The Protocol does not prescribe unexplained assets provisions.

Directorate on Corruption and Economic Crime

Botswana established the Directorate on Corruption and Economic Crime under the 1994 Act. It is a public office, headed by a director who is appointed by the President 'on such terms and conditions

as he thinks fit.' Part 3 of the Act sets out the extensive functions and powers of the Directorate. It has educational, advocacy, advisory and investigative functions. In the investigation of corruption and related activities, the Directorate can exercise any of the powers stipulated in sections 7, 8, and 10 to 15 of the Act. These include all the powers available to the police. However, the director's power to subpoena potentially incriminating information is greater than that normally available to the police. The prosecuting power of the Directorate is subject to the consent of the Attorney General.

Democratic Republic of Congo

There is no specific anti-corruption legislation. Rather, the current Criminal Code was modified in 1973 as regards corruption offences and in particular the envisaged sanctions for the public officials involved in the corrupt transaction (up to 15 years of imprisonment; confiscation, etc). The Code of DRC recognizes both the active and passive corruption.

Recently the National Inter-ministerial Committee on Drug Control and Crime Prevention initiated discussions regarding modification of the criminal law provisions related to the corruption, fraud, money laundering, organized crime and other economic offences.

Lesotho

Lesotho's anti-corruption law is of relatively recent origin, in the form of the Prevention of Corruption and Economic Offences Act of 1999. The Act bears a strong resemblance to Botswana's Corruption and Economic Offences Act, with only modifications in syntax and arrangement. For instance, where the Botswana statute uses the term valuable consideration, the Prevention of Corruption and Economic Offences Act employs the term benefit. The meaning attributed to these concepts is the same. The pattern established by the definition section is continued, with section 24 of the Corruption and Economic Crime Act being echoed by section 21 of the Prevention of Corruption and Economic Offences Act.² Similarly, section 31 of the former, which pertains to conflict of interest, has its equivalent in section 28 of the Lesotho³ statute. Both statutes have an identical provision criminalizing possession of unexplained wealth.

The Act creates a Directorate on Corruption and Economic Offences, with functions and powers as broad as its Botswana counterpart. An additional feature of the Lesotho legislation is the formulation of a civic duty to report suspicions of serious economic crime, which may take the form of corruption, to the head of the Directorate.

In terms of section 35 of the Prevention of Corruption and Economic Offences Act, any person who has reasonable grounds to suspect that a serious economic offence has been or is being committed or has been attempted, should report to the Directorate. The report is sworn or affirmed, and should specify – the nature of the suspicion; the grounds on which the suspicion is based, and all other relevant information known to the declarant.

Malawi and Zambia

The substantive, and to some extent institutional legislation relating to corruption in both countries is identical. In Malawi, the Corrupt Practices Act 18/1995 and the Penal Code [Chapter 7:01] are intended to control corruption in both the public and the private sectors. The equivalent law in Zambia is the Anti-Corruption Commission Act of 1996.

A prominent feature of the legislation in both countries is the wide scope of its operation. In Malawi both Chapter 10 of the Penal Code and Part IV of the Corrupt Practices Act devote attention to public sector corruption. The term public officer is defined to include political heads, namely the President, Vice President, ministers and members of parliament.

The provisions of Chapter 10 of the Penal Code [Cap 7:01], which are to some extent restated in Part IV of the Corrupt Practices Act, cover most of the established acts of corruption and the abuse of office. Sections 26 and 27 can be interpreted to include corruption in the non-state sector. It can be further argued that Section 27(4) anticipated Article 3(1)(f) of the Protocol in relation to bribery with an element of false pretence.

The Anti-Corruption Commission Act in Zambia replaced the Corrupt Practices Act of 1982, which was largely designed to deal with public sector bribery and other corruption by public officers. The concerns with unexplained wealth as a manifestation of corruption are reflected in the Corrupt Practices Act. In conjunction with asset disclosure laws and ethical codes, the Act was ostensibly intended to foster a culture of clean governance. The trend has continued, as the Anti-Corruption Commission Act is complemented by the Electoral Act [Chapter 13] and the Parliamentary and Ministerial Code of Conduct Act, number 35 of 1994. Both target elected public officials, although the Parliamentary and Ministerial Code of Conduct Act excludes the President. In Part 2, it incorporates a Code of Conduct. Section 4 is intended to discourage the dishonest or improper acquisition of significant pecuniary advantage by a Member of Parliament (National Assembly) or by another person, through:

- improper use of information obtained in the course of the MP's duties, which is not generally available to the public;
- disclosing official information to unauthorized persons;
- exerting improper influence in public appointments, which could cover nepotism and favouritism;
- converting government property for personal or some other unauthorized use;
- soliciting or accepting transfers of economic benefit, other than in strictly circumscribed circumstances.

Members who are appointed to ministerial office, which includes the Vice Presidency and deputy ministers, Speaker and Deputy Speaker, are required to disclose their assets, liabilities, and income. Such disclosure should be made within thirty days of the assumption of office, and thereafter annually. (Section 10) The content of disclosures is fairly detailed, and the declaration becomes a public declaration once filed with the Chief Justice, which allows access to it by the press and civil society.

The approach to holders of high political public office in the Zambian legislation seems to be consistent with the aspirations of the Protocol's emphasis on transparency. As a pre-emptive mechanism, the Protocol puts much faith in the free flow of information and participation by the media and civil society in minimizing opportunities for corruption. The register of assets and liabilities serves as a reference point for both the media and civil society monitors.

Election related Part IV of the Electoral Act covers misconduct of a corrupt nature. The Act combines punitive measures with political remedies.

Like the Malawi statute, the Anti-Corruption Commission Act applies to private sector corruption. (See Section 31(1) and (2))

Enforcement of anti-corruption legislation of general application in both countries is by dedicated units, the Anti-Corruption Bureau (ACB) in Malawi and the Anti-Corruption Commission (ACC) in Zambia. The ACB was tasked with implementing a four-pronged strategy against corruption, involving public education, prevention, investigation and prosecution of corruption. While it is vested with extensive intrusive powers, the ACB often lacked institutional and operational independence from the executive branch and it is thus subject to the oversight of the prosecution service in respect of cases for prosecution.

The ACC was established in 1982, with a similar mandate to the ACB, and operates in more than half of Zambia's nine provinces. Apart from investigators, the ACC employs its own prosecutors, although the consent of the Director of Public Prosecutions is required for all prosecutions. The capacity of both dedicated units is periodically enhanced by access to sources of funding outside government, especially from donor organizations.

South Africa

The primary law against corruption in all sectors is the Corruption Act of 1992. The Act abolished the dichotomy that existed between common law bribery and offences under the Prevention of Corruption Act of 1958.

Corruption as proscribed by the Act can be summarized as:

- unlawfully and intentionally giving or offering a benefit which is not legally due, to any person on whom power has been conferred or who has been charged with some duty, with the intention to influence them to commit or omit to perform an act in relation to their power or duty, or as a reward for an act or omission in the past
- unlawful and intentional receipt of a benefit of whatever nature which is not legally due, by a person on whom power has been conferred or a duty imposed, with the intention to commit or omit to do some act in future within the scope of his power or duty, or as a reward for some act or omission in the past.

The four elements of the conceptualization of corruption in the Act are:

- an offer and/or receipt of a benefit⁴
- a benefit which is not legally due
- given or offered to or received by a person holding office
- for the purpose of influencing that receiver to do or not do something within his power or which is his duty.

The definition of corruption is, in lay terms, “not Protocol compliant.” It falls short of Article 3(1)(d) - diversion of public funds or property, and (f) – bribery accompanied by false pretence, and does not take account of subparagraph (g) – which guards against laundering.

It should however be noted that, like Article 3, section 1 of the Act focuses on action or inaction in the sphere of the corrupt person's duties. This is a potential weakness of both instruments, in that it leaves out the corrupt official, freelancing outside his sphere of responsibility.

The Prevention of Organised Crime Act of 1998, prohibits participating in racketeering activities as well as money laundering, both of which are related to corruption. Section 4 of the Act criminalizes laundering agreements or the performance of any acts to conceal or disguise the nature, source, location, disposition or movement of proceeds of criminal activity. The place where the crime was committed is immaterial.

A Prevention of Corruption Bill has recently been tabled. The draft legislation tabulates corrupt practices and offences more comprehensively than the current legislation, and spells out more than 20 offences and penalties, in an endeavor to embrace as much of the encountered and anticipated corrupt activity as possible. Acceptance and giving out of undue gratification, bribery of public officers (local and foreign), abusing an office or position for undue gratification, comprise some of the offences of corruption captured in Chapter 2 of the bill. Gratification is defined more broadly than ‘valuable consideration’ in Botswana, ‘benefit’ in Lesotho, or ‘gratification’ in Malawi. Rather than employ a compounded or omnibus style of definition, exemplified by the Corrupt Practices Act of Malawi, the bill breaks the concept down on the basis of modes of benefit - direct and financial, direct

but non-financial, indirect and non-financial, intangible favours, etc.

This innovative bill extends to corruption in sport (clause 14). Tanzania pioneered the criminalisation of corruption in sport, but confined the relevant provision to a limited range of sports, and kept it in a schedule to the statute. Clause 14, which appears to be based on legislation in the United States, was evidently precipitated by the match fixing scandals which rocked the sport of cricket at the end of the nineties and beginning of 2000. Indeed, the first sport identified in the definition of ‘sporting event’ in an earlier version of the draft was cricket.⁵ Clause 14 introduces the concept of ‘scheme in commerce’, defined as ‘any scheme carried out in whole or in part through the use in national or foreign commerce of any facility for transportation or communication.’ It then penalizes any person who carries out any such scheme purposely to influence any game or sporting event. The intention seems to be regulation of the activities of dishonest bookmakers who attempt to influence matches using electronic communication.

If the bill is passed as it stands, South Africa will, for the first time in its legal history, regard control or possession of unexplained assets an act of corruption. Clause 19 seeks to criminalise the possession of assets acquired through corrupt practices, but only in respect of public officers. This distinguishes it from the Corruption and Economic Crime Act in Botswana, where the offence applies across all sectors. A public officer living beyond his or her means, or in possession of assets disproportionate to his means, will be presumed guilty of corruption. It will then be up to the individual to render an innocent explanation, sufficient to raise a reasonable doubt that his lifestyle or assets are not derived from corrupt practices. The enforcement of unexplained assets legislation typically evokes questions of probable transnational considerations, as contemporary trends indicate cross-border investment of proceeds from corrupt transactions. The efficacy of clause 14 depends as much on its consistency with constitutional rights as with the viability of existing regional and international mutual assistance laws. The Protocol is emphatic on the need for such assistance. The scope of mutual legal assistance in pre-proceedings asset tracing could be unduly narrow.

The bill also seeks to punish the corruption of witnesses, and to reinstate common law bribery.

The current anti-corruption legislation is complemented by measures to enhance transparency and improve access to information. As many commentators on corruption have emphasized, any serious attempt to deal with corruption needs to address the inter-related questions of leadership, transparency and accountability.

As is the case in Zambia, South Africa has adopted asset disclosure measures for political representatives. Disclosure is annual, and particular focus is placed on donations received and assets acquired.⁶ Unlike Zambia and Tanzania, the code of conduct obliging disclosure in South Africa is not an Act of parliament. However, in terms of detail, the South African code is more meticulous and demanding.⁷

Efforts have been undertaken to protect those who expose or provide information on criminal and other ‘irregular’ conduct. The Protected Disclosures Act of 2000, came into force in February 2001, to protect sources of certain disclosures of misconduct from victimization. The Act is confined, however, to misconduct, including corruption, within the workplace. It enacts procedures to facilitate the reporting of perceived or suspected unlawful activities by employers or fellow employees.

Outside the sphere of employer-employee relationships, individuals who have assisted in the investigation or prosecution of an offence may seek state protection for themselves and/or their relatives, if they are apprehensive about their personal security. The Witness Protection Act of 1998 introduced an administrative framework for the protection of vulnerable witnesses. At the center of the Act is the Office for the Protection of Witnesses, headed by a director. Witnesses at risk may be given protection at the place where they reside or be relocated to a place of safety for as long as necessary. The Act also envisages, without making detailed provision, the alteration of the identity of vulnerable

witnesses.

