



IMPLEMENTING AND ENFORCING THE AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

A comparative review

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ACRONYMS

AU	African Union
AUABC	African Union Advisory Board on Corruption
AUCPCC	African Union Convention on Preventing and Combating Corruption
CENAREF	National Finance Intelligence Unit (Cellule Nationale des Renseignements Financiers [DRC])
CNE	National Commission of Elections (Mozambique)
CSO	Civil Society Organisation
DRC	Democratic Republic of Congo
EFCC	Economic and Financial Crimes Commission (Nigeria)
FIC	Financial Intelligence Centre (Ethiopia and South Africa)
FATF	Financial Action Task Force
LICOCO	Congolese League against Corruption (Ligue Congolaise de Lutte contre la Corruption, LICOCO [DRC])
MLA	Mutual Legal Assistance
PEP	Politically Exposed Persons
STR	Suspicious Transaction Report (also known as Suspicious Activity Report)
UNCAC	United Nations Convention Against Corruption

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EXECUTIVE SUMMARY

Corruption in African countries is hindering economic, political and social development. It is a major barrier to economic growth, good governance and basic freedoms, such as freedom of speech and the right of citizens to hold governments to account.

In 2003, the African Union (AU) adopted the African Union Convention on Preventing and Combatting Corruption (AUCPCC), a shared roadmap for states to implement governance and anti-corruption policies and systems on a national and regional level. To date, 44 of the 55 AU member states have ratified the convention. However, there is little information on how well the convention is implemented in practice. The African Union Advisory Board on Corruption (AUABC), responsible for monitoring countries' progress in implementing the convention, has only received 13 progress reports to date, and these are not available to the public.

To address this gap, this report assesses the state of implementation of the AUCPCC in 10 countries: Côte d'Ivoire, the Democratic Republic of Congo (DRC), Ethiopia, Ghana, Morocco, Mozambique, Nigeria, Rwanda, South Africa and Tunisia. It is primarily aimed at supporting policy-makers and civil society members from the 10 countries to identify key challenges that need to be addressed to improve both the legal framework and enforcement in four key areas of the convention: money laundering (Article 6), illicit enrichment (Article 8), political party funding (Article 10), and civil society and media (Article 12). The report focuses on these four areas because they are crucial to developing strong anti-corruption frameworks and preventing the loss of vast sums to corruption.

General recommendations

- **Ratification:** All AU member states that have not yet done so, should urgently complete the full ratification process of the AUCPCC, including DRC and Morocco.
- **Monitoring:** Countries which have ratified the convention should finalise and submit progress reports to the AUABC as soon as possible. Countries should also consider developing formal multi-stakeholder engagement structures at the national level to support implementation and monitoring of the convention.
- **Transparency:** The AU should make all progress reports publicly available so that citizens can monitor their governments' internationally agreed commitments on anti-corruption. All states parties to the AUCPCC should publish, on at least an annual basis, easily accessible disaggregated data on the enforcement of money laundering and illicit enrichment offences and data on political party finances, including the amounts of public and private donations received and spent.
- **Capacity and independence:** All countries should invest in specialist technical skills and coordination capacity among investigators, prosecutors and other specialised professions to pursue complex corruption cases while ensuring full independence of prosecutorial and judicial bodies so that offences can be prosecuted impartially.

MONEY LAUNDERING AND ILLICIT ENRICHMENT

- **Criminalisation of money laundering and illicit enrichment offences:** Both offences are criminalised in all 10 countries examined in this report, except in Morocco which has yet to criminalise illicit enrichment. While Ghana and South Africa have not criminalised illicit enrichment *per se*, they have both established legal mechanisms for addressing the issues. Tunisia, meanwhile, excludes certain elements from the money laundering offence, including aiding and abetting and the acquisition, possession or use of property with the knowledge that it is the proceeds of corruption or related offences.
- **Scope of the money laundering offence:** The majority of countries include all crimes as potential predicate offences for the purposes of establishing money laundering, although Ethiopia, Ghana, Morocco and Mozambique take a threshold approach (that is, linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence). Most countries do

not require a prior conviction of the predicate offence for the purpose of establishing a money laundering offence (although it is not clear if this is the case in Côte d'Ivoire, DRC and Morocco). In most countries, there is either an explicit requirement to establish dual criminality with regard to predicate offences or it is assumed to apply where the predicate offence is committed abroad.

- **Scope of the illicit enrichment offence:** In Côte d'Ivoire and Tunisia, only public officials and/or their relatives can be charged with illicit enrichment, while in DRC, Ethiopia, Mozambique, Nigeria and Rwanda the offence applies to public officials and any other persons. All seven countries which have expressly criminalised the offence of illicit enrichment define it as a significant increase in assets and include the lack of a reasonable justification for the enrichment as part of the offence. The requirement that illicit enrichment be committed intentionally is not explicitly referenced in most countries' legislation, except for Ethiopia.
- **Enforcement data:** Reliable data on investigations, prosecutions, convictions and sanctions for money laundering and illicit enrichment is very difficult to come by across the 10 countries. Where data is available, it is rarely disaggregated, and, in the case of money laundering, fails to identify the predicate offences or whether cases relate to corruption. This makes monitoring the effectiveness of enforcement of money laundering and illicit enrichment offences very challenging.
- **Enforcement levels:** Available data suggests that enforcement of the two offences is severely lagging in most countries, although Tunisia has made some progress on pursuing money laundering offences. A key challenge in some countries is that authorities tend to focus on pursuing predicate offences, rather than money laundering offences, as the chances of successful prosecution are higher and they tend to carry stiffer sentences. In addition, enforcement of both money laundering and illicit enrichment measures is often hampered by limited financial and operational independence of prosecutorial and judicial bodies, court delays, limited resources, lack of technical knowledge, tools and specialised skills, and poor inter-agency coordination.

Recommendations

- **Tunisia** should consider expanding the scope of the money laundering offence to include aiding and abetting and the acquisition, possession or use of property with the knowledge that it is the proceeds of corruption.
- **Morocco** should consider criminalising illicit enrichment as a matter of priority and including this as a predicate offence for money laundering.
- **Côte d'Ivoire, DRC and Morocco** should consider clarifying, through legislative amendments, whether money laundering can be prosecuted autonomously from the predicate offence(s).
- **Ghana, Morocco and South Africa** should consider making illicit enrichment an explicit, standalone offence subject to criminal sanctions.
- To help avoid legal uncertainty, **Côte d'Ivoire, DRC and Tunisia** should stipulate the time period during which a person can be held liable for illicit enrichment.
- **Côte d'Ivoire, DRC, Mozambique, Nigeria, Rwanda and Tunisia** should consider including the "lack of a reasonable justification" for the enrichment as part of the offence.
- **All countries** should prioritise the publication of annual, disaggregated data on the number of money laundering and illicit enrichment cases prosecuted and their outcomes. Prosecution and conviction rates should be disaggregated to identify at least: the predicate offences, the nature of the case (for example individual or company, even if anonymised), and information on sanctions imposed and sums recovered.
- Given the complexities often involved in investigating money laundering and illicit enrichment offences, **all countries** should prioritise investment in specialist technical skills and capacity required to pursue such cases.
- **All countries** should also consider reviewing and strengthening coordination mechanisms between investigators and prosecutors, as well with other specialised professions such as financial analysts and tax inspectors, whose expertise can be critical in bringing complex cases to a successful conclusion.
- Where possible, enforcement bodies in **all countries** should focus not only on pursuing the underlying predicate offences, which tend to be easier to prosecute, but also give due attention to the money laundering offence itself.
- **All countries** should ensure full independence of prosecutorial and judicial bodies so that offences can be prosecuted impartially and without favour to powerful, politically connected individuals.

POLITICAL PARTY FUNDING

- **Regulation of donations:** With the exception of DRC and South Africa, most countries fail to expressly ban the use of funds acquired through illegal or corrupt means in political finance or electoral legislation. There are also, in some cases, important loopholes which allow donors to disguise donations as other financial instruments such as gratuitous loans and donations-in-kind, or channel funds through parties in order to avoid disclosure requirements. Côte d'Ivoire does not regulate private funding of political parties at all.
- **Transparency:** Ghana, Morocco, Mozambique, Nigeria, South Africa and Tunisia require political parties' financial reports to be made publicly available, although only four of these countries (Ghana, Mozambique, Nigeria and South Africa) expressly require the identity of private donors to be publicly disclosed. Ghana requires parties to submit a statement of their assets and liabilities to the Electoral Commission *prior* to a general election, which enables stronger oversight with regard to the funding of election campaigns. Rwanda and South Africa, meanwhile, require individual donations above a certain threshold to be reported to the relevant oversight bodies. In practice, even where disclosures are made to the public, they are rarely easily accessible to the ordinary citizen. For example, in Ghana, citizens must approach the Electoral Commission to access the information and pay a fee.
- **Sanctions:** Sanctions for non-compliance with political party funding rules are generally either non-existent, too lenient or too severe. In Ethiopia and Ghana, for example, the primary penalty for non-compliance is the cancellation of the registration of the offending political party. Such extreme penalties can undermine political rights and, with no alternative minor penalties in place, violations of the political finance law are likely to go unpunished.
- **Enforcement:** Even where legislation is relatively strong, it is rarely enforced. In some countries, such as DRC, Ethiopia and Mozambique, party funding legislation has fallen almost completely into disuse. Enforcement is often hampered by the lack of capacity and independence of oversight bodies, leading to sanctions either not being applied at all or in a manner that is not impartial (for example DRC, Ghana, Ethiopia, Mozambique and Nigeria).

Recommendations

- **Côte d'Ivoire** should take steps to regulate private funding of political parties as soon as practically possible.
- **Côte d'Ivoire, Ethiopia, Ghana, Morocco, Mozambique, Nigeria, Rwanda and Tunisia** should consider expressly banning the use of funds acquired through illegal or corrupt means in political finance or electoral legislation.
- **All countries** should review their legislative framework to close any loopholes regulating donations. In particular, countries should consider regulating the channelling of money through third parties and donations disguised as other financial instruments. In addition, countries that have not done so should consider placing limits on the amount a single donor can donate to a political party over a given period to prevent any party being captured by a single or limited number of wealthy individuals. South Africa's new Political Party Funding Act can be considered a good example to follow in this respect.
- **All countries** should work towards ensuring full transparency of political party funding by requiring political parties to make all financial reports publicly available on an annual basis, either directly or via an independent oversight agency, and in a manner that is accessible to the public, including in online, machine readable formats. Additional reporting on the funding of election campaigns should be required 90 days preceding and after a major election.
- **Côte d'Ivoire, DRC, Ethiopia, Morocco, Rwanda and Tunisia** should expressly require the identity of private funders of political parties, and the amounts both received and spent, to be publicly disclosed. Countries should consider making it mandatory for individual donations above a certain threshold to be reported to the relevant oversight bodies, as is the case in Rwanda and South Africa.
- **All countries** should consider reviewing sanctions for non-compliance with political party funding regulations to ensure that they are proportionate and effective. Sanctions should be sufficiently severe as to act as a deterrent while being graded according to the gravity and recurrence of the offence. In all cases, states must provide oversight bodies with the necessary funding, personnel

and independence required to ensure that such sanctions are imposed in an impartial and consistent manner.

MEDIA AND CIVIL SOCIETY

- **Enabling environment:** Ghana and South Africa have a vibrant and diverse civil society and media landscape. In most other countries, state interference in these sectors is common. In DRC, Ethiopia and Mozambique, for example, there are continued reports of harassment, violence and/or arbitrary arrests of journalists and activists. In other countries, such as Morocco, authorities use more subtle tactics of control, like legal harassment, travel restrictions and intrusive surveillance, to intimidate independent journalists. In many cases such tactics lead to a high degree of self-censorship by the media.
- **Engagement and participation:** To date, no country has developed an enduring structure specifically for external monitoring of the AUCPCC. Nevertheless, there are some examples of successful coalitions and multi-stakeholder platforms which could take on this role. The Ghana Anti-Corruption Coalition, for example, is a cross-sectoral grouping of public, private and civil society organisations (CSOs) which seeks to promote anti-corruption and good governance initiatives in the country, while in Tunisia, the Charter of Civil Society Alliance to Fight Corruption was developed by numerous CSOs and associations to contribute to the development and implementation of national policies and programmes on anti-corruption, good governance and transparency.
- **Access to Information:** With the exception of DRC, all countries analysed in this report have some form of standalone access to information legislation. However, the strength of access to information and other related laws varies considerably across countries. For example, DRC, Ethiopia, Rwanda and Tunisia all condition freedom of expression and association in various ways through ambiguous requirements which are open to interpretation and hence can be used to limit these freedoms in practice. Certain laws also restrict the kind of information which can be accessed by the public to an unreasonable extent. Ghana, for example, restricts access to information prepared for the president, vice president and cabinet, while in Morocco, requestors must prove a direct interest in the information requested.

Recommendations

- **All countries** should review their legislative framework on freedom of expression, association and information to ensure that there is a robust system in place to enable media and civil society to operate free of interference or intimidation.
- **DRC, Ethiopia, Rwanda and Tunisia** should reconsider the use of ambiguous terms such as “public order”, “good morals” or “encouragement of terrorist acts” in their legislation as they are open to interpretation and hence abuse.
- **Ghana** should consider removing the broad exceptions to information which is required to be made publicly available, while **Morocco** should remove the requirement for requestors of government held information to demonstrate a direct interest in that information. **DRC** should enact freedom of information legislation as a matter of priority.
- **All countries** should vigorously investigate allegations of harassment, violence and/or arbitrary arrests of journalists and activists and avoid state interference, prior approval or validation of media reports. Refusals of requests for information should be subject to appeal or review to an independent arbitrator such as a court of law.
- **All countries** should consider developing more formal engagement structures with media, civil society, the private sector and other stakeholders to support implementation and monitoring of the AUCPCC. Where they exist, states could engage existing coalitions and multi-stakeholder platforms to perform this role.

INTRODUCTION

THE AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

Corruption in African countries is hindering economic, political and social development. It is a major barrier to economic growth, good governance and basic freedoms, such as freedom of speech or citizens' right to hold governments to account. More than this, corruption affects the wellbeing of individuals, families and communities. While it varies extensively across countries and public institutions, corruption harms hundreds of millions of citizens by undermining their chances of a stable, prosperous future.¹

The African Union Convention on Preventing and Combatting Corruption (AUCPCC) is a shared roadmap for member states to implement governance and anti-corruption policies and systems on a national and regional level. It was adopted by the African Union (AU) Assembly in July 2003. The convention contains strong provisions that could go a long way in resolving corruption challenges across the continent. Along with similar instruments, such as the UN Convention Against Corruption (UNCAC), it provides a consensual framework to address cross-border issues, facilitate international cooperation and mutual legal assistance, and harmonise the legal and institutional framework to prevent and fight corruption.²

The AUCPCC has a number of strong points. It contains clear reference to human rights and social justice (see Preamble, Articles 2 and 3)³ and contains a mandatory standalone article on political party funding (Article 10). In contrast, the relevant UNCAC provision (Article 7) is discretionary and has a narrower scope. The AUCPCC includes various provisions on prevention (such as accounting, tax and audit systems, whistleblower protection, procurement standards and preventive bodies, including independent national anti-corruption authorities), and criminalisation of offences (such as active and passive bribery, domestic and foreign bribery, embezzlement, money laundering and illicit enrichment), although these are not as detailed as those provided under the UNCAC.

The convention includes both mandatory and non-mandatory provisions. For example, the AUCPCC contains mandatory provisions on private-to-private corruption (Article 11). It also requires public officials to submit asset declarations and provides various restrictions on the immunity of public officials (Article 7). The convention is also notable for its emphasis on access to information and the role of media, and has strong language on the involvement of civil society (Article 12).⁴ It is also unique in having a standalone article on minimum guarantees of a fair trial (Article 14). Under Article 19, the AUCPCC provides the framework for improving international cooperation between states, through better collaboration to prevent corruption in international trade transactions and in development aid and cooperation programmes, and through greater mutual law enforcement assistance in the freezing and confiscation of assets.⁵

At the same time, the convention has a number of weaknesses. It contains some vaguely worded provisions that lack detail, which could lead to undermining coherence between anti-corruption frameworks.⁶ The presence of non-mandatory provisions opens up the possibility for member states to avoid implementation in some cases.⁷ Although the AUCPCC has been hailed for acknowledging the connections between human rights and corruption, it focusses on criminal sanctions and fails to provide a coherent framework of remedies for individuals or groups whose human rights are largely violated as a result of corruption, such as compensation or restitution.⁸ Unlike the UNCAC, which calls for states to implement provisions allowing victims to seek compensation for damages caused by corruption (Article 35), the AUCPCC does not impose a similar obligation on state parties. Finally, the convention does not provide for any complaints and conflict resolution mechanisms.

Follow-up mechanism

Article 22 of the convention requires that state parties submit a report to the African Union Advisory Board on Corruption (AUABC) on their progress in implementing the AUCPCC. Civil society must also be involved in this monitoring process. However, this follow-up mechanism has been slow to come into effect, in part due to delays in resourcing the AUABC. The board has only received 13 reports to date, and only a handful

of reports are considered final (including Ethiopia, Nigeria and Rwanda), although these are not available to the public.⁹

PURPOSE OF THE REPORT

This report is primarily aimed at supporting policy-makers and civil society members from 10 African countries (Côte d'Ivoire, the Democratic Republic of Congo [DRC], Ethiopia, Ghana, Morocco, Mozambique, Nigeria, Rwanda, South Africa and Tunisia) to identify key challenges that need to be addressed to improve both the legal framework and enforcement of selected anti-corruption provisions contained in the AUCPCC. It will also be useful to stakeholders from other African countries who are party to the convention and who are interested in better understanding some of the challenges faced by their peers in combatting corruption.

Of the 10 countries covered by the report, all but two (DRC and Morocco) have signed, ratified and deposited instruments of ratification of the convention at the time of writing. In the case of DRC, the law authorises ratification of the AUCPCC,¹⁰ but administrative delays are reportedly holding back the process of depositing the instruments of ratification.¹¹ Morocco announced its intention to ratify the convention in late 2018.¹²

This report identifies implementation and enforcement gaps and provides concrete recommendations in four areas: money laundering (Article 6),¹³ illicit enrichment (Article 8)¹⁴ – both of which are criminalised – political party funding (Article 10), and civil society and media (Article 12). The report focuses on these four areas because they are crucial to developing strong anti-corruption frameworks and preventing the loss of vast sums to corruption. The choice of focus areas is also representative of key issues addressed through Transparency International's anti-corruption efforts in Africa.

Money laundering plays a vital role in generating and sustaining illicit financial outflows. In particular, organised crime groups rely on money laundering to hide the origin of funds generated from their illegal activities. In response, governments and lawmakers have introduced a range of legal and non-legal measures to prevent, detect and eventually prosecute money laundering. One such tool is the introduction of illicit enrichment offences, which criminalises possession of unexplained wealth. The convention also acknowledges that the fight against corruption requires a comprehensive approach that looks at measures that go beyond the formal institutions of the state. Two vital non-state actors in this regard are political parties, which are critical to shaping policy by putting forward candidates for public office,¹⁵ and civil society and the media, which are indispensable allies to citizens in holding governments to account in the fight against corruption.

The report is based primarily on desk-based research, including a literature review, a review of laws and jurisprudence of the respective countries, and a review of enforcement data, where available. The desk review was supplemented by a questionnaire with semi-open and closed questions, administered through local Transparency International chapters and partners. Follow-up interviews and requests for comments were arranged with various researchers and local experts. The report also draws on additional research conducted by Transparency International chapters in Ghana, Ethiopia, Morocco, Mozambique and South Africa.

The remainder of this report provides an analysis of each of the four articles of the convention. Section 1 deals with Article 6 on money laundering, section 2 covers Article 8 on illicit enrichment, section 3 discusses Article 10 on political party funding, and section 4 deals with Article 12 on civil society and media. Each section begins with an overview of the respective article or offence, followed by a discussion of both implementation and enforcement challenges in each of the 10 countries.



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1. MONEY LAUNDERING

ARTICLE 6: LAUNDERING OF THE PROCEEDS OF CORRUPTION

State Parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

- a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action.
- b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to the property which is the proceeds of corruption or related offences.
- c) The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences.

Article 6 of the AUCPCC criminalises money laundering, understood as the process by which the origins of assets generated by criminal activities are concealed in order to obscure the link between the funds and their illegal origins. While the offences under Article 6 are similar to those found in other treaties, including the UNCAC, the convention does not set out a framework for preventing money laundering, nor does it include provisions on the investigation, prosecution and sanctioning of money laundering.

This chapter discusses four areas in terms of the extent to which AUCPCC provisions are reflected in the national legislation of the 10 countries covered in this report. These are:

- **Scope of the money laundering offence:** Are the various money laundering offences provided for under Article 6 covered in the domestic legislation?
- **Scope of predicate offences:** To what extent are the offences listed in Article 4 (passive and active bribery, embezzlement, solicitation or offer of undue advantage, illicit enrichment, concealment, etc.) considered predicate offences for the purpose of establishing the money laundering offence?¹⁶
- **Autonomy of the money laundering offence:** Is prior conviction for the predicate offence(s) required to pursue a money laundering case?¹⁷
- **Dual criminality:** Where the predicate offence was committed abroad, is dual criminality required?¹⁸

In addition, the chapter briefly discusses the **availability of enforcement data** and the **level of enforcement** against money laundering offences in each country.

KEY FINDINGS

Table 1: Scope of money laundering offence

COUNTRY	BROAD SCOPE OF OFFENCES?	SCOPE OF PREDICATE OFFENCES?	REQUIREMENT FOR PRIOR CONVICTION OF PREDICATE OFFENCE TO ESTABLISH THE MONEY LAUNDERING?	REQUIREMENT FOR DUAL CRIMINALITY WHERE THE PREDICATE OFFENCE IS COMMITTED ABROAD?
Côte d'Ivoire	Yes	All crimes	Unclear	Assumed to be the case
DRC	Yes	All crimes	Unclear	Assumed to be the case
Ethiopia	Yes	Threshold approach	No	Yes
Ghana	Yes	Threshold approach	No	Yes
Morocco	Yes	Threshold approach	Unclear	Assumed to be the case
Mozambique	Yes	Threshold approach	No	Yes
Nigeria	Yes	All crimes	No	Yes
Rwanda	Yes	Unclear	No	Assumed to be the case
South Africa	Yes	All crimes	No	Assumed to be the case
Tunisia	Partially	All crimes	No	Assumed to be the case

- **Scope of the money laundering offence:** All 10 countries criminalise money laundering, including DRC and Morocco which are not yet parties to the AUCPCC. The scope of the offence in all cases is broad, with the exception of Tunisia which excludes certain offences including aiding and abetting and the acquisition, possession or use of property with the knowledge that it is the proceeds of corruption or related offences.
- **Scope of predicate offences:** The majority of countries include all crimes as potential predicate offences for the purposes of establishing money laundering, although Ethiopia, Ghana, Morocco and Mozambique take a threshold approach. In Morocco, money laundering applies to a specific list of crimes (but not illicit enrichment, which is not yet criminalised), while the scope of the offence in Rwanda is unclear. In addition, Cote d'Ivoire, DRC and Morocco, explicitly recognise the corruption crimes listed in Article 4 of the convention as predicate offences for the purpose of establishing money laundering.
- **Autonomy of the money laundering offence:** In most cases, countries do not require a prior conviction of the predicate offence for the purpose of establishing a money laundering offence, meaning that the two can be prosecuted autonomously, although this is unclear in the case of Côte d'Ivoire, DRC and Morocco.
- **Dual criminality:** In Ethiopia, Ghana, Mozambique and Nigeria there is an explicit requirement to establish dual criminality with regard to predicate offences. While not explicit in other countries, the requirement for dual criminality is nevertheless generally assumed to apply where the predicate offence is committed abroad.
- **Enforcement data:** Reliable data on investigations, prosecutions, convictions and sanctions is very difficult to come by across the 10 countries. Where data is available, it is rarely disaggregated and fails to identify the predicate offences or whether cases relate to corruption. This makes monitoring the effectiveness of enforcement of money laundering offences very challenging. Most data and reports are derived from anti-money laundering bodies such as the Financial Action Task Force (FATF) and foreign government institutions (such as the US Department of Justice).