The proliferation of anti-corruption institutions has naturally raised concerns about co-ordination among them. Article 4 of the Protocol prescribes the creation, maintenance and strengthening of, among other things, ‘institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption..’ The Protocol does not insist on the establishment of a unitary institution against corruption in each member state. A reading of Articles 11 and 12 suggests that a measure of integration of anti-corruption institutions within each state is necessary, if member states are to implement the Protocol and render accounts of such implementation, on a periodical basis. Article 12 (1) and (2) stipulate:

1. For the purposes of cooperation and assistance under this Protocol, each state party shall designate an authority.
2. The Authority shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Protocol.’

Thus, the Prevention of Corruption Bill makes no effort to establish a co-ordinating structure from the existing multiple agencies. However, it should be noted that two ancillary co-ordinating structures have been created. First, the National Forum against Corruption, a tripartite body comprising the government, the business sector and the civil society. Second, the Government adopted on 25 January 2002 the Public Sector Anti-Corruption Strategy, a comprehensive policy document, which inter alia stipulates the creation of the Anti-Corruption Co-ordinating Committee. The Committee is already operational.

On the issue of jurisdiction, the Bill seems to have overlooked Article 5 of the Protocol, which provides for the exercise of jurisdiction on the basis of the suspect’s presence in South Africa.

Zimbabwe

The conceptualization of corrupt transactions is premised on such transactions occurring within agency/principal relationships, and largely encompasses activities of agents vis-à-vis the business of principals. The primary statute is the Prevention of Corruption Act [Chapter 9:16]. Its scope of application with respect to corruption in the public sector excludes the President though it does include ministers, and members of the civil and uniformed services.

Zimbabwe has both pre-emptive and reactive legislation with a bearing on corruption. The former generally regulates the context in which corruption tends to occur. It deals with, for instance, the disclosure of conflicting interests that may have a bearing on tenders and procurement decisions. Apart from the numerous statutes regulating the public sector and public corporations,⁸ the Procurement Act epitomizes this kind of legislation.

The Prevention of Corruption Act is generally intended to respond to corruption in both the public and private sectors. Corrupt practices are defined in Part II of the Act, specifically in section 3 and rather obliquely in sections 4 and 14. The Act targets a relatively limited range of corrupt actions, the equivalent of what the common law would term bribery, fraud and extortion. For example, Section 4 is rather vague and could be interpreted widely to embrace disregard for appropriate procedures, administrative injustice, or dereliction of duty. It renders criminal action that is contrary to or inconsistent with a public official’s duty as such, or the omission by a public official to perform anything which falls within his or her scope of work, *if done to favour or prejudice any person*.

Bribery, fraud and extortion in both public and private sector is criminalized, on the part of both giver and receiver (section 3). The Act does not contain provisions relating to the conflict of interest or the corruption of foreign officials. The Act also addresses the issue of extraterritoriality. Regulations are envisaged in terms of section 18 for witness protection, however they have not been

drafted at the time of writing.

Tanzania

There are three statutory instruments for combating corruption in Tanzania, two being applicable to the mainland only and the other to Zanzibar. The Prevention of Corruption Act of 1971, and the Economic and Organised Crime Control Act of 1984, apply to the mainland while the Penal Decree extends anti-corruption law to the island of Zanzibar.

The Prevention of Corruption Act is an ambitious initiative against corruption.⁹ It deals with both soliciting and accepting bribes and targets other forms of corruption. Corruption is defined in section 3 of the Act as the solicitation, acceptance or acquisition from a person any advantage, which serves as an inducement to do anything in relation to his or her business. The Act draws no distinction between the public and the private sector on the issue of bribery. The Act also makes no provision for the participation as an accomplice in the offence.

The Act was amended in 1990 to curb corruption in general elections, a practice which had become endemic.¹⁰ The Economic and Organised Crime Control Act provides that any violation of the Prevention of Corruption Act is an economic crime, and therefore under the jurisdiction of the Economic Crimes Court. In addition, the First Schedule to the Economic and Organised Crime Control Act created the offence of bribery in sport, at both amateur and professional levels. A notable omission in the Schedule is that the person who receives the bribe is not penalized.¹¹ The Act also created the offence of hoarding commodities, pertinent to some parts of the region, but which does not seem to have been considered when the Protocol was drafted.¹²

The Act also establishes the Anti-Corruption Squad in the Office of the President to investigate and prosecute offences relating to corruption. The Squad is supposed to provide legal advice to the government and the public at large on issues relating to corruption. In order for the functionaries involved in the war against corruption to be more effective, the Squad has been elevated to a bureau. It is now called the Prevention of Corruption Bureau (PCB).

The Public Leadership Code of Ethics Act of 1995 is regarded as one of the pillars supporting anti-corruption measures in Tanzania. The Act establishes a code of ethics for certain public leaders, and seeks to provide a mechanism to monitor the acquisition of property by public officers.

Peter points out that ‘the code of ethics seeks to invoke, among others, the principle of officially declaring all property or assets and liabilities owned by a person in a position of power. This principle extends to his or her spouse and unmarried children. The aim of enacting this provision was to enable the relevant authorities to trace the property of public officials. If any official acquires property through corrupt means, this will be detected.’¹³ This provision, however, permits a number of exceptions. Non-declarable assets include:

- vehicles and other personal means of transportation
- residences, recreational, property and farms for personal use or the use of leader’s families
- household goods and personal effects
- income from land owned or occupied

Any of these assets can be derived from corrupt activity, and non-disclosure makes it difficult to bring the corruption to light.¹⁴ The Act prohibits acquisition of pecuniary advantage through the use of information obtained in the course of duty, converting government property for personal use, and soliciting transfers of economic benefit.

The Corrupt Practices Act established the Anti-Corruption Bureau.

Swaziland

The Prevention of Corruption Order of 1993, repealed and replaced the Prevention of Corruption Act of 1986. The various kinds of corruption that it penalizes are listed in Part III. Section 20 codifies the common law of bribery, while section 21 extends this to tender processes. Bribery in the private sector and in the conduct of judicial work is also criminalized. In section 26, Swaziland adopted the presumption of corruption on the sole basis of unexplained lifestyle or assets. Its main subsection prescribes that:

‘Any person who being or having been a public officer and

- maintains a standard of living above that which is commensurate with his present or past official emoluments; or*
- is in control of pecuniary resources or property disproportionate to his present or past official emoluments;*

shall, unless he gives a satisfactory explanation to the court...’ as to how he was able to obtain such resources, be presumed to have maintained such a standard of living or acquired such pecuniary resources or property through the commission of a corrupt act. A conviction leads to a penalty similar to that which can be imposed for the corrupt act itself.

Sub-section 2 extends the presumption to *‘any person who has no known source of income or who is not known to be engaged in any gainful employment.’*

Swaziland is of course not unique in giving legislative expression to popular prejudice by ‘turning the tables’ on serving and former public officers in this manner.

Mauritius

The Criminal Code is the main statute for dealing with corruption. In respect of public corruption, sections 124 to 133 apply. The provisions cover common forms of corruption, such as bribery, conflict of interest, judicial corruption, and compounding an offence. Section 333 of the Code penalizes embezzlement. Section 132(1) targets corruption bearing an element of false pretences. It provides that:

- 1. Any officer of a public body who accepts any offer or promise, or obtains or receives from any person, for himself or for any other person, any gift or reward*
 - (a) for doing an act which he alleges, or induces any person to believe, he is empowered to do in the ordinary course of his duty although as a fact such act does not form part of his duties;*
 - (b) for forbearing to do an act which he alleges or induces any person to believe, he is bound to do in the ordinary course of his duty, shall commit an offence...*

The Economic Crime and Anti-Money Laundering Act of 2000, can be applied to cases of serious corruption, as grand corruption can fall within the definition of economic offences. The Act was specifically intended to deal with money laundering. Perhaps its primary significance to corruption is that it creates additional avenues of detection, and augments the investigative capacity of law enforcement authorities. It also creates the Office of the Director of the Economic Crime Office. In terms of the Act, financial institutions are obliged to report suspicious transactions to the Director, who then has the duty to investigate.

Elected public officers are required to declare assets and liabilities in their name and in the names of spouses, minor children and grandchildren. Under the terms of the Declaration of Assets Act of 1991 a fresh declaration must be made when the value of the assets or liabilities significantly changes.¹⁵

The Central Tender Board occupies an important position in anti-corruption initiatives in Mauritius. No government department, local authority or other body can enter into a major contract without the approval of the Board. A major contract is defined as a contract worth at least 500 000 rupees.¹⁶

Mauritius had no dedicated anti-corruption institution at the time of writing, and most cases are investigated by the police. The Ombudsman has jurisdiction over instances of public sector corruption.

Namibia

The Prevention of Corruption Ordinance as amended by the Prevention of Corruption Amendment Act of 1985, is the relevant law.

Section 2 of the 1985 Act created three offences that were intended to supplement the common law crime of bribery by adding bribery offences to the regulations of agent conduct.

First, it is an offence for any person who is an agent to accept a gift as an inducement or reward for completing or not completing any act in relation to his or her principal’s affairs or business or for showing or not showing favour to any person in connection with the principal’s affairs or business. Second, it is an offence for any person to give or agree to give or offer gifts to agents for the same purpose as above. Third, it is an offence for any person to give to an agent or, in the case of an agent, to knowingly use with the intent of deceiving a principal, any account, receipt or other document in which the principal has an interest and which contains false information. The penalties in respect of all three situations are the same as for the common law crime of bribery.

While they may have advanced the law as set out in the Ordinance, the 1985 provisions do not deal with the numerous types of corruption associated with white-collar crime. For example:

The law does not address situations where agents, who, by arrangement with sellers of goods or with persons hired to render services, secretly obtain gifts or advantage through the abuse of their position in carrying out the affairs or business of principals. Nor does it address situations where an agent fails to disclose to his or her principal the full nature of a transaction carried out in connection with the business or affairs of a principal, that is intended either to deceive the principal or to obtain any gift or consideration for him or herself or another person.

The statute has also been criticized for not providing for the forfeiture of gifts.¹⁷ The Ordinance needs further modification to incorporate conduct that is contrary to or inconsistent with the duty of such a public official, or favouritism by dereliction of public duty.

The legislation is weakened by the absence of mechanisms for disclosure of receipts of gifts by public officials, either generally or from possibly tainted sources. The absence of provisions generally applicable to the non-state sector is also disconcerting.

The Public Service Act of 1995 is also pertinent, in that it creates another framework for defining and dealing with acts of misconduct by public officials. An official is guilty of misconduct if he or she accepts or demands with respect to the performance of or the failure to complete his or her duties any commission, fee or reward, pecuniary or otherwise, which is not due. Where an offer of such a commission is made, it should be reported to the head of the ministry. Failure to report forthwith to the Permanent Secretary is an act of misconduct. In this respect, the provision is complementary to the provision of the Prevention of Corruption Ordinance. A public official is liable to a disciplinary penalty for misconduct, as well as a criminal charge if he or she carried out corrupt acts. In addition, Namibia has legislation against electoral corruption, and conflicts of interests in public

procurement tender processes, requiring disclosure of interest, and recusal.¹⁸

An Anti-Corruption Bill has been passed by the National Assembly, but awaits the approval of the second legislative chamber. The Bill is dominated by provisions to bring into being an Anti-Corruption Commission, whose mandate will include public education. However, the Commission's prosecutorial powers will depend on the concurrence of the Prosecutor-General. In fact, prosecutions will be subject to the control and direction of the Prosecutor-General. The functions of the proposed Commission, however, appear to be extensive enough to encompass what the Protocol envisages.

Clause 31 lists corrupt practices. Its first paragraph is broadly similar to the South African Corruption Act of 1992. It does not seem to extend to what the common law would regard as extortion. The Bill also overlooks fraud related corruption, which involves the use of misleading documentation in order to deceive the state or any other entity. (e.g. VAT fraud). The Anti-Corruption Bill does not cover corruption in sport, or the diversion of resources, as required by Article 3(1)(d) of the Protocol. Furthermore, its provisions relating to jurisdiction are not entirely in line with Article 5 of the Protocol. The provisions recommended in the Protocol with respect to nationality or the presence of the defendant within a given territory, appear to have been overlooked. Near the end of the Bill is clause 36, which proclaims that the Act is 'not applicable to the President, except to the extent that it confers a power or imposes a duty' on him or her.