- **Enforcement levels:** Available data suggests that enforcement of the money laundering offence is severely lagging in most countries, with Tunisia again being a notable exception. A key challenge in some countries, such as Ethiopia and Ghana, is that authorities tend to focus on pursuing predicate offences rather than money laundering offences as these tend to carry stiffer sentences. In addition, enforcement is often hampered by limited independence of prosecutorial and judicial bodies, court delays, limited resources, and lack of technical knowledge and skills in investigating money laundering.

COUNTRY SNAPSHOTS

Côte d'Ivoire

In Côte d'Ivoire, money laundering is understood as the transfer and concealment, disguise, and the acquisition, possession and use of property with the knowledge that it is the proceeds of corruption or related offences.¹⁹ A broad range of predicate offences are considered for the purpose of establishing money laundering, including active and passive corruption, influence peddling, abuse of office, misappropriation, active and passive bribery (“concussion”), unlawful benefits and illicit enrichment.²⁰ Under the previous money laundering law,²¹ the money laundering offence was autonomous insofar as a conviction for a predicate offence was not required for the money laundering offence to be committed. The current law is not clear on the matter, although it is assumed that the autonomy of the offence still applies. Money laundering applies even where the predicate offence is committed abroad.²²

Enforcement

The offence of money laundering has rarely been prosecuted during the last five years.²³ There is only one known instance of a conviction for money laundering (under appeal at the time of writing),²⁴ although it is not known whether it is a corruption-related money laundering case. Information on the case, including the identity of the defendant, cannot be provided as long as the case is ongoing as it may undermine presumption of innocence.

Democratic Republic of Congo (DRC)

The DRC money laundering law criminalises all three aspects of the money laundering offence covered by Article 6 and applies to any offence which generates proceeds of crimes, even if committed abroad.²⁵ The law applies to both individuals and legal entities.²⁶ Furthermore, legislation recognises a range of predicate offenses for the purpose of establishing money laundering, including active and passive bribery, undue advantage, illicit enrichment, influence peddling, accomplishment or omission of an act, embezzlement and misappropriation of funds, and concealment.²⁷ The law is, however, silent on the autonomy of the money laundering offence. It is presumed that dual criminality applies if the predicate offence was committed abroad.

Enforcement

Data on enforcement of the money laundering offence in DRC is difficult to come by. The most recent data from the US Department of State dates back to 2014, at which time no prosecutions for money laundering were recorded.²⁸ According to data provided by the National Finance Intelligence Unit (Cellule Nationale des Resignements Financiers, CENAREF) to the Congolese League against Corruption (Ligue Congolaise de Lutte contre la Corruption, LICOCO), 24 people were investigated for money laundering in 2015, 30 in 2016, 18 in 2017 and 18 in 2018,²⁹ although it is not possible to identify whether any of these investigations relate specifically to corruption. The number of people prosecuted in those years was seven, six, five and two respectively, although, again, it is unclear whether these involve cases of corruption-related money laundering. There is no data on the number of people convicted. Because CENAREF is directly accountable to the Ministry of Finance, which may in some instances put an end to investigations, there is a risk that money laundering prosecutions involving individuals close to the ruling elite might be discontinued.

Ethiopia

Ethiopia’s efforts to combat money laundering are relatively recent.³⁰ The law explicitly criminalises money laundering, including conversion, transfer and disposal of property, aiding and abetting, concealment or

disguise, and acquisition of property knowing it is the proceeds of corruption.³¹ Ethiopia takes a threshold approach to predicate offences, defining them as any offence capable of generating proceeds of crime provided that such offences meet the criteria of criminal liability.³² The law also criminalises the corruption offences listed in Article 4 of the AUCPCC and these can be considered predicate offences for the purpose of establishing the money laundering offence.³³ It is not necessary to obtain a conviction for the predicate offence to prove the illicit origin of the property or to establish the offence of money laundering.³⁴ Dual criminality also applies where the predicate offence is committed abroad.³⁵

Enforcement

There is scarce information available on enforcement of money laundering offences in Ethiopia. The Cassation Bench of the Federal Supreme Court publishes information on its own court judgments in electronic and hard copy and the federal attorney general and the Financial Intelligence Centre (FIC) annual reports provide some additional data. Data from various investigative and prosecutorial bodies suggest that between 2010 and 2014, 61 cases of money laundering were investigated and prosecuted, and of these, 47 resulted in convictions.³⁶ One such case relates to *Federal Ethics and Anti-Corruption Commission Prosecutor vs. Abdulkarim Adem and 18 Others*, in which the accused siphoned money from his former employer (the Ethiopia Commodity Exchange) to buy a new house, although it is not known whether the case involves corruption-related money laundering. He was found guilty and sentenced to 23 years in prison and a fine of 70,000 birr (approximately US\$2,000).³⁷

Prosecution of money laundering by law enforcement agencies (including the federal police, the federal attorney general and the FIC) is hampered by lack of expertise and limited resources and tools to effectively identify and investigate money laundering cases.³⁸ Limited action on money laundering may also partly be explained by the emphasis the authorities place on proving the crime, while disregarding the related asset flows, as well as the fact that assets are often laundered abroad rather than where the predicate offence is committed.³⁹

Ghana

In Ghana, money laundering is considered an offence when the person knows, or ought to have known, that property which he/she acquires, uses or takes possession of is the proceeds of unlawful activity and he/she converts, conceals, transfers, disguises the property, or conceals or disguises the unlawful origin, disposition, movement or ownership of rights with respect to the property. Aiding and abetting is also a criminal offence.⁴⁰ Ghana applies a threshold approach, whereby bribery and corruption are considered predicate offences for the purpose of establishing money laundering.⁴¹ The legislation does not require a prior conviction for the predicate offence in order to initiate proceedings for money laundering.⁴² Dual criminality also applies when predicate offences are committed abroad.⁴³

Enforcement

Although there has been some success in prosecuting money laundering cases, the number of convictions remains modest. Ghana registered eleven convictions between 2014 and 2016 (two in 2014, six in 2015, and three in 2016, with another twenty-one cases pending before the courts at the time of writing), although they do not relate solely to corruption. Of these convictions, two arose from “suspicious transaction reports” (STRs) in 2014, three in 2015, and one in 2016.⁴⁴ In these cases, the courts convicted the accused of both money laundering and predicate offences. However, in most cases authorities are more often focussed on pursuing predicate offences as these tend to carry stiffer sentences, hence the small number of money laundering convictions.⁴⁵

Morocco

In Morocco, money laundering is understood as the conversion, transfer, disposal of property, concealment and acquisition of property acquired through corruption-related offences.⁴⁶ Money laundering applies to a specific list of predicate offences such as corruption, bribery, influence peddling and embezzlement.⁴⁷ Illicit enrichment is not considered a predicate offence as it is not yet criminalised. The Criminal Procedure Code allows Moroccan courts to prosecute a crime even if committed abroad, provided that one of the elements of the crime is committed in Morocco.⁴⁸ It is assumed that double criminality still applies when the predicate offence is committed abroad.

Enforcement

There is very little information on the number of money laundering prosecutions and convictions in

Morocco.⁴⁹ According to figures reported by the FATF in 2013, Morocco issued two money laundering convictions and four convictions for terrorist financing crimes.⁵⁰ Morocco's Financial Intelligence Unit (Unité de Traitement du Renseignement Financier, UTRF) received 318 STRs in 2015, and 304 in 2014, but no disaggregated data is available on the amounts involved or the nature or outcome of the cases.⁵¹

Mozambique

In Mozambique, money laundering is understood as the conversion, transfer or facilitation of any conversion or transfer of the proceeds of crime with the purpose of concealing their illicit origin, concealing the true nature, origin, location, movement or title of the proceeds of crime, and acquiring or possessing any title or using assets knowing of its illicit provenance at the point of receipt.⁵² Mozambique takes a threshold approach to money laundering for which corruption is considered a predicate offence.⁵³ Money laundering is autonomous, meaning that there is no need for a prior conviction of the predicate offence to prosecute money laundering.⁵⁴ Money laundering applies even when the predicate offence occurs abroad where dual criminality applies.⁵⁵

Enforcement

Although still modest, the number of investigations in Mozambique has been increasing since 2015. Eight individuals were investigated for money laundering offences in 2015, 16 in 2016 and 40 in 2017.⁵⁶ However, it is unclear how many of these cases are related to corruption and how many resulted in convictions. One case involving the prosecution of corruption-related money laundering relates to the Agricultural Development Fund, which resulted in prison sentences for 22 individuals.⁵⁷ In 2018, three people, including the former transport minister, were charged with money laundering in connection with the purchase of two Embraer planes.⁵⁸ In the US, Embraer admitted to paying bribes to Mozambican officials.⁵⁹ Generally, however, there is a paucity of data on money laundering. According to the FATF, the authorities do not collect data on money laundering and rarely communicate any evidence of cases resulting in convictions.⁶⁰

Nigeria

Nigeria's domestic legislation on money laundering is spread across various laws.⁶¹ The Proceeds of Crime Bill, which seeks to harmonise the existing anti-corruption legal framework on the recovery of proceeds of crime, has yet to receive the assent of the president.⁶² The legislation variously refers to money laundering as the concealment and disguise, conversion and transfer, and acquisition of property knowing that it is the proceeds of an unlawful act,⁶³ and the concealment and disguise, acquisition, possession or use of property knowing it is derived from an offence, and the conversion or transfer of property knowing it is an offence.⁶⁴ Nigeria takes an "all-crimes" approach to the list of offences.⁶⁵ Bribery and corruption are considered predicate offences, even when the predicate offence occurs abroad, and it is assumed that dual criminality applies.⁶⁶ There is no requirement for prior conviction of the predicate offence to prosecute money laundering.⁶⁷

Enforcement

Nigeria's Economic and Financial Crimes Commission (EFCC) is reported to have "aggressively" investigated high-profile money laundering cases recently, although, with little prosecutor involvement, EFCC investigators tend to rely mainly on confessions.⁶⁸ Moreover, when the authorities pursue a case, this is often done as an additional charge within a much broader indictment. The US Department of State reported 33 money laundering prosecutions and 2 convictions in 2015,⁶⁹ 0 prosecutions and convictions in 2014,⁷⁰ 17 prosecutions and 13 convictions in 2013, and 14 prosecutions and 5 convictions in 2011/12.⁷¹ However, it is not known whether any of these relate to corruption. According to the US Department of State, cases face long periods without resolution because of deficiencies in the judicial system.⁷² To try and address the problem, the chief justice of Nigeria in 2017 called for the creation of special anti-corruption and financial crimes courts.⁷³ In a recent high-profile case in 2020, Chief Olisa, a former national publicity secretary of the People's Democratic Party was found guilty on seven-count charges relating to money laundering, conversion and concealing of 400 million naira (approximately US\$1 million) received from the office of the national security adviser.⁷⁴

Rwanda

The anti-money laundering framework in Rwanda is spread among various laws.⁷⁵ Legislation criminalises the acquisition, possession and use and conversion, transfer and concealment of property derived from

crimes, as well as other forms of liability (such as aiding and abetting in a crime of money laundering).⁷⁶ However, the range of criminal activities that may apply for the purpose of establishing money laundering is unclear, defined only as “the original acts leading to money laundering”.⁷⁷ There does not need to be a conviction for a predicate offence when prosecuting an offence of money laundering.⁷⁸ Money laundering is committed even if predicate offences are committed abroad.⁷⁹ It is assumed that double criminality applies.

Enforcement

Information on convictions is published in the Rwanda Law Report (including names of convicted persons, summary of facts and legal arguments and the decision of the court).⁸⁰ The ombudsman and the Ministry of Justice publish online the names of those convicted and their sentences, although not the charges or crime committed.⁸¹ Other data on acquitted persons and abandoned cases can be obtained from the National Public Prosecution Authority on request.⁸² Only two money laundering cases have come before the authority, although it is not known whether these relate to corruption. One case has been prosecuted and the other is still pending at the time of writing.⁸³

South Africa

In South Africa, money laundering is understood to include the act of concealment, disguise, disposition, aiding and abetting, and the acquisition, possession or use of the proceeds of unlawful activity.⁸⁴ South Africa has adopted an “all-crimes” approach to money laundering, meaning all offences criminalised under South African law can be considered predicate offences for the purpose of establishing the money laundering offence.⁸⁵ The money laundering offence is considered to be autonomous, thus there is no need for a prior conviction to establish the offence.⁸⁶ Money laundering can be prosecuted in South Africa, even if the predicate offence is committed abroad, in which case dual criminality is assumed to apply.⁸⁷

Enforcement

While money laundering is a specific offence under the South African penal code, it is not often prosecuted alone. Instead, prosecutors typically include money laundering as a secondary charge in conjunction with other offences.⁸⁸ The Financial Intelligence Centre (FIC) referred more than 800 cases to the South African Police Service during the period 2009-2013, although it is unclear how many of these referrals were investigated and resulted in convictions, nor does data disaggregate the various predicate offences.⁸⁹ In the year 2017/2018, the FIC referred 149 cases of money laundering to law enforcement and received 164 investigation requests. Again, it is unclear whether these are linked to corruption.⁹⁰ According to older data from the International Monetary Fund, there were 8 convictions for money laundering in 2011, 13 in 2012, and 11 in 2013. Most of those were for self-laundering of proceeds of domestic predicate crimes rather than charges for third party laundering. There is no information on the underlying predicate offences.⁹¹

Tunisia

In Tunisia, the concealment, transfer and disposal of property obtained illegally is criminalised.⁹² However, various offences are excluded, including aiding and abetting, and the acquisition, possession or use of property with the knowledge that it is the proceeds of corruption or related offences. Tunisia adopts a broad, “all-crimes” approach to money laundering and the money laundering offence is considered to be autonomous. Money laundering applies even when the predicate offence occurs abroad, in which cases dual criminality is implied.

Enforcement

Data on enforcement from the Ministry of the Interior and the Tunisian Financial Analysis Commission suggests that the offence of money laundering is relatively well enforced. In 2015, there were 1,205 investigations, 200 prosecutions and 5 convictions of individuals for money laundering offences, and 472 investigations, 12 prosecutions and 0 convictions of companies. In 2016, the figures were 905 investigations, 357 prosecutions and 30 convictions of individuals, and 807 investigations, 75 prosecutions and 10 convictions of companies. In 2017, there were 1,107 investigations, 460 prosecutions and 27 convictions of individuals, and 760 investigations, 150 prosecutions and 14 convictions of companies. During those three years, a total of 24 billion Tunisian dinar (approximately US\$8.8 billion) were seized and 19 billion Tunisian dinar (approximately US\$7 billion) confiscated.⁹³

A magnifying glass is positioned over a document, focusing on a list of numbers. The numbers are arranged in a column and are followed by plus signs (+) on the right side. The numbers are: 282.109,00; 39.822,00; 903.874,00; 265.241,00; 7.506.433,00; 1.365.144,00; 1.255.870,00; 92.130,00; 150.264,00; 370.454,00; 65.807,00. The magnifying glass is held by a hand, and the background shows other parts of the document, which are out of focus.

282.109,00	+
39.822,00	
903.874,00	+
265.241,00	+
7.506.433,00	+
1.365.144,00	+
1.255.870,00	+
92.130,00	+
150.264,00	+
370.454,00	+
65.807,00	

2. ILLICIT ENRICHMENT

ARTICLE 8: ILLICIT ENRICHMENT

1. Subject to the provisions of their domestic law, State Parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment.
2. For State Parties that have established illicit enrichment as an offence under their domestic law, such an offence shall be considered an act of corruption or a related offence for the purposes of the Convention.
3. Any State Party that has not established illicit enrichment as an offence shall, in so far as its laws permit, provide assistance and cooperation to the requesting State with respect to the offence as provided in this Convention.

Note: Article 1(1) of the AUCPCC defines illicit enrichment as: “the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income”.

The illicit enrichment offence takes unexplained wealth of a public official as visible proceeds of corruption.⁹⁴ Essentially, illicit enrichment penalises persons for accumulating wealth that is deemed disproportional to their sources of income if they cannot satisfactorily account for its origin.⁹⁵ The burden lies with the accused to prove the legitimate sources of his/her assets. Failure to do so leads to the assets being considered ill-gotten, followed by conviction and forfeiture of the assets.⁹⁶

Application of the illicit enrichment offence can be controversial, since shifting the burden onto the accused poses a risk for the respect of human rights, the right to a fair trial and the presumption of innocence. For this reason, the application of Article 8 of the convention is non-mandatory. However, jurisprudence and good practice show that safeguards, such as proportionality tests, can be built to avoid the abovementioned risks from materialising.⁹⁷

The offence of illicit enrichment under the AUCPCC applies to both public officials and “any other person”.⁹⁸ The convention does not include reference to a period of interest, does not define asset increase and makes no reference to intent (unlike the UNCAC, which defines illicit enrichment as an act that “is committed intentionally”). In practice, most illicit enrichment offences do not specifically mention intent. However, jurisprudence tends to favour the establishment of intent, either explicitly or implicitly, as a necessary factor of the offence.⁹⁹

The following key areas are discussed in terms of the extent to which convention provisions are reflected in the national legislation of the 10 countries. While, as noted above, not all of these are explicit requirements under the convention, they are nevertheless considered crucial elements of an effective legal framework for criminalising illicit enrichment.¹⁰⁰

- **Criminalisation:** Is the offence of illicit enrichment criminalised under domestic law?
- **Persons of interest:** Does the offence of illicit enrichment apply to all persons, only public officials or other categories of persons?
- **Period of interest:** Does the legislation define the time period during which a person can be held liable for having illicitly enriched him/herself?
- **Significant increase:** Does the legislation define illicit enrichment in terms of a “significant increase in assets”?

- **Intent:** Does the legislation require a demonstration of intent with regard to the offence of illicit enrichment?
- **Absence of justification:** Does the legislation include the “lack of a reasonable justification” for the enrichment as part of the illicit enrichment offence?
- **International cooperation:** For those countries that have not criminalised the offence, does legislation provide for mutual legal assistance (MLA) to requesting states in the context of the illicit enrichment offence?

In addition, the **availability of enforcement data** and the **level of enforcement** against money laundering offences in each country are briefly discussed.

KEY FINDINGS

Table 2: Scope of the illicit enrichment offence

COUNTRY	IS ILLICIT ENRICHMENT CRIMINALISED?	PERSONS OF INTEREST?	PERIOD OF INTEREST?	SIGNIFICANT INCREASE IN ASSETS?	INTENT?	ABSENCE OF JUSTIFICATION?	INTERNATIONAL COOPERATION THROUGH MLA?
Côte d’Ivoire	Yes	Public officials	Un-defined	Yes	Un-defined	Yes	N/A
DRC	Yes	Any person	Un-defined	Yes	Un-defined	Yes	N/A
Ethiopia	Yes	Any person	Yes	Yes	Yes	Yes	N/A
Ghana	Not explicitly	N/A	N/A	N/A	N/A	N/A	Yes
Morocco	No	N/A	N/A	N/A	N/A	N/A	Assumed to be the case
Mozambique	Yes	Any person	Yes	Yes	Un-defined	Yes	N/A
Nigeria	Yes	Any person	No	Yes	Un-defined	Yes	N/A
Rwanda	Yes	Any person	Yes	Yes	Yes	Yes	N/A
South Africa	Not explicitly	N/A	N/A	N/A	N/A	N/A	Yes
Tunisia	Yes	Public officials and relatives	Un-defined	Yes	Un-defined	Yes	N/A

- **Criminalisation:** Illicit enrichment is criminalised in Côte d’Ivoire, Ethiopia, DRC, Mozambique, Nigeria, Rwanda and Tunisia. South Africa has not criminalised illicit enrichment but has established an administrative mechanism for addressing the issue. Likewise, in Ghana, illegal acquisition of wealth or property is considered a breach of various laws, including the constitution, but not an offence *per se*. Morocco has yet to criminalise the offence.
- **Persons of interest:** In Côte d’Ivoire and Tunisia, persons of interest are limited to public officials and/or their relatives, while in DRC, Ethiopia, Mozambique, Nigeria and Rwanda they cover public

officials and any other persons. Where liability of legal persons is provided for, it is assumed that the offence can apply to legal persons. In Rwanda, for example, sanctions are provided for companies that are convicted of corruption (which covers the illicit enrichment offence). Nigeria, meanwhile, has created an offence of unjust enrichment that applies to the finance and banking sector.

- **Period of interest:** In Ethiopia and Mozambique, the period of interest only covers a public official's time in office, while in Côte d'Ivoire, DRC and Tunisia it is left undefined.
- **Significant increase in assets and absence of justification:** All seven countries which have criminalised illicit enrichment define the offence as a significant increase in assets and include the lack of a reasonable justification for the enrichment as part of the illicit enrichment offence.
- **Intent:** The requirement that illicit enrichment be committed intentionally is not explicitly referenced in most countries' legislation, except for Ethiopia where the law specifically makes reference to intent to obtain unlawful enrichment for oneself or a third person. In Rwanda, although the legislation does not explicitly refer to intent, the courts have ruled that intent is an element of the offence.
- **International cooperation:** The three countries that have not criminalised illicit enrichment (Ghana, Morocco and South Africa) all have a framework in place to give effect to MLA requests involving the offence of illicit enrichment.
- **Enforcement data:** There is a dearth of data on prosecution and conviction of illicit enrichment across all jurisdictions. Where data is available, it is either not accessible to the public, or it is of poor quality (for example because it is not sufficiently disaggregated). In Tunisia, the law is too new for there to be relevant data available.
- **Enforcement levels:** Most countries report few or no cases of illicit enrichment. There have been some prosecutions for illicit enrichment in Rwanda, with at least four cases in 2016-2017, two of which resulted in convictions. In Nigeria, data from 2007 to 2013 reveals there were up to 89 cases of illicit enrichment and breach of the code of conduct for public officials investigated during that period, although it is not possible to say whether prosecutions for illicit enrichment resulted in convictions. Challenges in prosecuting illicit enrichment cases include the fact that many of those suspected of the offence are politically exposed persons (PEPs) who may benefit from political immunity (Nigeria), the lack of expertise and tools to pursue the offence and poor inter-agency coordination (Ethiopia and Nigeria) or lack of financial autonomy of the organisations tasked with investigating and prosecuting illicit enrichment (Nigeria).