Seychelles

The law against corruption in the Seychelles appears in sections 372 to 376 of the Penal Code [Chapter 158]. Concern about public sector corruption provided the impetus for legislation, but the resulting provisions can be applied to the non-state sector as well. As with the Zimbabwean legislation, the Seychelles law is premised on the assumption that the corrupted is usually an agent.

Proscribed conduct includes:

- on the part of an agent, accepting or obtaining any gift or consideration;
- on the part of briber, offering, giving any gift or consideration
- on the part of the agent, falsifying documents, receipts etc in order to mislead the principal.

In respect of electoral corruption, the Elections Act of 1995 prohibits vote buying and similar misconduct.

There is no dedicated anti-corruption unit in the Seychelles. The responsibility for investigating corruption falls on the police and occasionally the Ombudsman.

Mozambique

Currently corruption cases are dealt with under the provisions of the Penal Code (Articles 21 and 318). However, new draft anti-corruption legislation is being prepared and it is expected to be adopted by the legislative authority within the coming year.

Protection of whistleblowers

The coercive strategies envisaged by the Protocol and the respective legislation should be complemented by non-coercive, preventive strategies designed to encourage the supply of information to the institutions set up to enforce corruption legislation. The Protocol advocates proactive and reactive measures. An effective way of harmonizing the two modes of response is to protect whistle-blowers from punitive administrative action and occupational risks that arise when incriminating information is revealed.

Public servants in the middle and lower rungs of the administrative ladder may see, on a daily basis,

instances of corruption in forms of abuse of power, position, public funds, resources, authority and office for personal benefit or reward to surrogates. But they may not occupy the management positions that would enable them to take preventive action. Furthermore, their complaints may be ignored by those in a position to act but who instead opt to collude with corrupt top management or political leadership.

The legal provisions in the member states that have adopted anti-corruption laws in the past decade demonstrate an appreciation for whistle blowers, and a desire to protect their interests. Thus, there are provisions in Botswana that promise confidentiality for informants. The recent bill in Namibia also provides for confidentiality as does the recent legislation in Lesotho. The jurisdiction which has gone furthest towards protecting vulnerable sources of information is South Africa, which also passed the Protected Disclosures Act. Lesotho is formulating protection legislation identical to that of South Africa. While the current Zimbabwe Prevention of Corruption Act includes a provision that makes it criminal to interfere with or victimize a witness, it does not appear to provide sufficient protections.

Objective 2: Promotion and facilitation of co-operation among state parties in support of prevention, detection and prosecution of corruption in all sectors

Jurisdiction

The Protocol calls for member states to extend jurisdiction beyond their borders in order to fight against corruption and its proceeds. Angola has no specific procedural legislation against corruption. The same applies to Mozambique at present, but new anti-corruption legislation may provide adequate or appropriate provisions. Few of the provisions in the legislation from the other countries studied extend jurisdiction extra-territorially. Section 1(2) of the Corruption Act in South Africa can apply to acts of corruption committed outside the country, or originating from outside the country. However, this Act lacks specificity. The Namibian Anti-Corruption Act, which is not yet law, confers limited extra-territorial jurisdiction in a similar way to the Corruption Act. Section 46 of the Corruption and Economic Crime Act of Botswana extends jurisdiction for acts committed outside Botswana by nationals of that country. Zambia attaches jurisdiction to Zambian nationality or domicile. The closest legislative provision to the Protocol is perhaps clause 21(1) of the Prevention of Corruption Bill (South Africa) which reads:

(1) The provisions of this Chapter shall apply to-

- (a) an act committed outside the Republic by a South African citizen or a person domiciled in the Republic, if the act is not punishable at the place of its commission or the place of its commission is subject to no criminal law enforcement in respect of such offence;*
- (b) any other act committed outside the Republic if that act is not punishable at the place of its commission or if the place of its commission is subject to no criminal law enforcement in respect of such offence and if the perpetrator was a South African citizen or a person domiciled in the Republic at the time of the act or became a South African citizen after such an act.*

As indicated above, this provision differs from Article 5 of the Protocol. It also departs from an earlier version of the draft, which was based on a German criminal jurisdiction provision.¹⁹

Corruption as a basis for extradition

The Protocol requires either recognition of corruption as an extraditable offence in bilateral and multilateral treaties or the treatment of the Protocol as an actual extradition treaty. While existing extradition arrangements between and among member states could be used in corruption cases, there is no specific provision in anti-corruption legislation specifically on this aspect. Extradition laws have generally tended to be separated from substantive legislation. There does not appear to be much statuto-

ry reformulation required, since every country in the region has an extradition statute, whose terms can be incorporated into anti-corruption legislation. At present, the SADC Protocol on Extradition is under preparation.

Most SADC states already have laws that allow extradition either in the form of a treaty or to designated states. Corruption, like drug trafficking, can be included among extraditable offences. The SADC Protocol on Combating Illicit Drugs has already set a precedent. In its wake, the United Nations Convention against Transnational Organised Crime also demands that corruption be included as an extraditable offence. Problems might arise from disparities with respect to the extradition of nationals and different sentencing practices – particularly attitudes to capital punishment. The starting point is for all member states to be linked by extradition treaties. Only Namibia can be regarded as having a quasi-extradition treaty with every other SADC state. South Africa also has extradition arrangements with most of the other SADC states.

Mutual legal assistance and technical co-operation

Member states already have experience in implementing mutual legal assistance laws in cases with transnational dimensions. This entails assistance in facilitating investigations as well as during criminal proceedings that are under way. Only Angola lacks the legal framework to facilitate the kind of assistance envisaged. A survey of the legislation and practices, however, revealed three notable shortcomings:

- the absence of uniformity on the scope for mutual assistance, with some states not including assistance with investigations,
- the tendency by some states to designate the countries to which assistance would be afforded,²⁰
- the subordination of non-policy processes to political considerations. Resolution of issues that should be of a technical legal nature, such as extradition decisions, tends to be unpredictable as a result. High-level political judgments could be influenced by corruption.

Inevitably, not all SADC states can benefit from the mutual assistance provisions of others. This is an area in need of harmonization which will be addressed by the SADC Protocol on Mutual Legal Assistance in Criminal Matters.

As surmised in another analytical work, ‘co-operation in enforcing the law across national borders involves joint work not only on the part of law enforcement officials, but also among legal systems. In an environment where states differ in terms of background, values and levels of development, the practicality of co-operation is bound to be tested. Questions of the mutual compatibility of investigative systems and probative rules of evidence will arise. The former are probably easier to harmonize than the latter.’²¹

Objective 3: Provision of a framework for harmonizing policies and legislation against corruption

Much of the work required to achieve this objective will be performed by individual member states as they bring their laws in line with Article 3 of the Protocol, and establish the necessary mechanisms for implementation discussed above.

Perhaps, in addition, each member state’s legislation should oblige the executive in promulgating subordinate legislation with regard to practices prevailing in the region.

Objective 4: Setting standards by which to periodically measure, through peer review, the performance of member states in combating corruption.

Peer review has become a conventional method of monitoring implementation of international under-

takings. A committee composed of member states is tasked with monitoring implementation. At the same time, the committee has other responsibilities, including the provision of technical assistance to state parties. Matsheza expresses confidence in the committee’s utility, on the basis that its reports ‘could mobilise shame (against) delinquent states’ but cautions that ‘this is (probably) one of the most difficult aspects of the Protocol’.²² His confidence seems to be based on the conviction that civil society and the media will either be represented on the committee, or at least make an input into its findings.

Despite acknowledging the important role which they can play in preventing and exposing corruption, the Protocol does not advocate the inclusion of civil society and the media in monitoring mechanisms. The furthest it goes is to affirm the commitment of member states to adopt measures to *create, maintain and strengthen mechanisms to encourage participation by the media, civil society and non-governmental organizations in efforts to prevent corruption...* (See Article 4(1)(i))

It may be contended that the Protocol is inimical to measures which inhibit freedom of expression generally, and which inhibit press freedom in particular. To the extent that a member state adopts legislation to limit press freedom therefore, it violates the letter and spirit of the Protocol, and cannot genuinely implement its provisions. It is unlikely that in such cases the media will be in position to contribute to the anti-corruption climate even if the Protocol does provide a forum for such a role.

Concluding Observations

The SADC Protocol against Corruption is regarded as a significant development in the evolution of a multilateral approach to corruption in the region. The preamble to the Protocol acknowledges that corruption is a contemporary problem. It is important that the Protocol be put in force by ratification of two thirds of the SADC Member States in the shortest possible time. Member States should therefore bring their laws into line with the Protocol, and harmonize and simplify mutual assistance mechanisms. At the time of writing only three SADC Member State had ratified the Protocol. Several member states had taken positive steps that indicated their intention to ratify. Namibia, Mozambique and South Africa were in the process of introducing new legislation, and Lesotho was taking steps to implement a new statute against corruption, and to introduce witness protection measures.

In view of the Protocol’s requirements the analysis has indicated that there are a number of areas in current national anti-corruption legislations which need to be developed in order to facilitate the ratification and subsequent implementation of the Protocol. Examples include: the scope of coverage of various statutes, jurisdiction, and of complementary legislative and enforcement structures. The table below just illustrates some features of existing and proposed laws which should be taken into account in the process of ratification and subsequent implementation of the Protocol. It does not purport to be comprehensive and should not be viewed as a critical judgment on the Member State’s capacity to ratify the Protocol. Rather, it is meant to provide some indications based on comparative overview. After all, the anti-corruption legislation is one of the most dynamic criminal law legislative areas as illustrated by a number of anti-corruption laws under preparation. Therefore, one can only expect that further work is needed in order to meet the requirements of the Protocol, which in itself, is an important guiding normative framework at the regional level even before it is being put into force.

Member State	Areas to be developed	Auxiliary procedures and supportive structures
Angola	Updating of the Penal Code or specific anti-corruption legislation needed.	No mutual assistance legislation. Anti-Corruption unit still not operating
DRC	Updating of the Penal Code or specific anti-corruption legislation needed	To be developed
Botswana	Substantively meets the Protocol	Updating as regards provisions on jurisdiction, transparency and witness protection.
Lesotho	Substantively meets the Protocol	Updating as regards provisions on jurisdiction, transparency and witness protection. Legislation not yet implemented.
Malawi	Mostly meets the Protocol but needs further development as to target embezzlement and focus on private sector transactions.	Some updating and support to Anti-Corruption Bureau's operations.
Mauritius	In part meets the Protocol but further development needed.	To be developed
Mozambique	New legislation under development.	New legislation under development.
Namibia	New Anti-Corruption Bill needs some further refinement viz-a-viz the Protocol on certain aspects of content and jurisdiction.	Proposed Anti-Corruption Commission needs more clarity as regards jurisdiction.
Seychelles	Upgrading needed with respect to scope.	To be developed
South Africa	Proposed Bill substantially in line with the Protocol subject to revision of jurisdiction component.	Substantially developed but problem of co-ordination.
Swaziland	Mostly meets the Protocol but needs further development as regards target embezzlement and s focus on private sector transactions.	Updating needed including the area of asset disclosure.
Tanzania	Mostly meets the Protocol.	Updating needed including the asset disclosure regime.
Zambia	Mostly meets the Protocol but further development needed as regards target embezzlement, and focus on private sector transactions.	Some updating and support to the Anti-Corruption Commission.
Zimbabwe	Upgrading with regard to scope and overemphasis on agent/principal context of corrupt transactions.	Further development as regards witness protection, asset disclosure and clarity regarding corruption case investigations.