COUNTRY SNAPSHOTS

Côte d'Ivoire

The illicit enrichment offence in Côte d'Ivoire applies to public officials who cannot reasonably justify a substantial increase in assets compared to their income.¹⁰¹ The definition of the offence covers persons of interest, the conduct of enrichment and absence of justification, but the period of interest is left undefined and no reference is made to intent.

Enforcement

Little to no official data is available on enforcement. Likewise, there is no information on cases investigated by the High Authority for Good Governance (Haute Autorité pour la Bonne Gouvernance, HABG) or tried in court.¹⁰² The country has witnessed various high-profile corruption cases, but it is unclear whether they relate to illicit enrichment *per se*. Some of these cases refer to bank accounts of Ivorian PEPs that were traced back to Singapore in the Panama Papers.¹⁰³

Democratic Republic of Congo (DRC)

In DRC, illicit enrichment is defined as the substantial increase in assets of a public official (which includes elected representatives at all levels of state) or of any person who cannot reasonably justify such an increase in light of his/her legitimate income.¹⁰⁴ Other elements of the offence include increase in assets and absence of justification, but there is no reference to the period of interest or intent.

Enforcement

There are no known cases of illicit enrichment in practice.¹⁰⁵ According to LICOCO), the Congolese League against Corruption, this is largely because most PEPs benefit from political immunity, and the investigative, prosecutorial and judicial powers lack independence. Moreover, CENAREF – which is in charge of investigating and prosecuting illicit enrichment – while having some expertise and adequate staffing, is inadequately funded and does not collaborate sufficiently with overseas entities. The Prosecutor's Office, in turn, is allegedly politicised, which undermines the pursuit of illicit enrichment cases.¹⁰⁶ Data on illicit enrichment is not available to the public.

Ethiopia

In Ethiopia, illicit enrichment applies to any public official who is, or was, in office, and who maintains a standard of living “above that which is commensurate with the official income from his present or past employment or other means”, and “who is in control of pecuniary resources or property disproportionate to the official income from his present or past employment or other means” and who cannot give a satisfactory explanation to the court.¹⁰⁷ The law specifically makes reference to intent to obtain for oneself or a third person an unlawful enrichment, which can be taken to cover a broad range of persons.¹⁰⁸

Enforcement

Court judgments from the cassation bench of the Federal Supreme Court are published and available to the public and some data is available in the federal attorney general and FIC annual reports. Reportedly, the courts have tended to presume that legal provisions on unexplained property cannot be fully enforced without the implementation of asset registration systems, although this is beginning to change with most courts now agreeing to pursue cases based on their merits (weight of the evidence).¹⁰⁹

A 2014 study noted a rise in cases involving possession of unexplained property in Ethiopia, but also some confusion regarding crucial aspects of the concept and its prosecution, such as the temporal scope of the offence and the circumstances that justify initiating and continuing criminal investigation, prosecution and adjudication.¹¹⁰ Additional challenges to the successful prosecution of illicit enrichment include the fact that the federal police, the federal attorney general and law enforcement agencies generally lack the expertise and tools that allow them to effectively identify and investigate illicit enrichment cases. This is believed to be exacerbated by a lack of proper coordination among these bodies.¹¹¹

Ghana

Ghana has not established illicit enrichment as a criminal offence *per se* but has taken measures to prevent property from being acquired illegally. Illegal acquisition of wealth or property which is not reasonably attributable to income, gifts, loans, inheritance or any other reasonable source can be considered a breach of the Code of Conduct for Public Officers of Ghana and a contravention of the constitution.¹¹² The asset declaration law contains similar provisions on illegal acquisition of property or assets.¹¹³ The constitution requires that a public officer submit to the auditor general a written declaration of all property or assets owned directly or indirectly.¹¹⁴ Neither the constitution nor the asset declaration law provide any specific sanction in case of contravention or non-compliance. However, a person that has been charged with an offence by the Economic and Organised Crime Office may be asked to declare income and assets or face penalties (including a fine, time in prison and, in some cases, forfeiture to the state). Failure to submit a declaration is an offence liable to a fine or time in prison.¹¹⁵ Finally, Ghana can provide assistance and cooperation to a requesting state with respect to the offence of illicit enrichment as provided in the convention.¹¹⁶

Morocco

Illicit enrichment has yet to be criminalised in Morocco. Moroccan MPs recently blocked a bill seeking to criminalise illicit enrichment in the penal code, reportedly due to the ambiguity of the proposal and the risk of “future political instrumentalization” to silence critical or dissenting opposition MPs.¹¹⁷ Asset disclosure mechanisms are in place requiring public officials to submit a declaration upon starting and ending a role.¹¹⁸ The Court of Auditors is empowered to further investigate a case based on suspicious declarations. Late entries, failure to declare and wrongful declarations are sanctioned by the law, the latter between 3,000 dirhams (approximately US\$325) to 15,000 dirhams (approximately US\$1,630). Under Moroccan law, international conventions take precedent over domestic law with respect to judicial cooperation with foreign

countries.¹¹⁹ It is therefore assumed that an MLA request associated with the illicit enrichment offence would not be rejected.

Mozambique

According to the criminal code, anyone who owns property which is proven to be incompatible with his/her legitimate income shall be liable to sanctions¹²⁰ as well as forfeiture to the state.¹²¹ Meanwhile the probity law defines the illicit enrichment offence as “obtaining, for oneself or for another, during the term of one’s mandate, work or public function, goods of any nature whose value is disproportionate relative to the evolution of the public servant’s assets or income”.¹²² The scope of the probity law is narrower compared to the offence included in the criminal code and provides mainly for administrative or disciplinary sanctions, although it does envisage prison sentences under certain conditions. Mozambican law covers the period of interest, conduct of enrichment and absence of justification, but does not specify whether the offence of illicit enrichment applies to public officials and/or private individuals and makes no reference to intent.

Enforcement

The illicit enrichment offence is reportedly seldom used in practice, and there are no known cases of successful prosecution.¹²³

Nigeria

Under Nigerian law, the EFCC has special powers to investigate the assets of any person where the person’s lifestyle is not justified by the known sources of income¹²⁴ and possession of unexplained property can be used as corroborative evidence in a court of law.¹²⁵ However, it has been argued that this does not amount to a standalone illicit enrichment offence.¹²⁶ On the other hand, the UN Organisation on Drugs and Crime concludes that “evidence of disproportionate wealth is used not only as corroboration but also to establish a crime of illicit enrichment”.¹²⁷ Other acts include similar provisions. For example, the anti-corruption law grants power to the chairman of the Independent Corrupt Practices and Other Related Offences Commission to require the public official to justify the sources of his/her assets, where he or she has reasonable grounds to do so. If he/she fails to explain satisfactorily such excess, there is then a presumption of ill-gotten wealth.¹²⁸ Nigerian legislation also provides for an offence of unjust enrichment in the banking sector whereby “it is an offence for an employee of a bank to own assets in excess of his legitimate, known and provable income and assets”.¹²⁹ Thus, taken together, the Nigerian statutes include many of the key elements of the offence other than the period of interest and intent.

Enforcement

Between 2007 and 2013, the Code of Conduct Bureau investigated a total of 89 cases of illicit enrichment and other breaches of the Code of Conduct for Public Officials, including various PEPs, some of which resulted in prosecutions. It is not known how many of these resulted in sanctions or convictions, however.¹³⁰

In 2018, the EFCC approached the Supreme Court seeking to overturn the appellate court’s judgment and restore the charges against a judge of the Federal High Court¹³¹ accused of receiving up to US\$260,000 between 2013 and 2015 without justification of a legitimate source.¹³² Meanwhile, in 2017 a judge of the National Industrial Court was charged with illicit enrichment worth 3.5 million naira (approximately US\$9,000).¹³³ Prosecution of illicit enrichment in Nigeria is reportedly hampered by poor coordination between agencies, between federal and state levels as well as between government and non-state actors. Other issues include limited capacity and lack of skills, and limited resources for implementation.¹³⁴

Rwanda

Under Rwandan law, “any person who cannot justify the source of his or her assets compared with his or her lawful income” commits an illicit enrichment offence.¹³⁵ Moreover, the scope of the offence can be considered to include legal persons, given that it establishes financial penalties for those companies with legal personality that are convicted of the offence of corruption.¹³⁶ Although the legislation does not explicitly refer to intent, the courts have ruled that intent is an element of the offence.¹³⁷ Thus, most elements of the offence are provided for.

Enforcement

Only a handful of illicit enrichment cases have been prosecuted and tried in Rwanda. The National Public

Prosecution Authority has reportedly prosecuted four individuals for illicit enrichment to date – two cases in 2016 (both of which resulted in convictions), and another two in 2017 (neither of which resulted in convictions).¹³⁸ Case law is published in the Rwanda Law Report, and data is partly available with some basic information on the names of those convicted and the type of sentence.¹³⁹

South Africa

Illicit enrichment has yet to be fully criminalised in South Africa, although the Government of South Africa considers that the current legal framework is sufficient to comply with UNCAC Article 20 on illicit enrichment.¹⁴⁰ Under the law, the national director of public prosecutions can apply to a judge to investigate a person if evidence is presented to the judge that “a person maintains a standard of living above that which is commensurate with his or her present or past known sources of income or assets, or is in control or possession of pecuniary resources or property disproportionate to his or her present or past known sources of income or assets, through the commission of corrupt activities or the proceeds of unlawful activities.”¹⁴¹ In turn, the director can summon the suspected person to produce evidence on the asset or property, but such evidence cannot be used in a criminal proceeding.¹⁴² South Africa has the requisite legal framework to give effect to MLA requests for illicit enrichment.¹⁴³ South Africa is also party to various other bilateral and multilateral agreements, such as the South Africa Development Community Protocol on Mutual Legal Assistance.

Tunisia

Under Tunisian law, illicit enrichment is defined as “any significant increase in a person’s earnings, or the earnings of a relative, obtained for his/her/their benefit, or a significant increase in income that is not proportional to his/her/their resources and for which he/she/they cannot prove the legitimate origin”.¹⁴⁴ Persons of interest are defined as high-level government officials, senior public officials, independent bodies, judges, banks, security forces, journalists and union leaders.¹⁴⁵ Private individuals and legal persons are not subject to the offence.

Enforcement

Because the law is so recent, there is no data on enforcement.

**POLLING
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3. POLITICAL PARTY FUNDING

ARTICLE 10: FUNDING OF POLITICAL PARTIES

Each State Party shall adopt legislative and other measures to:

- a) proscribe the use of funds acquired through illegal and corrupt practices to finance political parties
- b) incorporate the principle of transparency into funding of political parties

Unlike other comparable treaties, such as the UNCAC, Article 10 of the AUCPCC places a very clear and non-discretionary obligation on state parties to legislate for, and effectively enforce, transparency requirements for political party funding. Nevertheless, Article 10 of the convention is lacking in detail, in particular with regards to whom political parties must report to: to government, to an oversight body or to the public at large.

The following key areas are discussed in terms of the extent to which AUCPCC provisions are reflected in the national legislation of the 10 countries covered in this report. While not all of these are explicit requirements under the convention, they are nevertheless considered crucial elements of an effective legal framework for regulating political party funding:¹⁴⁶

- **Regulation of donations:** Are donations to political parties regulated, including the receipt of funds through illegal means and the use of state resources for political purposes?
- **Record-keeping:** Are political parties required to keep financial records of their income and expenditure, including the identity of their funders and the amounts both received and spent?
- **Oversight:** Are political parties required to make these records available for review and/or audit by an independent, external body?
- **Transparency:** Are political parties required to publicly disclose financial information, including the identity of their sources of funding and the amounts received, in an easily accessible form?
- **Sanctions:** Are there sanctions for non-compliance with party funding regulations?