1. Article 4(1)(a) to (d)
2. The sole difference is that while the Botswana statute uses the formulation 'a public officer is guilty of corruption' the Lesotho statute prefers 'commits the offence of corruption'.
3. Section 34 in the Corruption and Economic Crime Act, and section 31 in the Prevention of Corruption and Economic Offences Act
4. Which need not be in financial terms. See S v W 1991 (2) SACR 642 (W); S v Palm 1997 (1) SACR 206
5. The draft has since abandoned the reference to specific sporting codes in its definition of 'sporting event'.
6. In terms of the Code of Conduct for Assembly and Permanent Council Members, all registrable - interests must be disclosed. These include:
 - shares and other financial interests in corporate entities
 - remunerated employment outside parliament
 - directorships and partnerships
 - consultancies
 - sponsorships
 - gifts and hospitality from a source other than a family member or permanent companion
 - any other benefit of a material nature
 - official foreign travel
 - ownership and other interests in land and property, and
 - pensions
7. See section 8 of the Code.
8. See the Railways Act [Chapter 13:09], the Electricity Act [Chapter 13:05], the Air Zimbabwe Corporation Act [Chapter 13:02].
9. Ibid.
10. The benefits of the Act were somewhat negated by the Electoral Laws (Miscellaneous Amendments) Act, number 4 of 2000, which is permissive of electoral irregularities like treating.
11. See section 3 of the Schedule.
12. The anti-hoarding provision has since been incorporated into the Penal Code.
13. See Chris Maina Peter "Combating Organised Crime in Tanzania" in C. Goredema (ed) Organised Crime in Southern Africa: Assessing Legislation. ISS, Monograph No.56, 2001
14. See section 10 of the Act
15. Change is measured in financial terms. At the time of writing the figure was 100 000 rupees.
16. See Act 32 of 2000
17. See Ray Goba, 'Legislation and Organised Crime in Namibia' in C Goredema (ed) Organised Crime in Southern Africa: Assessing Legislation, op. cit p.93-133, at 110
18. See Electoral Act, number 24 of 1992, and the Tender Board of Namibia Act, number 16 of 1996.
19. See Explanatory memorandum to the Bill. A later version of the Bill has reinstated the extension of jurisdiction by reason of presence within South Africa, where the defendant is neither a citizen or domiciled in the country. Clause 21(1) now permits the exercise of jurisdiction by a South African court in respect of an act committed outside South Africa by any foreigner, if the act constituted an offence in the country where it was committed, and the foreigner is apprehended in the country, and is not extradited. The latest version of clause 21 seems to comply with Article 5 of the Protocol.
20. See Botswana's Mutual Assistance in Criminal Matters Act, number 20 of 1990. It provides for co-operation in the provision and securing of international assistance in criminal matters by Botswana. "Criminal matter" is widely defined in the Act to include:
 - a criminal matter relating to taxation, customs duties or other revenue matter or relating to foreign exchange control;
 - a matter relating to the forfeiture or confiscation of property in respect of an offence; and
 - a matter relating to the restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated in respect of an offence.
The Act applies to any foreign country where an arrangement has been made for mutual assistance in criminal matters, pursuant to which the Minister, issues a statutory notice designating the Act as applicable to that country.
21. C Goredema 'Harmonising Legislation against Organised Crime in SADC countries' in C Goredema (ed) Organised Crime in Southern Africa: Assessing Legislation, op. cit. p. 187-201, at 195
22. P Matsheza in an unpublished paper presented at the 10th International Corruption Conference in Prague, October 2001.

Chapter 3

Anti-Corruption Institutions and Practice in Southern Africa

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Introduction

Corruption and the damage it causes to political and social institutions are major global issues. Recent decades have witnessed an increasing world prominence of such crimes and the efforts to combat them. It is so also in the SADC Region. In August 2001 the SADC member states adopted and signed the SADC Protocol Against Corruption, a clear manifestation of the regional political will to combat corruption.

Contemporaneously with the drafting of the SADC Protocol, a number of other regional initiatives were underway. Two are of particular relevance to this paper. In June, 2000, after a series of Round Tables involving Justice Ministers and Attorneys General, existing anti-corruption bodies in the region and representatives of countries which did not yet have such bodies agreed to form the Southern Africa Forum Against Corruption (SAFAC) with the objective of coordinating a regional approach to anti-corruption work and ultimately becoming the implementing body of the SADC Protocol.

At the same time, the Regional Office for Southern Africa of the United Nations Office on Drugs and Crime, and the SADC Secretariat's Drug Control Office, in co-operation with SAFAC and the regional NGO – Human Rights Trust of Southern Africa (SAHRIT), recognising the close links between drug trafficking, organised crime and corruption perceived the need to draw together senior officials in the region who were concerned with investigating and prosecuting corruption. The Regional Seminar on Anti-Corruption Investigating Strategies with particular regard to Drug Control for SADC Member States was held in Gaborone, Botswana in October 2001.

At the seminar, representatives presented papers outlining their countries' anti-corruption legislation, the extent of corruption and the mechanisms in place to deal with the problem. Participants also presented case studies of recent corruption cases, which provided anecdotal supporting evidence for the seriousness of the situation in the region. Case studies related to both investigations and prosecutions.

This paper summarises and analyses each of the country presentations¹, seeks to compare the varying approaches taken to combat corruption throughout the SADC Region and outlines a number of conclusions and recommendations for future work and study.

The paper discusses the countries in three distinct groupings:

Group 1 - countries that have anti-corruption agencies

Zambia	South Africa
Tanzania	Malawi
Botswana	Swaziland

Group 2 - countries contemplating the establishment of anti-corruption entities

Zimbabwe	Mozambique
Lesotho	Mauritius
Namibia	Angola

Group 3 - countries that currently have not contemplated the establishment of anti-corruption entities

Democratic Republic of the Congo
Seychelles

Group 1- Countries already having anti-corruption agencies

Zambia

Zambia's anti-corruption initiatives commenced in 1982 when the Zambian Anti-Corruption Commission (ACC) was established by passage of legislation directed toward the implementation of the 'three pronged attack' strategy of investigation, prevention and public education.

The ACC employs its own prosecutors who act under authority of the Director of Public Prosecutions. The Director's consent to prosecute is a prerequisite to every case of corruption brought to the courts by the ACC. The ACC operates in 5 of Zambia's 9 provinces. In the 4 provinces in which the ACC has not established a presence, cases of corruption can be handled by the police. Some cases of corruption related to drug trafficking have also been dealt with by the country's Drug Enforcement Commission.

Noteworthy powers conferred on the ACC include:

- Wiretapping is possible under the authority of a judge and the product is admissible
- Search and seizure when authorised by a judge²
- Electronic surveillance on the initiative of the investigator
- Under cover operations are permitted but entrapment is prohibited
- Compulsory production of public documents under the authority of the Director General

Over its 19-year history the ACC has enjoyed mixed fortunes, which have fluctuated in direct proportion to the varying strength of political will and the physical resources made available to the body. There is no doubt that an original strong determination to attack the problem was severely undermined by the dramatic devaluation of the kwacha during the early 1980s. Other problems, which have faced the ACC, include political and other interferences in prosecutorial decisions.

The ACC's statistics over the past 5 years are revealing the following:

Table 1: Zambia's ACC Statistics for 1996-2000

Year	Complaints received	Investigations launched	Prosecutions Initiated	Convictions ³
1996	922	513	59	37 (62.7%)
1997	865	495	69	55 (80%)
1998	1485	538	63	29 (46%)
1999	1325	460	100	30 (30%)
2000	1262	403	49	10 (24%)

Statistics from 1998 reveal a turning point in the ACC's successes. The number of complaints received jumped dramatically, but have since declined. The same year, perversely, saw an equally dramatic reduction in the ACC's conviction rate. Perhaps however, the direction of these figures is about to change as in March 2000 the country's President launched a 10-year "Programme for Good Governance" which included strong support for the further development of the ACC. At the same time, the Minister of Finance has given strong vocal support with calls for a "clean, transparent and accountable Government, free from corruption."

The ACC's public education programme has been quite impressively well focussed of late with messages being creatively put across in poster and other media campaigns.

The ACC has benefited from donor assistance throughout its history, first and foremost, by the secondment of a United Kingdom expert to the organisation, and a joint 5 million point Zambian/United Kingdom aimed at capacity building for the organisation with particular focus on human resources.

Zambia's media, especially the private media, provide extensive coverage of corruption related issues.

Tanzania

Tanzania has, over recent years, enjoyed multi-party democracy but for many years since gaining independence from the United Kingdom, single party rule prevailed. Irrespective of this, the country has consistently claimed to have ranked the problem of corruption near the top of its agenda. Tanzania was the first country to establish a dedicated anti-corruption body, this being established in 1972, two years before the Independent Commission Against Corruption in Hong Kong. The Prevention of Corruption Bureau's mandate covers mainland Tanzania only whilst on the island of Zanzibar the responsibility for dealing with corruption rests with the police.

The Bureau's history and success rate have been variable during its existence and it is clear that there has been a definite link between its successes or lack thereof, and the levels of political will and resources available at any one time in its history. Tanzania's anti-corruption efforts have been periodically assisted by donor agencies, especially in resource provisions. Recently this assistance has increased. In summary, there can be little doubt that the corruption issue has now become entrenched as a high priority for the Tanzanian government.

The upsurge of public confidence in the revitalised anti-corruption campaign appears to have coincided with a Presidential Commission of Inquiry Against Corruption, which submitted its report in 1996. This led to the formulation of the Tanzania National Anti-Corruption Strategy and Action Plan, which was issued by the President's office in November 1999. The effect of this plan on the number of complaints received by the PCB over the years from 1996 to 2000 was dramatic:

1996 – 439	1999 – 1088
1997 – 503	2000 – 1461
1998 – 432	

However, there were only 121 prosecutions and the year 2000 saw only 8 convictions for corruption. All of those convicted were public officials and all but one was sentenced to imprisonment.

The PCB implements the 'three-pronged' attack strategy. It has units dealing with investigations, prosecutions, prevention, public education and trend analysis. Although the bureau prosecutes most of its cases 'in-house' using its own lawyers, the consent of the Director of Public Prosecutions is required before a prosecution can begin.

The PCB has the following noteworthy powers:

- "Wire tapping" with the authority of the court – though the evidence obtained from wire taps is admissible, the courts tend to treat it with caution and usually need corroborating evidence as well
- Search and seizure on the authority of the Director General of the PCB
- Electronic surveillance on the authority of the Director General of the PCB
- Use of under cover agents under the authority of the Director of Investigation of the PCB
- Searching of suspects bank accounts under the authority of the Director General of the PCB
- While the PCB lacks the power to demand the production of documents, it seems formal requests for productions are usually honoured.

Tanzania's media is described as vibrant and has run a number of exposes, thereby maintaining a high level of public interest in the issue of corruption. In summary it would seem that despite a somewhat chequered approach to corruption over the past 30 years, political and public will to fight against such practices, is currently very high. It seems that the major problem facing the campaign is the paucity of successful prosecutions.

South Africa

The presence in South Africa of no less than 12 agencies which have anti-corruption as part of their mandate, is proof, if it were needed, that there is strong political will to tackle corruption and that resources are being made available. However, as a number of representatives involved in the SA campaign have noted, the sheer number of agencies makes an integrated national approach to the problem difficult.

Four recent developments in South Africa must be welcomed both inside the country and regionally. The first is the adoption of the Public Sector Anti-Corruption Strategy by the Government on 25 January 2002, which includes the establishment of the Anti-Corruption Co-ordinating Committee. The Committee will attempt to ease some of the problems related to co-ordination among various agencies with anti-corruption mandates. The second is the creation of the South African National Anti-corruption Forum. Not only will this new, non-executive, body oversee national anti-corruption programmes and offer a degree of co-ordination, but it will also be empowered to represent the country internationally on anti-corruption issues. The third development is the partnership entered into in March, 2001 between the Government of South Africa and the United Nations Office on Drugs and Crime under the auspices of the United Nations' Global Programme against Corruption. This agreement is aimed at producing an assessment of the trends and causes of corruption and the efficacy of the country's anti-corruption measures in the public and other sectors; providing support to the national strategy against corruption; offering assessment and risk-management procedures in the public sector departments and for the Public Service Commission, and supporting the development of provincial anti-corruption action plans. Finally, a draft of the Prevention of Corruption Bill has been tabled for Parliamentary procedure, while South Africa just ratified the SADC Protocol Against Corruption.