In addition, the **availability of enforcement data** and the **level of enforcement** of political party finance regulations are briefly discussed.

KEY FINDINGS

Table 3: Scope of the political party funding regulation

COUNTRY	USE OF FUNDS ACQUIRED ILLEGALLY PROHIBITED?	REQUIREMENT TO RECORD AND REPORT FINANCIAL INFORMATION?	REQUIREMENT TO MAKE FINANCIAL INFORMATION PUBLICLY AVAILABLE?	REQUIREMENT TO PUBLICLY DISCLOSE IDENTITY OF DONORS?	ADEQUATE SANCTIONS FOR NON-COMPLIANCE?
Côte d'Ivoire	No	No	No	No	No
DRC	Yes	Yes	No	No	No
Ethiopia	No	Yes	No	No	Yes

Ghana	No	Yes	Yes	Yes	No
Morocco	No	Yes	Partially	No	Yes
Mozambique	No	Yes	Yes	Yes	Partially
Nigeria	No	Yes	Yes	Yes	No
Rwanda	No	Yes	No	No	Yes
South Africa	Yes	Yes	Yes	Yes	N/A (pending)
Tunisia	No	Yes	Partially	N/A	Yes

- **Regulation of donations:** Only DRC and South Africa expressly ban the use of funds acquired through illegal or corrupt means in political finance or electoral legislation. Côte d'Ivoire, meanwhile, only regulates public funding, which represents a fundamental shortfall in its legal framework. In Nigeria, party funding laws do not apply equally to party members as they do political parties. This means that donors can channel funds through party members rather than the party in order to avoid disclosure requirements. Similarly, in Ethiopia, donations to third parties who spend money in pursuit of a political party's objectives are not bound by disclosure requirements. The new South African Political Party Funding Act seeks to combat these issues by banning donations to individual party members outright and by including third-party entities in the definition of "political party" for the purpose of the legislation.
- **Record-keeping and oversight:** With the exception of Côte d'Ivoire, all countries impose an obligation on parties to keep financial records and to submit reports pertaining to these records to an external body, although the content and level of detail required through such reporting varies from country to country. For example, unlike its peers, Ghana requires parties to submit a statement of their assets and liabilities to the Electoral Commission *prior* to a general election which enables stronger oversight with regard to the funding of election campaigns. Rwanda and South Africa, meanwhile, require individual donations above a certain threshold to be reported to the relevant oversight bodies.
- **Transparency:** Ghana, Morocco, Mozambique, Nigeria, South Africa and Tunisia provide for financial reports to be made publicly available, although only four of these countries (Ghana, Mozambique, Nigeria and South Africa) expressly require the identity of private funders of political parties to be publicly disclosed. DRC, Ethiopia, Morocco and Rwanda require political parties to make financial disclosures to an oversight agency only, with no obligation on either the party or the oversight agency to make those disclosures public.
- **Sanctions:** Sanctions for non-compliance with political party funding rules are generally either non-existent, too lenient or too severe. In Ethiopia and Ghana, for example, the primary penalty for non-compliance is the cancellation of the registration of the offending political party. Such extreme penalties can undermine political rights and should only be imposed in the most severe cases. And with no alternative minor penalties in place, violations of the political finance law are likely to go unpunished, especially if it is the ruling party that is implicated.
- **Enforcement levels:** While most countries require at least some political finance information to be published, in practice, this seldom happens. In some countries, such as DRC, Ethiopia and Mozambique, party funding legislation has fallen almost completely into disuse. Where disclosures are made to the public, they are often not done so in a manner that is easily accessible to the ordinary citizen. For example, in Ghana, citizens must approach the Electoral Commission to access the information and pay a fee. Enforcement of party funding is often hampered by the lack of capacity and independence of the oversight bodies, leading to sanctions either not being applied at all or in a manner that is not politically neutral. This can be seen in DRC, Ghana Ethiopia, Mozambique and Nigeria.

COUNTRY SNAPSHOTS

Côte d'Ivoire

The law in Côte d'Ivoire is very limited in scope. Legislation only governs public funding of political parties, and hence only a small fraction of the sources of funding for political parties. The law provides for subsidies to be paid to political parties represented in the National Assembly and requires parties to account for expenditure.¹⁴⁷

Democratic Republic of Congo (DRC)

Information relating to private donations to political parties, including the amount and identity of the donor, must be declared to the Department of Internal Affairs.¹⁴⁸ However, there is no requirement for the department to make those reports public. Thus, the law does not provide for full public disclosure. The only penalty for failure to meet the reporting and accounting requirements is to annul the transaction in question.¹⁴⁹ Donations must be of a “non-criminal origin” and cannot come from foreign governments.¹⁵⁰ The state *may* grant subsidies to political parties but the law does not specifically require the state to do so.¹⁵¹ The fact that state funding is permitted, but not required, creates confusion and the opportunity for abuse, insofar as funding may be used selectively. Additional legislation was adopted to further regulate the area of funding of political parties by providing for the allocation of public funds for political party activities.¹⁵²

Enforcement

A study from 2010 found that the requirements for bookkeeping and reporting in the legislation were not complied with and no sanctions had been imposed at the time.¹⁵³ The same study found that a “significant share of resources of the ruling parties come from illegal tapping of Treasury resources by party members who occupy executive positions, as well as illegal commissions from public contract procedures”.¹⁵⁴ More recent information on enforcement of the law could not be found.

Ethiopia

Political parties must keep thorough financial statements which include the amounts of donations and the identity of the donor.¹⁵⁵ Parties are further required to submit an annual report to the Ethiopian National Elections Board which includes the sources of the party's income. In addition, political parties must appoint an external auditor to audit their financial statements.¹⁵⁶ However, the board is not required to publish the sources and amounts of parties' donations. The legislation provides a clear list of banned sources of income, including donations from foreign sources, anonymous donors, government organisations and donations in return for undue benefits.¹⁵⁷ However, the list of banned sources does not cover all forms of criminal proceeds. There is also no regulation on third parties who receive and spend money on behalf, or in aid, of a political party. As a result, there have been reports in Ethiopia of parties circumventing the ban on foreign donations by channelling donations via third parties in order to conceal the identity of the original donor.¹⁵⁸

Enforcement

There have been concerns in the past about the independence of the board responsible for overseeing political financing and that the legislation is enforced only when it advances the interests of the ruling party. For example, a 2009 report stated that the funding models provided for in the legislation had favoured the ruling party and had been used as a means to increase the income gap between the incumbents and the opposition.¹⁵⁹ In the absence of a competitive multiparty democracy in the country, the ruling party possesses virtually unimpeded control over all state institutions and affairs, thereby creating a conducive environment for poor enforcement of political finance regulations.¹⁶⁰

Ghana

Political parties must submit accounts of their assets and expenditure, including the sources of their donations in cash or in kind, to the Electoral Commission, which in turn is required to publish reports in the government gazette.¹⁶¹ In addition, parties must submit a statement of their assets and liabilities to the commission within 21 days prior to a general election¹⁶² – providing greater transparency with regard to the funding of election campaigns – and an account of all electoral expenditure within six months after a

general election.¹⁶³ In addition to the publication of party accounts in the government gazette, interested persons may examine the records held by the commission upon payment of a prescribed fee.¹⁶⁴ Outside election periods, the commission may cancel the registration of a political party if they fail to submit the accounts required or submit accounts that are false¹⁶⁵ or otherwise contravene the provisions of the law governing operations of political parties.¹⁶⁶ Whilst deregistration is a stiff penalty and, therefore, a strong deterrent, the absence of lesser penalties (especially for a first-time offence), when it comes to imposing sanctions on parties, opens the door for potential abuse. Another important shortfall in the Ghanaian law is the failure to expressly prohibit donations proceeding from criminal activities and contributions from state-owned enterprises.

Enforcement

International IDEA reported in 2014 that parties which failed to submit the financial reports required by the legislation suffered no sanctions as a result.¹⁶⁷ Similarly, reports from an AU election observation mission into the 2016 elections in Ghana¹⁶⁸ and an analysis of the 2012 elections by the International Growth Centre both stated that not a single political party complied with the reporting obligations and that the Electoral Commission took no action against these breaches.¹⁶⁹

Morocco

Political parties are required to keep financial accounts of their income and expenditure¹⁷⁰ and must submit financial reports (including proof of income and expenditures) to the Court of Auditors who are further tasked with auditing those statements.¹⁷¹ In addition, parties must justify that the funds allocated to them from the public purse are being used for the purposes specified by law.¹⁷² If a party does not submit their accounts to the court within the prescribed period, the party may lose its right to receive public funding during the following year.¹⁷³ The failure to produce documents required is further punishable by the suspension or, in the case of continued non-compliance, the dissolution of the political party.¹⁷⁴ Interested persons may examine or obtain a copy of the financial reports of political parties at the Court of Auditors, although such reports are not required to disclose the identity of donors.¹⁷⁵ No single donor may donate more than 300,000 dirhams (approximately US\$32,000) to a single party during the same financial year.¹⁷⁶ Donations from public bodies and state owned enterprises¹⁷⁷ and funds from foreign sources are prohibited.¹⁷⁸ There is also a ban on cash transactions above 10,000 dirhams (approximately US\$1,050).¹⁷⁹ However, Moroccan legislation does not expressly ban the use of funds acquired through illegal means for the funding of political parties.

Enforcement

The picture with regards to compliance with party finance legislation is mixed. The Court of Auditors generally publishes the financial reports required by law in an easily accessible format online.¹⁸⁰ Meanwhile, the High Court of Auditors reported that all political parties submitted their financial statements within 30 days of the 2011 legislative elections as required.¹⁸¹ However, local civil society organisations (CSOs) expressed some concerns regarding the lack of control of party financing and spending, and of account audits performed by party-affiliated structures during the 2016 parliamentary elections.¹⁸² The Court of Auditors also reported several anomalies and violations with regard to spending of funds granted by the state in the years 2013 and 2014.¹⁸³

Mozambique

Parties are required to publish their financial statements on an annual basis in the state gazette, including the sources of income and the purpose of expenditure.¹⁸⁴ Furthermore, the law requires parties to declare any “gifts or bequests”, including the value of the donation and the identity of the donor.¹⁸⁵ The electoral law requires parties and candidates to record all revenue and expenditures during the election period and submit a report to the National Commission of Elections (CNE) within 60 days of an election.¹⁸⁶ The CNE must then publish a report of these statements in the state gazette. In the event of parties or candidates failing to submit their records of income and expenditure, they may be subject to fines of between 25 to 50 times the national minimum wage.¹⁸⁷ The use of state resources for campaign purposes¹⁸⁸ and donations from organs of state and public enterprises are prohibited.¹⁸⁹ However, Mozambican legislation fails to explicitly proscribe the use of criminal funds for political party funding.

Enforcement

A study into party funding during the 2009 elections in Mozambique found that no official information was available on the private funding of political parties and state supervisory bodies were completely inactive in

supervising spending limits.¹⁹⁰ The study found that, at the time, the CNE had never published a report of the accounts submitted by parties.¹⁹¹

Nigeria

Political parties are required to publish financial statements and submit a detailed annual statement to the Independent National Electoral Commission, including sources of funds and expenditures.¹⁹² The commission is required to present an annual report to Parliament detailing the accounts of all political parties¹⁹³ and to publish a report of these statements in three national newspapers.¹⁹⁴ Parties are not permitted to receive donations from anonymous sources, although anonymous donations are allowed if made directly to a candidate rather than the party.¹⁹⁵ Donors are thus able to circumvent the restrictions by donating anonymously to candidates that campaign under the flag of a political party. The same loophole can be exploited to avoid the prohibition on foreign funding. Any party that fails to provide the Electoral Commission with the information required is liable to a fine of no less than 500,000 naira (approximately US\$1,380).¹⁹⁶ The same sanction applies to parties that accept funds from foreign sources.¹⁹⁷ Nigerian law does not explicitly ban funding to political parties from criminal sources.