In addition to the National Anti-Corruption Forum, South Africa has 11 other organisations, which have anti-corruption work as part of their mandate. These are:

*Note: Those agencies marked * refer cases of corruption to one of the three Criminal Justice Agencies⁴*

- **South African Police Service Commercial Crime Unit:**
Investigates all cases of commercial crime including corruption.

- South African Police Service National Anti-corruption Unit#:
Investigates cases of alleged corruption within the South African Police Service only.
- National Prosecuting Authority:
This is the country's centralised prosecuting authority, which institutes and conducts criminal proceedings on behalf of the State and carries out investigations as required. The Authority acts against corruption either through the South African Police Service, or its own Asset Forfeiture Unit or the Directorate of Special Operations.⁵ The authority also recovers proceeds of corruption and other crimes through civil action.
- The Auditor General*#:
The office of the Auditor General conducts forensic auditing, audits and reports on accounts, financial statements and financial management.
- The Public Protector*#:
The Public Protector investigates and makes recommendations to State departments on any conduct, which may have resulted in prejudice to citizens.
- The Public Service Commission*#:
This Commission investigates public service systems, policies, controls and practices and makes recommendations for change.
- Independent Complaints Directorate*#:
The Directorate investigates complaints in respect of offences and misconduct committed by members of the South African Police Service. Complaints of corruption are referred to the South African Police Service National Anti-corruption Unit.
- Special Investigating Unit*:
The Unit investigates alleged serious malpractices or maladministration in State institutions, assets and public money and conduct, which may seriously harm the interests of the State. The Unit is also able to recover and protect public assets through civil law procedures and a Special Tribunal to adjudicate civil matters.
- Department of Public Service and Administration*#:
On request this department investigates public service matters related to policies practices, systems and controls. Its primary role is policy development regarding public service management.
- National Intelligence Agency*:
The agency provides intelligence support to investigating agencies.
- South African Revenue Service*#:
The service implements the Government's tax policies but also investigates tax related corruption, including corruption by its own officials, often in partnership with other agencies.

The South Africans' use of the word 'prevention' in the anti-corruption context is ascribed to 'public education' within the 'three pronged attack' model. Those marked # above also undertake public education⁷ functions. Thus, it would seem that the Special Investigating Unit and the Department of Public Service Administration perform duties akin to formal corruption prevention assignment work.

Under Section 179 of South Africa's Constitution, decisions to prosecute are vested in the National Director of Public Prosecutions but he has power to delegate this to other bodies, both public and private.

The following investigation tools are available within the country:

- Wiretapping on the authority of a designated Judge of the High Court
- Searches and seizures with a warrant issued by a Magistrate or Judge
- Electronic surveillance when authorised by a senior member of the South African Police Service or equivalent in other services
- Use of undercover agents when authorized by the Director of Public Prosecutions
- The National Prosecuting Authority is able to conduct 'preparatory investigations' which might include interviews with suspects. However, incriminating statements made by suspects in this process cannot normally be used against them in subsequent criminal proceedings.

South Africa is the highest consumer of narcotics in the SADC region and hence transshipment routes culminate in the country. The extent of corruption connected with this illegal activity is not accurately known.

The South African media is perhaps the most developed and sophisticated in the whole SADC region. It is usually fearless and has no inhibitions over publishing details of corruption scandals and running exposes.

Botswana

Botswana has a multi-party democracy, yet the ruling Botswana Democratic Party has held power with a substantial majority since the country gained independence from the United Kingdom in 1966. Once one of the poorest nations on earth, it has become self sufficient and prosperous due the discovery of mineral resources, particularly diamonds.

Faced with a number of major corruption-related scandals in the late 1980s and early 1990s the Government of Botswana determined to take action to counter the problem and tasked a number of senior officials with exploring mechanisms in use elsewhere in the world. Impressed by the 'three pronged attack' (investigations, prevention and public education) adopted by Hong Kong, Malaysia and others, the Botswana Government resolved to set up a similar organisation.

The Directorate on Corruption and Economic Crime (DCEC) came into existence in 1994 following the enactment of legislation by Botswana's National Assembly. The creating Act also revised and strengthened the country's anti-corruption laws and gave DCEC a number of powers, some of which would undoubtedly be considered very significant. These include the following powers:

- of arrest
- of search with or without a warrant
- to compel banks and other financial institutions to disclose otherwise confidential information about suspects
- to compel the provision of information by witnesses and suspects
- of restraint of assets
- of forfeiture of assets

Wiretapping is not lawful in Botswana but evidence obtained by other covert means such as physical and technical surveillance is admissible.

The DCEC does not have the responsibility for prosecution; this being constitutionally vested in the Office of the Attorney General, whose consent to prosecute is an essential prerequisite to each new corruption case brought before the courts. DCEC has however assisted the Attorney General with some of the prosecutorial work under delegated authority.

The DCEC operates a hot-line system and receives approximately 1800 complaints each year from which it launches an average of 400 investigations. Prosecutions are being launched at the rate of approximately 50 new cases per year.

The organisation has an establishment of 156 posts and operates from a newly constructed headquarters in the capital city, Gaborone, while maintaining a branch office in the northern city of Francistown. The annual budget is approximately US\$2,000,000.

Initially the organisation was staffed with a combination of imported expatriate experts and officers seconded from Botswana's other law enforcement agencies, notably the police, customs and taxes departments. It also recruited local newly graduated university students. By the end of 2001, all but 5 of the original 14 expatriate experts had left the organisation and secondments were no longer taking place.

An overview of DCEC's short history would *prima facie* indicate success in that there has been no recurrence of the major scandals which beset the country in the late 1980s and 1990s. The public education campaign launched via a number of media channels has certainly had an impact within the country. A need for a regular evaluation of the work performed by the corruption prevention group in terms of the impact studies has been identified.

An analysis to DCEC's caseload reveals that bribes to border officials, bribes to obtain permits and licences, tender irregularities in the construction and other industries, and petty frauds against Government figure as the most critical corruption issues. There is still no sufficient evidence as to the seriousness of the connection between corruption and drug trafficking.

Following an initial period of scepticism towards DCEC and its objectivity, the Botswana media became much more supportive of the DCEC.

It is apparent, that despite the impact DCEC has made, the courts are extremely lenient, with imprisonment following a conviction for corruption being the exception rather than the rule. There are also problems arising from the very slow processing of cases through the Attorney General's chambers and the courts. DCEC has yet to silence the critics who claim that it is either disinterested in investigating what are called 'big fish' or is afraid to do so for fear of reprisals.

There is currently no 'disclosure of assets' legislation in the country, and although DCEC publishes its annual report to the President, the organisation cannot yet publicly demonstrate that it is accountable, transparent and operationally independent.

Malawi

Malawi's anti-corruption campaign has been a top Government priority since the country adopted a revised constitution in 1994 which brought a multi-party democracy into being. In 1995 the Government enacted the Corrupt Practices Bill, which, besides strengthening anti-corruption laws, also provided the framework for the creation of the Anti-Corruption Bureau (ACB).

The ACB commenced operations in 1997 and now has 58 staff. It implements the 'three-pronged attack' strategy of investigation, prevention and public education. The Bureau also has prosecutorial powers but the consent of the Director of Public Prosecutions is required before any prosecution can be launched for corruption offences. The ACB operates from two bases in the country; its headquarters are located in the capital Lilongwe and there is a branch office in the country's second largest city Blantyre.

The bureau has received a total of 8335 complaints since its inception:

1997/98	4273	1999/00	1627
1998/99	1044	2000/01	1241

The dramatic number of complaints made during the first year is perhaps explained by the publicity generated at the ACB's inception. The first year was followed by an equally dramatic decline in the following year, an upsurge the year after and a decline in the last year for which figures are available.

From the 8335 complaints made, the bureau's Director has authorised a total of 2672 (32%) investigations. These investigations have thus far led to the prosecution of 99 persons for corruption offences. Few of these cases have been concluded in court.

The ACB is currently being assisted by the secondment of an advisor from the United Kingdom's Department for International Development.

The ACB has powers of search and seizure when authorised by a judicial officer and can request the production of documents. Included in the new Malawi legislation are provisions similar to those in Botswana which makes possession of unexplained property an offence. However in Malawi, the provision is restricted to public officials only.

The Malawi Chapter of Transparency International is complementing the ACB's public education programme which will impress any visitor to the country.

The country's media are generally very supportive of the ACB and the anti-corruption campaign but naturally tend to focus on the more high profile cases. This seems to further the belief that corruption only exists in the top echelons of Government.

Swaziland

The Kingdom of Swaziland enacted revised anti-corruption legislation in 1993⁹, which strengthened the country's laws against corruption and created the Anti-Corruption Commission (ACC). However it was not until 1998 that the ACC came into being. Charged with the duty of investigating and preventing corruption, the ACC currently has an establishment of approximately 31 officers. The enabling legislation provides that the ACC shall have a Commissioner and Deputy Commissioner, but to date no Commissioner has been appointed. Nevertheless an expatriate Deputy Director has been appointed and he has acted as Commissioner since inception.

The ACC has powers to investigate but decisions to prosecute are vested in the Director of Public Prosecutions. The ACC has been invested with the powers:

- of search and seizure
- to demand the production of bank documents following the issue of a warrant

Wiretapping and electronic surveillance is legal but treated sceptically by the courts as is the use of undercover agents. The ACC has embarked on a limited public awareness campaign by the issue of a number of informative posters.

Statistics are currently only available for the first year of the ACC's operations¹⁰. In it, a total of 126 cases were reported and investigated and from this number a total of 29 persons were charged with corruption offences but no information was available as to the judicial outcomes.

Comments on Group 1 Countries

Tables 2 and 3 below provide an ‘at-a-glance’ comparison between the 5 SADC Countries which have existing dedicated single anti-corruption bodies¹¹.

Table 2 – Comparison of size and scope of dedicated single anti-corruption organisations in Southern Africa (excluding the Republic of South Africa)

Country	Year in which Anti-Corruption Organisation formed	Population in millions	Size of anti-corruption organisation (No of staff ¹²)	Ratio of anti-corruption staff to population ¹³	Full/Partial implementation of 3 pronged attack	Prosecutions conducted by Anti-Corruption Organisation
Botswana	1994	1.7	155	1 : 11,000	Full	Yes
Malawi	1998	11	58	1 : 190,000	Full	Yes
Swaziland	1999	1	31	1 : 32,250	Partial	No
Tanzania	1972	33	500	1 : 66,000	Full	Yes
Zambia	1982	10.5	200	1 : 52,500	Full	Yes
Totals		57.6	944	1 : 61,000		

Table 3 – Powers of dedicated anti-corruption organisations in Southern Africa

	Tanzania	Zambia	Botswana	Malawi	Swaziland
Wiretapping Lawful?	Yes	Yes	No	No	Yes
Electronic surveillance Lawful?	Yes	Yes	Yes	Yes	Yes
Undercover operations lawful?	Yes	Yes	Yes	Yes	Yes
Search and seizure without warrant?	Yes	No	Yes	No	Yes
Powers of arrest?	Yes	Yes	Yes	Yes	Yes
Powers to compel production of bank statements without recourse to courts?	Yes	No	Yes	No	No
Powers to compel production of other documents without recourse to courts?	No	Yes	Yes	Yes	No
Currently donor assisted?	Yes	Yes	No	Yes	No

Group 2 - Countries contemplating establishing dedicated anti-corruption agencies

Zimbabwe

Zimbabwe gained full independence from the United Kingdom in 1980.

The Prevention of Corruption Bill currently being considered in Zimbabwe envisages the establishment and empowerment of an Anti-Corruption Commission within the country and seeks to revise and strengthen existing legislation. Currently, anti-corruption investigative work is carried out by the Zimbabwe Republic Police (ZRP).

Within the ZRP there are a number of Serious Fraud Squads and Special Investigations Teams who have the responsibility of investigating corruption cases reported to the force. These squads are

based in Harare and Bulawayo. Within the force there is an Anti-Corruption Unit which responds to complaints made against members of the police force. It appears that the ZRP is solely reactive to corruption and that there is little proactive action. Indeed there is a requirement that before an investigation can be launched, a complaint must be registered, and hence there must be a complainant. The police would not therefore act on rumour or the indictments of a newspaper article alone.

Currently, the powers available for investigation of corruption offences are purely those already possessed by the ZRP. These include:

- Wiretapping on the authority of a judicial officer
- Searches, seizures electronic surveillance and the use of under-cover agents on the authority of a judicial officer
- Production of documents on the authority of a judicial officer

Decisions to prosecute are vested in the Attorney General but he is assisted by a number of police prosecutors.

For the 5 years leading up to 2001 a total of 2,430 cases of alleged corruption were reported to the police. Two thousand three hundred (2,300) cases were investigated and resulted in a total of 1,844 persons being charged. Processing of these cases in court appears to have been comparatively rapid with 75% of the cases having been concluded. Sentences ranged from 1 to 5 years imprisonment and/or fines between Z\$3,000 to Z\$100,000.¹⁴ The high proportion of persons charged compared to the number of investigations launched could be confirmatory of the lack of proactive action against corruption in the country.

The ZRP feel that persons most prone to corruption in the country are from middle and top management positions in the public sector. It is felt that a major causative factor is that these individuals’ salaries are incommensurate with their positions. Corruption related to drug trafficking did not surface as a major issue of concern to the Zimbabwean authorities. There is ample media coverage of corruption as an issue within both the public and private press although media exposes appear to be rarely followed up by formal investigations leading to prosecutions.¹⁵

The country currently has no corruption prevention activities and public awareness/education has been thus far left in the hands of the Zimbabwe Chapter of Transparency International.

Lesotho

Lesotho is a democratic kingdom with a population of just over 2 million people.

In 1995, under the guidance of the Danish Centre for Human Rights, a yearlong study on the phenomenon of corruption took place in Lesotho. Based on its findings and other research conducted in South Africa, Denmark, Botswana and the United Kingdom, Lesotho’s Parliament enacted new anti-corruption legislation in August, 1999. The Prevention of Corruption and Economic Offences Act established an autonomous Directorate on Corruption and Economic Offences with powers to investigate corruption and economic offences.

The Act, modelled on the Botswana legislation, calls for the Directorate’s officers to have power for the following:

- Search and seizure with or without a warrant
- Arrest
- Compelling suspects to provide information
- Compelling the production of information and accounts including from financial institutions

Although it was reported in December, 2001 that office accommodation had been secured, due to an absence of resources, the envisaged Directorate has yet to be established. The ultimate intention is to adopt the 'three-pronged attack' strategy but rather than attempt full implementation at the outset, initial activities would be restricted to investigations.

Although the new law does not envisage any change in the system, i.e. prosecution decisions will remain the responsibility of the Director of Public Prosecutions, the new Directorate intends to employ prosecutors and it is anticipated that the Director of Public Prosecutions will delegate actual prosecution work rather than prosecutorial decisions to these persons.

Thus until the Directorate is established and operational, matters of corruption continue to be handled under the normal policing powers of the Royal Lesotho Mounted Police.

Corruption issue has been widely debated in the media and within Government over the past five years. This anti-corruption climate has been most recently confirmed in the important corruption case involving the official of the Lesotho Highlands Development Authority and a number of foreign investors.

It is apparent that cannabis grown in the Kingdom is smuggled into neighbouring South Africa which would infer that corruption at border crossings is a high probability, though no evidence of this has been brought forward.

Mauritius

In October, 2001 the Government of Mauritius appointed a Select Committee of members of the National Assembly to review the law against corruption and making recommendations as to appropriate anti-corruption measures, including the possible establishment of a dedicated anti-corruption commission.

Until the Select Committee publishes its report and its recommendations are considered, there are a number of existing institutions within the country that maintain corruption as part of their mandates. These are:

- The Police
- The Economic Crime Office
- The Ombudsman
- Ad hoc Commissions of Enquiry.

Within the Mauritius Police Service there is a unit known as the Police Fiscal Unit which looks into cases of corruption that fall under the aegis of the criminal code. The Economic Crimes office, a multi-disciplinary agency, also enquires into bribery cases, particularly those which have an element of money laundering. Special Commissions of Enquiry are established to examine allegations of malpractice within the public sector. The Ombudsman is empowered to investigate any alleged fraud or corrupt act committed by a public officer.

The Economic Crimes Office appears to have taken the leading role in anti-corruption efforts over recent years. In addition to using its own staff of accountants and lawyers, the office has the power to call on the police for investigative assistance. The following powers are available to the office:

- Requiring that suspected persons be interviewed and produce documents under the authority of the Director
- Entry to search a bank or other financial institution on the order of a judge
- Wiretapping on the authority of a judge

Powers of arrest are vested with the police officers attached to the office.

Decisions to prosecute are vested with the Director of Public Prosecutions.

Over the period 1998-2000 a total of 24 public officers have been prosecuted in the country for corruption. Sixteen (16) of these were police officers.

The country's media takes the issue of corruption seriously and it seems that journalists have developed certain level of expertise in investigative journalism.

Drug consumption, in particular heroin, is a current social problem in Mauritius. However, authorities do not regard the country as being on any major transshipment route, nor do they hold that corruption related to drug trafficking is a major issue.

Mozambique¹⁶

After many decades of civil war Mozambique has enjoyed relative peace and a multi party democracy since October, 1994. Though possessing considerable agricultural and mineral resources, the political turmoil which beset the country has prevented exploitation of these resources. Poverty and its consequences continue to be major problems for the country's 16.9 million people.

It is thought that Mozambique's seaports are on transshipment routes for narcotics destined for neighbouring South Africa, suggesting a strong possibility of corruption by customs officers at both the seaports and land borders. In general, recently corruption was identified by the Government and the civil society as one of the serious problems with a number of anti-corruption initiatives taking place, some of which are donor supported.

In recent times, the Government of Mozambique has been increasingly vocal about the need to deal with corruption and has declared its intention to set up a dedicated anti-corruption body. Indeed, new anti-corruption legislation envisages the creation of a dedicated anti-corruption entity which will be placed within the Attorney-General's Office.

Corruption cases, like all other major criminal activity, are regarded as the responsibility of the Attorney General. The Attorney General is assisted by the 'Criminal Investigations Police' a branch of the Ministry of Interior. Investigations completed by the police are submitted to the Director of Public Prosecutions who obtains authority to prosecute from the Attorney General. Within the Attorney General's Office a dedicated anti-corruption prosecutor is operating in anticipation of the new anti-corruption legislation. It appears that, at present, there are no special investigative tools available other than those used by the Attorney General, the courts and police, for other criminal investigation work.

Namibia

Namibia gained independence from South Africa in 1990 and has a multi-party democracy.

Corruption within Namibia falls under the jurisdiction of the Namibian police, which, have no specially devoted resources to address the problem. It follows that normal police powers are used to investigate crimes of this nature. An alternative investigative model available within the Namibian Constitution would be the appointment of a short term Commissions of Inquiry with specific terms of reference. These, however, have been used sparingly due to the paucity of Judges of the High Court.

The Government of Namibia has been increasingly vocal in its condemnation of corruption and has

publicly recognised the danger it poses. In response to the presence of this issue on the public agenda, the government has drafted an Anti-Corruption Bill. At the time of writing this paper, the bill was before the country's National Assembly. When enacted, this legislation will bring into being the Namibian Anti-Corruption Commission, which also features public education and investigation in its mandate.

Currently, the power to initiate prosecutions for any offence within the country is vested with the country's Prosecutor General. This will not change when the new Anti-Corruption Commission is created.

Law enforcement officials in Namibia are very much alert to the belief that the country may be used as an entry point for illegal narcotics (in particular crack/cocaine) from Latin America to Southern Africa. However, the subject garnering the most attention within the country is cannabis. The authorities concede that narcotics are being smuggled through the country's land borders and that Namibia also lies on transshipment routes. No evidence has been identified to indicate that awareness of corruption within Namibia is a contributing factor in this traffic.

Angola¹⁷

Angola has a civil law system under which criminal investigations are largely the responsibility of the judiciary and police officers acting under the direction and control of the judges. The High Authority against Corruption was created in 1995 with the objective of developing 'preventative actions and carry out monitoring of corruption'. However, it appears that the High Authority has not been very active.

It would seem that there are elements of the country's media that are prepared to run exposes but it is said that there is little expertise in investigative journalism in the country.

There are some recent very positive signs of change. Firstly, there is the fact that Angola is a signatory to the SADC Protocol Against Corruption, a demonstration of high-level political will to tackle the problem. Secondly, there is evidence of an increasing willingness for the country to send representatives to regional forums discussing the issue. These representatives have been very open and honest about the extent of the problem within the country and have asked for assistance from their colleagues in SAFAC¹⁸ and SAMNAC¹⁹ to develop anti-corruption skills and strategies.

Comments on Group 2 countries

In Lesotho and Namibia the political debates on whether to establish a dedicated anti-corruption agency have been concluded and we now await the construction of the already designed organisations. Both governments are intent on implementing the 'three-pronged attack' strategy, though perhaps not as eager for the commencement of operations. Zimbabwe also envisages the creation of an anti-corruption commission. Mozambique's draft anti-corruption legislation envisages the establishment of a dedicated anti-corruption unit within the Attorney General Office; at present a dedicated anti-corruption prosecutor is already operating.

Mauritius has yet to reach conclusions on the efficacy of establishing a dedicated single anti-corruption organisation or the form that it should take if created. With regard to Angola the signs of activating the High Authority against Corruption are still weak.

Group 3 – Countries that currently have not contemplated to establish the dedicated anti-corruption agencies

Democratic Republic of the Congo

Given the political turmoil, which has faced the Democratic Republic of the Congo (DRC) over the past few years, it is logical that corruption and its effects have not been placed at the top of the Government's policy agenda and action list. Having said that, the country did sign the SADC Protocol Against Corruption indicating high level political will. However, it is believed that it will be some time before it will be possible for the DRC to ratify the Protocol and commence implementation.

The anti-corruption laws in the country date back to 1973 and do not appear to have been revised or updated since. Potential penalties associated with conviction for corruption offences are however the most severe in the region, with some offences attracting mandatory minimum sentences and forfeiture of 'illicit remunerations'.

Responsibility for dealing with investigations rest with the Judiciary Police under the civil law system. The Inter-Ministerial National Committee on the Fight against Drugs and Crime Prevention has identified a need for legislative changes in the area of corruption and for the development of comprehensive anti-corruption national programme.

The country's media is frequently covering corruption issues.

Seychelles

With a population of only 100,000 people, corruption does not seem to be an issue of major public concern in the Seychelle Islands. Corrupt acts are indeed punishable under the country's penal code which is enforced by the Seychelles Police Force. The force has no special anti-corruption unit and cases of corruption are the responsibility of the Criminal Investigation Unit.

In addition, the country's Ombudsman has powers to investigate corruption within the Public Service and the Judiciary. The prosecution authority on the islands is the Attorney General, who makes prosecution decisions and undertakes prosecutions. Both the Attorney General and the Ombudsman have the power to direct the Commissioner of Police to forward to them incomplete investigations or cases in which the police have decided not to recommend prosecution to their offices and they may also thereafter direct the police to pursue the matters in accordance with their directions.

The following powers of investigation are available to the police in the battle against corruption:

- Wiretapping on the authority of a judge – (the product is admissible in evidence)
- Searching with a warrant issued by a judicial officer, or without a warrant
- Electronic surveillance – (no particular authority is required)
- Undercover agents – though permissible, the size of the population involved seriously affects the feasibility of this tool

Public awareness and education about corruption is the responsibility of the Police Public Relations Officer and Community Police Officers though there is little evidence of such activities.

Whilst not specifically targeting corruption, the Seychelles Government has embarked on an exercise to 'clean-up' and revamp the public service as a means to increasing efficiency.

Corruption receives very little coverage in the Seychelles media.