Enforcement

In 2015, election observers from the European Union noted that financial reports were often submitted late, or not at all, and were not made public as required. No sanctions are known to have followed.¹⁹⁸ It has also been reported that politicians exceed spending caps with impunity.¹⁹⁹ In one example of an attempt to circumvent party funding laws, a donor justified exceeding the individual donation limit of 1 million naira (approximately US\$2,600) per annum, when donating 250 million naira (approximately US\$650,000) to the incumbent President, Goodluck Jonathan, in 2010, stating that he had collected exactly 1 million naira from each of his 250 family members.²⁰⁰ More recently, in the 2019 general election, political analysts raised several concerns regarding both the neutrality and capacity of the Electoral Commission to enforce party funding laws.²⁰¹

Rwanda

Political parties are required to keep financial statements and submit these accounts to the Rwanda Governance Board (responsible for registering political parties) and the Office of the Ombudsman on an annual basis.²⁰² In addition, donations received in excess of 1 million Rwandan francs (approximately US\$1,100) must be reported to both bodies, including the identity of the donor and the value of the donation.²⁰³ The board is then required to audit and verify those financial statements and submit a report to the Senate, although such reports do not include detailed itemisation of incomes and expenditures. The law does not require the public disclosure of information regarding the financing of political parties. The use of state resources for party political purposes, foreign donations and donations from public and religious institutions to political parties is prohibited.²⁰⁴ Other than that, there are few restrictions on the means that can be employed by political parties in Rwanda to raise funds. Rwandan law does not expressly prohibit funding from the proceeds of criminal activities, although “bequests that undermine the integrity of the Country” are prohibited.²⁰⁵

Enforcement

While Rwandan authorities report strong compliance with political party funding laws,²⁰⁶ the lack of public access to this information makes it hard to verify. No violations of political finance laws were reported during either the 2010 presidential or 2013 parliamentary elections, partly because of the limited scope of the law. The ombudsman carried out 16 investigations into alleged breaches of political finance law over the 2010 and 2013 elections, but no violations were confirmed.

South Africa

South Africa passed the Political Party Funding Act in 2018.²⁰⁷ Donations are broadly and precisely defined, covering both cash donations and donations in kind (including loans on terms other than commercial terms, money paid, or expenses incurred on behalf of political parties and the provision of assets, and facilities or professional services other than on commercial terms). Any contribution to a political party which falls under this definition must be declared both to the Independent Electoral Commission and the public if the value of all donations from a single donor cumulatively exceeds 100,000 rand (approximately US\$7,200) over a 12-month period. The law also imposes a simultaneous obligation on donors to report to the commission the details of donations made to political parties to ensure there are

no discrepancies, although this information is not made publicly available. The act establishes a multiparty democracy fund to raise and distribute donated funds from the private sector to political parties in proportion to their level of representation in the National Assembly and provincial legislatures.²⁰⁸ Donors can only remain anonymous if they donate to this fund. Foreign donors (other than governments) may only donate to a party for the purposes of training, skills and policy development.²⁰⁹ A political party may not accept a donation that it knows, or ought reasonably to have known or suspected, originates from the proceeds of crime.²¹⁰

Enforcement

Because the law is so recent, there is no data on enforcement.

Tunisia

Parties must keep records of all income and expenditure²¹¹ and are required to publish their financial statements and auditor's reports in the national gazette²¹² as well as to submit a detailed report to the Court of Accounts which includes a description of all sources of funding.²¹³ A draft 2018 bill, includes proposals to ban donations from companies, while increasing the cap on individual donations to a party per year from 60,000 to 100,000 dinar (approximately US\$33,500). Reporting requirements are more clearly defined under the draft bill and would require parties to publish the sources of their income (including the amounts and identities of donors) on an electronic platform.²¹⁴ Tunisian political finance does not explicitly include a ban on illegal funding to political parties.

Enforcement

International IDEA reports that the Independent High Commission for Elections took an active role in fulfilling its oversight responsibilities during the 2011 election period, including imposing sanctions for violating party funding law.²¹⁵ The commission ruled to annul certain election results due to campaign finance violations – a decision that was later overturned by the Administrative Tribunal.²¹⁶ After the 2014 elections, when less restrictive regulations were in place, reports of unsanctioned overspending emerged and very few parties submitted their financial records as required and on time.²¹⁷ According to reports in 2018, only 15 out of 211 parties submitted their financial reports in 2018, or 7 per cent of the country's political parties, compared to 11 parties in 2017 and only 6 in 2016. As a result, in May 2018, 117 parties reportedly received warnings for failure to respect Article 27 in the year 2016.²¹⁸



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4. CIVIL SOCIETY AND MEDIA

ARTICLE 12: CIVIL SOCIETY AND MEDIA

State Parties undertake to:

1. be fully engaged in the fight against corruption and related offences and the popularisation of this Convention with the full participation of the Media and Civil Society at large
2. create an enabling environment that will enable Civil Society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs
3. ensure and provide for the participation of Civil Society in the monitoring process and consult Civil Society in the implementation of this Convention
4. ensure that the Media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial

Media and CSOs have a critical role to play in investigating and drawing public attention to potential abuses of power and corrupt practices and holding government and elected officials to account. While the AUCPCC introduces a requirement for broad access to information (Article 9), and in particular for the media (Article 12), the scope of Article 12 is broad, with a range of non-specific requirements.

The following key areas are discussed in terms of the extent to which AUCPCC provisions are reflected in the 10 countries covered in this report.

- **Enabling environment:** Is there an enabling environment for media and civil society to hold authorities to account?
- **Engagement and participation:** Is there formalised engagement between media and civil society and government on combatting corruption and monitoring implementation of the AUCPCC?
- **Access to information:** Does the law enable media and civil society to access information necessary for them to perform their roles?

KEY FINDINGS

Table 4: Key elements of enabling environment for the operation of media and civil society

COUNTRY	ACCESS TO INFORMATION LEGISLATION? ²¹⁹	GLOBAL RIGHT TO INFORMATION RATING (OUT OF 150) ²²⁰	FREEDOM HOUSE “FREEDOM IN THE WORLD” RATING (FREE/PARTLY FREE/NOT FREE) ²²¹
Côte d’Ivoire	Yes	76	Partly Free
DRC	No	N/A	Not Free

Ethiopia	Yes	111	Not Free
Ghana	Yes	97	Free
Morocco	Yes	73	Partly Free
Mozambique	Yes	60	Partly Free
Nigeria	Yes	88	Partly Free
Rwanda	Yes	85	Not Free
South Africa	Yes	119	Free
Tunisia	Yes	120	Free

- **Enabling environment:** Ghana and South Africa have a vibrant and diverse civil society and media landscape. In most other countries, state interference in these sectors is common. In DRC, Ethiopia and Mozambique, for example, there are continued reports of harassment, violence and/or arbitrary arrests of journalists and activists. In other countries, such as Morocco, authorities use more subtle tactics of control such as legal harassment, travel restrictions and intrusive surveillance to intimidate independent journalists. In many cases such tactics lead to a high degree of self-censorship by the media.
- **Engagement and participation:** To date, no country has developed an enduring structure for the external monitoring of the AUCPCC specifically. Nevertheless, there are some examples of successful coalitions and multi-stakeholder platforms which could take on this role. The Ghana Anti-Corruption Coalition, for example, is a cross-sectoral grouping of public, private and CSOs, which seeks to promote anti-corruption and good governance initiatives in the country, while in Tunisia, the Charter of Civil Society Alliance to Fight Corruption was developed by numerous CSOs and associations to contribute to the development and implementation of national policies and programmes on anti-corruption, good governance and transparency.
- **Access to information:** With the exception of DRC, all countries analysed in this report have some form of standalone access to information legislation. However, the strength of the laws varies considerably across countries (see table 4 above). For example, DRC, Ethiopia, Rwanda and Tunisia all condition freedom of expression and association in various ways which can serve to limit these freedoms in practice. In DRC and Rwanda, these rights are guaranteed as long as they do not undermine “public order” (as well as “good morals” in the case of Rwanda), while in Tunisia, the laws allows government to verify information which can be considered to be an attack of the public interest or national security. Similarly, Ethiopian law includes ambiguous offences such as “moral support and encouragement of terrorist acts”. Certain laws also restrict the kind of information which can be accessed by the public to an unreasonable extent. Ghana, for example, restricts access to information prepared for the president, vice president and cabinet, while in Morocco, requestors must prove a direct interest in the information requested.

COUNTRY SNAPSHOTS

Côte d’Ivoire

The right of access to information in Côte d’Ivoire is guaranteed in the constitution and other laws,²²² although some types of information are excluded (such as information pertaining to state secrets or national security).²²³ The Commission on Access to Information and Public Documents, which oversees the implementation and enforcement of freedom of information requests, can impose administrative or financial penalties on government bodies that fail to comply with access to information requirements. Criminal penalties also apply for falsifying or destroying public documents. The commission has a detailed website

which provides the mechanisms to assist requestors in accessing public records²²⁴ and has run a series of training and public awareness-raising programmes on the right of access to public information.²²⁵

Enforcement

Although Côte d'Ivoire only emerged from years of political turmoil and conflict in 2011, freedom of association and freedom of expression rights are generally respected.²²⁶ The freedom of CSOs was limited by restrictive policies between 2002 and 2011, but the situation has since improved and they are now generally permitted to operate freely.²²⁷ However, balanced information is not always available in practice and journalists are reportedly still vulnerable to abuse by the police,²²⁸ although instances of violence and intimidation since 2011 are extremely rare.²²⁹ No formal framework is in place providing for engagement between the government and CSOs and media on implementation of the AUCPCC.

Democratic Republic of Congo (DRC)

The 2005 constitution provides basic protections of the rights of CSOs and media, while legislation protects freedom of opinion, expression, and the right to inform and be informed, so long as these comply with the law and do not undermine public order.²³⁰ The same legislation also entitles media to report independently provided it complies with the law.²³¹ However, no specific legislation has been passed on freedom of information. (Legislation was passed by the Senate in 2015 but has yet to be voted in by the National Assembly.)