Practitioners' Views on Corruption

Chapter 1 provided an overview of corruption in the region based on survey data. The presentations made at the seminar reveal that many SADC countries do share common problems. Table 4 below shows areas identified at the seminar as being vulnerable to corruption:

Table 4: Corruption vulnerable areas in the SADC

Legend:

- | | |
|--------------------------|-------------------------------------|
| 1 = Customs | 7 = Employment |
| 2 = Judiciary | 8 = Immigration and Border Controls |
| 3 = Police | 9 = Health |
| 4 = Procurement | 10 = Revenue Collection |
| 5 = Licences and permits | 11 = Narcotics trafficking |
| 6 = Education | |

√ = Identified as a problem in the country concerned

Country	Corruption Prone areas	1	2	3	4	5	6	7	8	9	10	11
Angola			√									
Botswana					√	√			√			
DRC		√										√
Lesotho		√										√
Malawi				√	√				√		√	
Mauritius		√		√	√					√		
Mozambique		√							√			√
Namibia		√		√	√	√			√			√
Seychelles		√										
South Africa				√	√	√			√			√
Swaziland			√		√			√				
Tanzania			√		√		√			√	√	√
Zambia		√			√							
Zimbabwe				√								
Totals		7	3	5	7	4	1	1	5	2	2	6

The order of prevalence of corruption problems is as follows:

- | | |
|-------|--|
| 1/2 | Customs and Procurement |
| 3 | Narcotics trafficking |
| 4/5 | Police and Immigration and Border Controls |
| 6 | Licences and permits |
| 7 | Judiciary |
| 8/9 | Revenue Collection and Health |
| 10/11 | Employment and Education |

One area on which the seminar focussed was corruption relating to drug trafficking in the region. The Southern African Interpol Sub-Regional Bureau confirmed that narcotics trafficking is a major regional concern, with hard drugs reaching the region from South America and Asia. South Africa, Tanzania, Lesotho, Mozambique, Namibia and the Democratic Republic of the Congo certainly

regard narcotics trafficking as extremely serious issues affecting their countries.

The seminar heard little evidence that the inevitable connection between narcotics trafficking and corruption is being addressed either at national or regional levels. Corruption involving customs, immigration and border controls also appears high on the list below Table 4, but for reasons different from drug trafficking. It would seem therefore that concerted proactive measures focussed on border posts would address a number of major issues and that there is an urgent need for both national and regionally coordinated action in this area. A means of addressing this would be for SARPC-CO²⁰ and SAFAC to form a working partnership to address the issue. It is further suggested that a meeting between the two organisations with regard to data collection, information sharing and joint operations could have a major impact.

Anti-corruption investigative tools used within the SADC Region

It is widely accepted that in order to investigate corruption effectively, it is necessary to use investigative techniques and powers that exceed the 'norms' for other types of criminal activities. The governments which provided these additional powers, have also recognised that corruption is exceedingly difficult to investigate and prove, that offences take place in great secrecy without witnesses, and that there is rarely forensic evidence available for examination.

These additional powers are sometimes vested in dedicated anti-corruption agencies without reference to the courts or they may be granted on application to a judicial officer. Typically the powers include:

1. Some erosion of a suspect's right of silence
2. Without recourse to the courts, compelling banks and other financial institutions to breach client confidentiality by disclosing details of suspects' financial activities
3. Compelling suspects to produce documents
4. Wiretapping^{21 22}
5. Electronic Surveillance²³
6. Undercover operations
7. Searches without warrant
8. Restraint of Assets

Table 5 below illustrates the extent to which these powers are available in the region²⁴

Table 5: Availability of additional anti-corruption investigation powers in SADC

Powers (1-8) as identified above; N/K = Not known

Country	Investigative Power/Tool	1	2	3	4	5	6	7	8
Botswana		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Lesotho		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Malawi		No	No	No	No	Yes	Yes	No	Yes
Mauritius		Yes	No	No	Yes	Yes	Yes	No	N/K
Seychelles		No	No	No	Yes	Yes	Yes ²⁵	No	N/K
South Africa		Yes ²⁶	No	Yes	Yes	Yes	Yes	No	Yes
Swaziland		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tanzania		Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Zambia		Yes	No	Yes	Yes	Yes	Yes	No	Yes
Zimbabwe		No	No	No	Yes	Yes	Yes	Yes	N/K

The extent to which these additional powers and tools are used within the countries in which they are available has not been measured, nor has the extent to which they are effective or capable of generating evidence. A study of these two factors would be of extreme value to countries contemplating revision of their anti-corruption measures and it is suggested that this could be undertaken by SAFAC. Revision of legislation might lead to the introduction of a number of newly classified offences, such as “conflict of interest”, “unexplained wealth”, etc., and these in turn may require additional investigative powers and evidentiary rules.

The Media and Corruption in the SADC

Media sources in two countries claim their governments are engaged in censorship practices. Throughout the region there is recognition that the media can play a major role in attacking corruption by exposing and reporting on its prevalence. In the countries already implementing the “three pronged attack” it is clear that anti-corruption agencies have been working to encourage investigative journalism and while they may not be working in partnership with media bodies, an atmosphere of mutual respect appears to be evolving.

A welcome development in this regard was the meeting between the Management Committee of SAFAC and the Steering Committee for the formation of the Southern African Media Network Against Corruption²⁷ in Maputo in December, 2001. At this meeting there was agreement that the two bodies should continue a dialogue leading to formal and informal links and information sharing strategies.

Conclusion

The building blocks for all anti-corruption initiatives are:

- Political will
- Effective anti-corruption legislation
- Provision of adequate law enforcement tools
- Provision of adequate human, financial and physical resources
- A determination to continue with the campaign despite setbacks and embarrassments
- Independent, skilled, effective and corruption-free judiciary
- Skilled personnel in the following disciplines
 - Investigations
 - Prosecutions
 - Accountancy
 - Public Education
 - Corruption Prevention
- Effective public education campaigns
- Independent, courageous and skilled media
- Continuing public support.

Four of these need special mention. Regional political will has been amply demonstrated by the adoption of the SADC Protocol Against Corruption. Without exception, each member state in the region has professed determination to tackle corruption within their own countries. The SADC Protocol itself will be an instrument of change in this regard, as one of its provisions requires signatories to periodically report on the progress of anti-corruption activities to a meeting of Heads of State. Thus, there is must confidence that the level of political will in the region to combat this problem will increase rather than decline.

All SADC countries currently have anti-corruption legislation, although, as it was pointed out in Chapter 2, a number of legislative developments need to take place in order to strengthen the anti-corruption normative frameworks and supportive enforcement structures.

Among many other things, this paper has sought to summarise the extent to which special anti-corruption investigative tools are in use in the region. An overview shows distinct variations but there does seem to be a common acceptance that special powers are essential for success.

There is wide disparity throughout the region as to the volume of resources devoted to national anti-corruption campaigns. Unfortunately, in some nations there is no budget for such programs and until this is addressed, little progress will be made. The fact that a number of donor and international agencies have contributed to the development of national anti-corruption campaigns is a welcome sign. It is suggested, however, that donors might realise their objectives more effectively by also supporting regional initiatives that encourage further self-development, offer more cost effective solutions and achieve lasting results. An example might be the facilitation of skills training.

Recent regional developments, of which the seminar under review was but one, tend to incite optimism that corruption will come to receive the attention it deserves. More and more stakeholders are joining the campaign both at national and regional levels and they are calling for increased coordination between the roles being assumed by SAFAC and the responsibilities of other international agencies such as the United Nations and SADC. The battle will be long, but it will be increasingly effective.

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1. In respect of two countries (Mozambique and Angola), the information provided in this paper has been supplemented by reference to presentations made at two other 2001 forums.
 2. Interestingly evidence obtained from an illegal search is admissible provided it relates to a fact relevant to the case.
 3. The percentage figures are presented on a ‘year against year basis’ and the convictions obtained may not necessarily relate to the prosecutions initiated as shown in the previous column, hence many cases may still be before the courts and as yet not concluded.
 4. These are the South African Police Service, the National Prosecuting Authority and the Special Investigating Unit.
 5. Known as the “Scorpions”
 6. Also known as the Ombudsman
 7. In the ‘three pronged attack’ context
 8. At a cost of @ US\$5 million
 9. The Prevention of Corruption Order No 19 of 1993
 10. 1998
 11. These tables exclude South Africa
 12. Includes ‘auxiliary’ employees
 13. The ratio in Hong Kong is 1:3600
 14. @US\$55 to US\$1850 at the ‘official’ exchange rate
 15. Views expressed by Zimbabwean media representatives at an anti-corruption workshop for journalists held in Victoria Falls, Zimbabwe in August, 2001
 16. Information obtained from a presentation made at the 1st Training Workshop for Anti-Corruption Investigators under the auspices of the Southern Africa Forum Against Corruption (SAFAC) and organized by the Human Rights Trust for Southern Africa (SAHRIT), Helderfontein, Gauteng, South Africa 4th – 8th June, 2001.
 17. Information also gathered from presentations made at a Media Workshop, hosted by SAHRIT (see Note 17) held at Victoria Falls, Zimbabwe between 13th and 17th August, 2001.
 18. Southern Africa Forum Against Corruption
 19. Southern Africa Media Network Against Corruption formed at the Media Workshop (See note 19)
 20. Southern African Regional Police Chiefs Cooperation Organisation
 21. Telephone interception
 22. Wiretapping is also used to investigate other serious offences
 23. Eves-dropping on suspects’ conversation by means of technical equipment
 24. No data is available from Angola, DRC, Namibia and Mozambique
 25. But never used
 26. But the product cannot normally be used as evidence against the suspect
 27. SAMNAC

Guidelines on legislation and enforcement

- One submission per country.
- Please provide answers using the format below.
- A sample submission for a hypothetical country is attached: the sample does not include relevant attachments and annotations.
- Whenever citing from an official source (court order, legal precedents, government report or research works), please provide full citation as endnotes (not footnotes).
- Each country is requested to fax or e-mail this general information to United Nations Office on Drugs and Crime, Regional Office for Southern Africa.
- Where it is possible, all document should also be provided in hard copy and via a computer diskette in MS-DOS ASCII (text) file or in Word or Word Perfect format.

FORMAT**(1) Legislative Information****(a) Laws which specifically target corruption:**

- Does your country have any laws which specifically target corruption?
- If you have a special law or laws which specifically target anti-corruption, please provide the names and cites for such law(s), a brief description of the law(s) and what behaviour is proscribed, and also a copy of the law.

(b) Offenses and sanctions related to corruption:

- Please specify what types of corrupt behavior are proscribed by your criminal code, special laws, or other legislative and administrative sources? Such behavior could include, for example:
 - acceptances or demands of money or some other benefit by public officials,
 - offers or promises to provide money or other benefits to public officials,
 - bribery involving foreign officials,
 - bribery between private entities,
 - trading in influence by a non-public official who asserts he or she can influence a government official or action upon the promise or receipt of money or some other benefit,
 - bribery involving officials of international organizations,
 - laundering any money or benefit received pursuant to an offense mentioned above, or
 - offenses involving funding for political parties, election fraud, etc.
- For each proscribed behavior, please specify the cite of the code provision which makes such behavior an offense and the respective potential sanctions for each offense. If imprisonment is a potential sanction, please provide the maximum and minimum possible sentences for each offense.
- Can public office holders be dismissed or disqualified for engaging in any of the behaviors which you mentioned above?

(c) Liability of legal persons/corporations for corrupt behavior

- Are legal entities (e.g. – corporations, non-profit organizations, etc.) subject to any of the offenses mentioned in part (b) above? If so, please list which offenses. If legal entities are subject to different offenses or sanctions, please provide legal cites for each offense and respective potential sanctions for each offense.

(2) Organisational information:**(a) Investigative Authority:**

- What agencies are entitled to investigate corruption cases?
- If it is the police, are there special anti-corruption units, and, if so, please provide descriptions of such special units?
- Is there a specialised anti-corruption body with investigative and/or prosecutorial powers?
- If there is more than one agency involved with the investigation and prosecution of corruption cases, please describe the distribution of responsibilities among the various agencies?
- Are the following tools available to gather evidence in corruption cases? If so, please list the following for each tool: (a) who can authorize the use of each tool (e.g. – prosecutor, judge, investigator) to gather evidence?, (b) is the evidence obtained by each tool ever admissible in a criminal trial (and, if so, upon what circumstances)?
 - wiretap
 - searches and seizures
 - electronic surveillance
 - use of undercover agents or agents provocateur
 - use of formal investigative/judicial requests or other means which require the production of financial or other documents,
 - other extraordinary means to gather evidence
- Does your country have any formal system created to protect witnesses who testify in corruption cases? If so, please briefly describe such system.

Other activities of investigative authorities:

- Is the investigative authority for corruption cases involved in activities other than criminal investigation (such as, for example, public awareness campaigns, education, or public relations)? If so, please describe such activities.

(b) Prosecution:

- What agencies are entitled to bring corruption cases to the adjudicating authorities (for example, public prosecutors, special prosecutors, special investigative judges, officers in charge of special investigative units or other appropriate officers or organisations)?
- Does your constitution or laws provide any individuals or organizations special grants of immunity from indictment, prosecution, or preventive custody (e.g. – members of parliament, judges, prosecutors, others?) If so, please describe the extent of each immunity and also cite the legal authority from which each grant of immunity extends.

(c) Adjudication:

- What courts or other bodies try corruption cases?
- General statistical information (where available, please provide source.) Please include statistics of, in the last 5 years,;
 - How many corruption cases have been reported to the investigative authorities?
 - How many were investigated?
 - How many persons were charged with corruption offences?
 - How many corruption cases have been adjudicated?
 - What kinds of penalties were imposed on the persons convicted?
 - Have the courts imposed heavier penalties for public officials?
 - What percentage of crimes reported to investigative agencies is corruption related?

(3) Trends:

- In your opinion, what areas and persons are most prone to corruption?
- What corruption problems seem to be on the rise in your country?

- Does there exist any non-law enforcement-related governmental bodies created to help address corruption problems in your country (e.g. – an anti-corruption parliamentary commission with no investigative functions, etc.)?
- How is corruption treated in the media? How often does this issue make headlines?
- Has your government issued any decrees or formal programmatic statements about the fight against corruption? If so, please briefly describe these efforts.

(4) International co-operation:

- What is necessary to enhance international co-operation in the investigation and prosecution of corruption?

(5) Future direction:

- Is there any particularly noteworthy developments in anti-corruption strategies in your country (for example, new or proposed legislation, creation of new bodies or authorities, or training efforts)?

Annex 2.

Guidelines for Preparing a Case Study

Each country will be asked to prepare one case study for each of the following three areas of corruption:

1. Political/Administrative corruption,
2. Economic corruption, and
3. Corruption related to drug trafficking/abuse/control

Each corruption area can be characterised loosely by the participants in the corrupt action.

1. *Political/Administrative corruption:* one of the actors holds an elected or appointed office or is a government or political official; and, thereby, the consequence of the corrupt action directly influences the politics and governance of the state.
2. *Economic corruption:* one of the actors is an official of a public enterprise (e.g.—corruption involving privatization), or the corrupt action involves a public or private enterprise (e.g. – corruption related to contractual dealings).
3. *Corruption related to drug trafficking/abuse/control:* an actor is engaged in criminal justice/drug enforcement-related activities or is responsible for helping enforce laws and the corrupt activity is aimed at trafficking in drugs or street-dealing or manufacturing

Contents of each case study

Each participating country (not each participant) is expected to prepare one case-study for each type of corruption mentioned above (three cases total per each country).

Each delegation should, to the extent possible, draw upon the most notable cases of corruption, including those that involved a large amount of financial benefit, involved high or top-ranking officials or business managers, or became the subject of much press or public attention in your country.

Each case study should preferably address the following issues:

Case-related facts

Actors (Who)

- Description of Actors: Who offered the bribe or performed the corrupt action? Who received or solicited the bribe?
- What is the actor's position and decision making powers?

Time/ Duration (When)

- Did the action occur only once, or was it continuing?
- If it is a continuous action, how long did it last, and how often did it occur?

Offence place (Where)

- Where did the offence take place: within your country or in a foreign country?

Content (What)

- What was the basis of the corrupt agreement?
- What was the objective?
- How much money or what kind of reward was involved?

Method (How)

- How was payment made, or the reward transferred? (Where known, provide details)

Motivation (Why)

- Was the conduct motivated by reasons of financial gain or by other reasons (for example, for political purpose or group loyalty)?

Investigation

Initiatives

- What led to or triggered the investigation (for example, citizen or fellow officer complaints, management vigilance, or media activity)?

Technique

- What kinds of investigative techniques were used, and what evidence was gathered?

Special consideration

- What particular investigative powers were available under the relevant laws?
- Were these used?

Prosecution

- What difficulties were faced in
 - determining to prosecute; and
 - carrying out the prosecution.
- Are there special evidentiary or procedural rules in corruption prosecutions? If so, were these used?

Outcome of the investigation

- Were the involved parties prosecuted?
- Were they convicted and, if so, what penalty was imposed?

Evaluation

General Evaluation of investigation and prosecution

- Was the investigation and prosecution successful?
- What legal or practical shortcomings were identified?

Keys to success/ failure of the investigation and prosecution

- What are regarded as the principal reasons for success or failure (for example, particular police powers, legal provisions, procedural provisions, police or prosecutor skills, or resources or the lack of such provisions, powers, or resources)?

Annex 3

REGIONAL SEMINAR ON ANTI-CORRUPTION INVESTIGATING STRATEGIES WITH PARTICULAR REGARD TO DRUG CONTROL

SEMINAR EVALUATION

Tumelo Gopane

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Introduction

The total number of participants in the seminar was fifty-seven, of which forty-six were delegates from the SADC member states. Twenty-six individuals responded (56%) to an evaluation questionnaire presented during the final session of the seminar. This survey was created to provide seminar organizers with feedback on what participants found helpful, unhelpful, or would like included in the future. The survey sought feedback on the following areas:

- ¥ General assessment of the seminar
- ¥ Case study method
- ¥ Presentation by experts
- ¥ Organization of the seminar
- ¥ Dissemination of information
- ¥ Technical cooperation
- ¥ Outcome of the seminar.

General Assessment

Question 1: Please indicate your rating for the overall impression of the seminar from 1 to five, (with 1 being the lowest and 5 the highest)

Category	High	Somewhat High	Low	Average	Blank *
Overall impression	8	9	1	7	1

* Represents the number of all the respondents who did not provide information.

Seventeen respondents indicated their overall impression of the seminar was high; seven rated the seminar as average. Only one respondent rated the seminar as poor.

Question 2: What do you think about the duration of the seminar?

Category	Too Long	Long	Appropriate	Short	Too short	Blank
Duration of the seminar	1	2	18	3	1	1

Eighteen respondents found the duration of the seminar to be just “appropriate”, while three respondents found the seminar long and four respondents deemed the seminar to be short. In total, a majority of the respondents found the length of the seminar appropriate and suitable.

Case Studies and Discussion

Question 3: Please rate the case study method in terms of its substantive contribution to the seminar

Category	Somewhat high	High	Appropriate	Somewhat low	Blank
Contribution of the case method	9	9	5	2	1

Eighteen respondents rated the case study method as being highly contributive to the seminar. Five of the respondents found the case study method to be appropriate; two respondents found the case study method contribution to the seminar to be somewhat low. A majority of the participants rated the case study method favorably.

Question 4: Would you say the average length of each case study presented was

Category	Too long	Somewhat long	Appropriate	Somewhat short	Too short	Blank
Duration of the presentation	2	3	17	1	2	1

Seventeen respondents found the average length of each case study to be appropriate, while three respondents found the length to be somewhat long and three found the length to be short.

Question 5: Would you say the discussion following the case study presentation was

Category	Excellent	Good	Appropriate	Poor	Very poor
Discussion	4	14	7	1	0

Eighteen respondents found the discussion following the case study presentation to be “good” (4 respondents found the discussion to be “excellent”); seven found the discussion to be “appropriate”, and only one found the discussion to be “poor”. Overall, respondents indicated that the seminar achieved good balance between the presentations (lectures and case studies) and interactive discussions.

Presentations by experts

Question 6: Please rate the expert’ presentation in terms of substantive contribution to the seminar

Category	Excellent	Good	Appropriate	Poor	Blank
Experts’ presentation	14	8	3	0	1

Fourteen respondents found the experts’ contribution to the seminar to be “excellent”, eight found the expert contribution as “good”, three found their contribution as “appropriate”.

Question 7: Duration of the expert presentation

Category	Too long	Somewhat long	Appropriate	Blank	Too short
Duration of the presentation	0	2	14	9	1

Fourteen respondents found the length of the presentation to be appropriate , two respondents found the length of the presentation to be somewhat long and one found the length to be too short . Nine of the respondents did not respond to this question because the question did not have a proper heading.

Organization of the seminar

Question 8: Would you say the organization of the seminar was

Category	Excellent	Good	Appropriate	Poor	Very poor
Organization of the seminar	5	10	9	2	0

Fifteen respondents rated the organization of the seminar as good . Five rated the seminar as excellent, nine found the organization to be appropriate . Only two found the organization poor .

Question 9: The working atmosphere was

Category	Pleasant	Average	Unpleasant
Working atmosphere	15	8	3

Fifteen respondents found the atmosphere of the seminar to be “pleasant”, while eight of the respondents found the organization of the seminar to be “average”. Only three of the participants described the atmosphere of the seminar to be “unpleasant” (the reason set forth was that the conference hall was not adequately aired and that it was too small).

Question 10: Topics that should have been covered

The respondents agreed that the most important topics were covered. Only one respondent felt that money laundering should have been covered because the region is especially affected by this particular crime.

Outcome of the seminar

Question 11: Would you say that the seminar was

Category	Very relevant	Somewhat relevant	Not relevant
Relevance	21	5	0

Twenty-one of the respondents found the seminar to be relevant to their particular country, while five found the seminar to be somewhat relevant to their particular country. No participants regarded the seminar as irrelevant to their particular country.

Question 12. Dissemination of information

Different mechanisms were mentioned as ways of diffusing information and experience gained from the seminar. The following is the list of the frequently mentioned mechanisms:

- Compiling of reports that will be made available to colleagues.
- Holding seminars and workshops in which all major stakeholders involved in the fight against corruption are invited and all the information and experience that was gained from the seminar is shared among participants.
- Workshops will be used not only to educate criminal justice personnel about corruption, but civil society as well.

- Southern Africa Forum Against Corruption
- In-service training, radio and television show that the public at large can access.
- Electronic distribution of documents as a means of ensuring that people will have access to the material at all times.
- Establishment of Anti-Corruption Units

Technical co-operation

Assistance by international organizations

Participants felt that more guidelines are needed to help their respective countries establish Anti-Corruption Units. It was also mentioned that assistance was needed with ongoing efforts to seize the proceeds from criminal activity and plans to further the enforcement of regional legislation.

Question 13: Please order the following type of assistance by international organizations in the area of Anti-Corruption by importance for your country.

Categories	Most important	Least important	Average	Blank
Preparation of laws	9	8	5	4
Establishment of Anti-Corruption Units	11	4	7	4
Training in investigative methods	21	2	3	0
Analysis of the current situation	16	4	6	0
Organization of Prevention	12	4	7	0
Coordination among various authorities	11	6	8	0

Twenty-one respondents' felt that the most important area in need of international assistance is training in investigative methods. Sixteen of the respondents mentioned analyses of the current corruption situation as an area requiring international assistance. Assistance was also requested in the areas of prevention, co-ordination among agencies and the establishment of Anti-Corruption Units. Less importance was attached to the legislative work, including the ratification of international and regional conventions and protocols.

The above ratings of the importance of areas for technical assistance clearly reflect the profile of the participants who belong to the law enforcement sector.

Suggestions for future seminars

The list below consists of suggestions that were mentioned regarding future seminars:

- Material to be discussed should be sent ahead of time
- Undue emphasis on the regional problems related to corruption and violence
- Importance of money-laundering
- Case study method based on actual cases rather than hypothetical cases
- Clearer guidelines for the verbal presentation of country profile and case study
- Issuance of the certificates of attendance
- Better working conditions in terms of the conference hall and facilities
- Long duration of the seminar in order to provide for leisure activities and meetings with the host country/ city authorities