Enforcement

DRC suffers from an extremely unaccommodating environment for the media and civil society, whereby “regulations and laws related to the media generally serve as a way for government to censor information”.²³² There are frequent reports of harassment of CSOs, arrests of activists and cancellation of social gatherings by those in power, and several reports of harassment, violence and arrests of journalists under the auspices of defamation laws.²³³ Journalists are often afraid to publish reports of corruption and illicit enrichment for fear of reprisal from the ruling party.²³⁴ In the December 2018 presidential elections, reports emerged of internet shutdowns and signal blockings of news sources.²³⁵ Despite these pressures, CSOs and media reportedly remain very active.²³⁶ Given that DRC has yet to fully implement the AUCPCC, there is no direct engagement between government and civil society and media on implementation of the convention.²³⁷

Ethiopia

The constitution guarantees the right of access to information of public interest, the freedom of the press and prohibits any form of censorship,²³⁸ while additional legislation grants the right of access to information to the media in order to fulfil its public function, and limits restrictions to press freedoms to what is defined in law.²³⁹ Yet, the constitution also undermines these rights through, for example, broad definitions for “terrorist acts”, ambiguous offences such as “moral support and encouragement of terrorist acts”, and provisions for warrantless search and seizure, arrests and detention.²⁴⁰ Meanwhile, defamation laws allow the government to seize material before publication and can censor websites that are critical to the ruling party.²⁴¹ The law also significantly restricts the ability of CSOs to operate by limiting foreign sources of funding to only 10 per cent of their income.²⁴²

Enforcement

In practice, threats and imprisonment have resulted when investigative journalists attempt to uncover unfavourable practices by the ruling elite. The government does not tolerate dissenting views – leading to the intimidation, harassment, and arbitrary prosecution of journalists and activists.²⁴³ The Committee to Protect Journalists rates Ethiopia as the fourth most censored country in the world.²⁴⁴ The Federal Ethics and Anti-Corruption Commission has organised several engagements with various youth, women, business, media and other civil society forums. However, due to underfunding and limited capacity of the CSOs, the substance of these engagements is limited.²⁴⁵

Ghana

The constitution provides for freedom of the press, independence of the media, and a general right of access to information and prohibits arbitrary censorship.²⁴⁶ In 2019, a new Right to Information Act was passed following more than 20 years of political wrangling and scrutiny. While many saw this as an important step forward, some local groups have criticised the new law for restricting access to certain

categories of information concerning key government actors, including information prepared for the president, vice president and cabinet.²⁴⁷

Enforcement

Ghana has a diverse and vibrant civil society and media, and legal protections are generally respected in practice.²⁴⁸ Although there have been some isolated instances of violence against journalists in recent years, Ghana is regarded as having one of the freest media environments on the continent.²⁴⁹ CSOs are able to freely organise without state interference.²⁵⁰ There have been some attempts to incorporate civil society and media in the fight against corruption in Ghana.²⁵¹ The Ghana Anti-Corruption Coalition seeks to promote anti-corruption and good governance initiatives in Ghana through capacity-building, research and advocacy interventions.²⁵² Meanwhile, the Parliament of Ghana adopted the National Anti-Corruption Action Plan in 2011, assigning specific roles to public, private, media and civil society sectors in the fight against corruption. These include, among other things, public awareness campaigns, partnerships with government and ensuring CSOs implement strict principles of transparency in their operations.²⁵³

Morocco

While the Moroccan constitution enshrines the rights and freedom of civil society and media,²⁵⁴ this has not always been translated into legislation, especially in relation to reporting on political issues that are contrary to the interests of the ruling elite. For example, the 2002 Press Code gives the prime minister the right to suspend publications if they are deemed to undermine Islam, the monarchy and public order. Meanwhile, exemptions from access to information are couched in very broad terms. Moreover, requestors must have a direct interest in the information requested and can face criminal penalties for using information gathered in a manner that they did not specify in the original request.²⁵⁵

Enforcement

CSOs and NGOs have become increasingly hamstrung by the regulatory control of the state through “discrete strategies of control and intimidation which make use of the legal system and financial strains on independent journalists”.²⁵⁶ This is particularly the case for independent media outlets that report on the royal family, the status of Western Sahara or Islam.²⁵⁷ While CSOs are quite active, they are subject to legal harassment, travel restrictions, intrusive surveillance and other forms of interference.²⁵⁸ Given that Morocco has yet to ratify the AUCPCC, there is no direct engagement between government and civil society and media on implementation of the convention.²⁵⁹

Mozambique

The constitution provides for the freedom of the press, including the right to access sources of information,²⁶⁰ although libel and defamation are still criminalised.²⁶¹ The constitution also grants citizens the right of access to information, supplemented by the Freedom of Information Act of 2014.²⁶²

Enforcement

Freedom of association is generally respected but freedom of assembly rights are regularly violated by police. Libel and defamation laws have deterred journalists from freely reporting – as have cases of intimidation, harassment and violence against journalists.²⁶³ Furthermore, the government regularly fails to comply with the Freedom of Information Act by refusing to grant access to unfavourable information that is normally required to be made available by law.²⁶⁴ There is little engagement, nor any formal consultation, with civil society and media on the implementation of the AUCPCC.²⁶⁵

Nigeria

The Nigerian constitution protects freedom of expression and the press.²⁶⁶ However, defamation remains criminalised and Sharia law operating in several areas criminalises some press offences (though it is unclear what these are).²⁶⁷ In addition, the fact that the president is responsible for granting licenses to operate television and radio outlets presents the potential for abuse.²⁶⁸ The constitution also protects the right to information as does the Freedom of Information Act 2011,²⁶⁹ although there are some exemptions such as on national security grounds.

Enforcement

CSOs and media are largely able to form and operate freely. However, media steer clear from covering certain topics for fear of reprisals, and there are some reports of intimidation and harassment leading to self-censorship – especially in cases involving corruption allegations.²⁷⁰ Whilst freedom of expression and

association are guaranteed, there are still instances of civil gatherings being shut down or prohibited by government if they are not in the latter's interests.²⁷¹ Furthermore, according to the Carter Center, there remains a "pervasive culture of secrecy in government business" as well as numerous practical and administrative barriers to the effective exercise of the right to access public information.²⁷² No formal framework is known to be in place providing for engagement between the government and CSOs and media on the matter of the implementation of the AUCPCC.

Rwanda

The Rwandan constitution protects the freedom of the press and freedom of association, as long as these do not prejudice "public order" and "good morals", which leaves significant room for interpretation when applying the law. The Access to Information Act of 2013 allows the public and media to access information held by the state and some private bodies, if it is in the public interest to do so (for example, "to promote founded public debate" and "to keep the public regularly and adequately informed about the existence of any danger").²⁷³

Enforcement

While CSOs and media are generally free to report on government activities,²⁷⁴ intimidation, harassment, threats and obstruction have been increasingly prevalent in recent years.²⁷⁵ A culture of fear among the press has led to high degrees of self-censorship. Many journalists have fled the country in recent years and several CSOs have been banned.²⁷⁶ The government has appointed information officers to promote and support implementation of the Access to Information Act, and civil society (most notably Article 19) and government have conducted workshops and training exercises aimed at supporting implementation of the act.²⁷⁷ The Rwandan government has also created an online resource, named *Sobanukirwa*, for processing information requests,²⁷⁸ although analysis from 2016 revealed that 89 out of 108 requests were ignored.²⁷⁹ The government's anti-corruption policy emphasises the role of civil society, citizens and the private sector in the fight against corruption.²⁸⁰ For example, the Civil Society Platform organises an annual Civil Society Organisations Week to strengthen NGOs' participation in national development programmes, while the Joint Action Development Forum²⁸¹ regularly organises open days at the district level to strengthen the participation and visibility of CSOs.²⁸² Civil society also has a seat on the National Anti-Corruption Advisory Council, which devises strategies for combatting corruption in Rwanda.

South Africa

Section 16(1) of the South African Constitution guarantees freedom of expression insofar as individuals, the media and academic thought are concerned.²⁸³ Access to information rights are founded in the constitution and supported by the Promotion of Access to Information Act 2 of 2000 which provides the legal apparatus for information requests.

Enforcement

South Africa has a vibrant and adversarial media²⁸⁴ which robustly engages with society, as well as with powerful stakeholders in both government and the private sector. It plays an active role in exposing political and private sector corruption, in particular through specialist investigative journalist groups, such as *amaBhungane* and *Scorpio*.²⁸⁵ In 2017, for example, the media played a crucial role in exposing the corruption linked to the Gupta family and a British public relations firm in stirring up racial tensions in the country.²⁸⁶ However, journalists face attack for critical reporting, with government and opposition parties exerting pressure on both state-run and independent outlets. Journalists and rights groups have also expressed concern of the misuse of surveillance laws to spy on reporters.²⁸⁷ Freedom of information requests, which are frequently submitted, are generally respected despite certain administrative challenges. In the event of government refusing to grant access to information required by the relevant laws, the courts have shown a willingness to intervene.²⁸⁸ There is no formalised engagement between government and civil society and media regarding the monitoring and implementation of the AUCPCC, although civil society is engaged by government in the broader context of combatting corruption.

Tunisia

Article 31 of the 2014 Tunisian Constitution protects the freedom of the press and prohibits prior censorship, while the law protects the right of access to information.²⁸⁹ However, there are some significant legal restrictions on the ability of media to report freely, including provisions relating to the freedom of the

press, printing and publishing which allow government to verify information which can be seen as an attack of the public interest or national security.²⁹⁰

Enforcement

Some instances of the violent obstruction of anti-government protests have been reported as well as anti-terrorism laws being used by government to carry out surveillance of journalists. Whilst no official censorship of the press is provided for, harassment and intimidation of journalists and CSOs means that self-censorship is common.²⁹¹ Whilst the law enables the public and the press to request access to information held by the state, this rarely happens in practice, with only roughly 10 per cent of such requests granted in 2017.²⁹² In 2017, 28 organisations and associations came together to form the Charter of Civil Society Alliance to Fight Corruption in response to an initiative launched by the national anti-corruption agency. The charter pledges to contribute to the development and implementation of national policies and programmes related to the fight against corruption, good governance and transparency.

CONCLUSION

Fourteen years after the African Union Convention on Preventing and Combatting Corruption came into force, progress on transposing and enforcing its provisions across Africa is mixed. This report has explored the enforcement of the convention in 10 member countries (Côte d'Ivoire, Democratic Republic of Congo [DRC], Ethiopia, Ghana, Morocco, Mozambique, Nigeria, Rwanda, South Africa and Tunisia) to identify implementation and enforcement gaps in four critical areas of the convention: money laundering (Article 6), illicit enrichment (Article 8), political party funding (Article 10), and civil society and media (Article 12). Of the 10 countries covered by the report, all but two (DRC and Morocco) have signed, ratified and deposited instruments of ratification of the convention at the time of writing.

The report finds that most countries have taken important steps in developing their legal frameworks to comply with these four articles of the convention. Both money laundering and illicit enrichment are criminalised in all 10 countries (with the exception of Morocco which has yet to criminalise illicit enrichment). All 10 countries also have legislation in place to regulate political party funding, although the strength and breadth of the legislation varies across countries with some important gaps in many cases. For example, most countries fail to expressly ban the use of funds acquired through illegal or corrupt means, while only four countries expressly require the identity of private donors to be publicly disclosed. DRC, meanwhile, is the only country yet to introduce a standalone access to information law.

While there are improvements to be made in further strengthening national legal frameworks to combat corruption across the 10 countries, the key challenge is the active and impartial enforcement of existing laws and regulations. Enforcement of money laundering and illicit enrichment offences is severely lagging in all countries except Tunisia, while political party funding legislation has fallen almost completely into disuse across the board. Moreover, with the exception of Ghana and South Africa, state interference in the civil society and media sectors in the form of intimidation, arbitrary arrests and legal harassment is common, with almost no repercussions for those responsible for suppressing the right to free expression.

Enforcement of laws is often hampered by a combination of limited financial and operational independence of prosecutorial, judicial bodies and oversight bodies as well as lack of technical tools and skills and poor inter-agency coordination, leading to sanctions either not being applied at all or in a manner that is not impartial. At the same time, the lack of reliable, publicly available data on the enforcement of corruption offences, and political party funding rules in practice, means that it is almost impossible for civil society and other stakeholders to monitor enforcement trends and hold governments to account for their failure to uphold the law and sanction non-compliance.

It is in this context that this report calls on the African Union and all member countries to urgently publish all progress reports on the implementation of the AUCPCC so that citizens can monitor their governments' internationally agreed commitments on anti-corruption. Governments must also work to ensure full financial and operational independence of prosecutorial, judicial and oversight bodies so that corruption and other offences can be sanctioned consistently and without favour.

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