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An overview of corruption challenges and the African Continental Free Trade Area

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ABSTRACT

For decades, African leaders have committed themselves to fighting corruption, but due to a lack of transparency and accountability in governance, it continues to thrive and infiltrate the social, economic and political spheres. Corruption undermines the fundamental values of African unity grounded in socio-economic development. Notwithstanding the prospects of the African Continental Free Trade Area (AfCFTA), economic integration will be in vain in the presence of corruption. In recognising that corruption hinders Africa's economic, political and social development, the African Union enacted the Convention on Preventing and Combating Corruption. Regrettably, the Convention falls short of establishing a continental independent anti-corruption institution. In its stead, article 22 of the Convention provides for an Advisory Board on Corruption established within the African Union. This article argues that the Convention necessitates an independent investigative anti-corruption institution aimed at promoting justice by holding perpetrators accountable, promoting the rule of law, and minimising corrupt opportunities and perpetration. The article begins with an overview of the corruption conundrum and its effect on Africa amidst economic integration efforts. This discussion is followed by a synopsis of the AfCFTA. The article probes existing anti-corruption mechanisms in Africa and argues that the absence of an independent African anti-corruption investigative institution to implement the Convention is a deficiency that could hinder the effectiveness of the AfCFTA.

Keywords: corruption; economic integration; development; poverty

1 INTRODUCTION

Corruption has numerous facets, making it difficult to develop an exhaustive definition of it. Though there are numerous opinions, understandings and assumptions as to its meaning, nature and implications, it is "best described as a betrayal of trust at the expense of others"[1] and may be defined as the abuse of delegated or public power for private gain.[2] Corruption may also be understood as the "sale of government property for private gains".[3] Unfortunately, these latter definitions limit the perpetration of corruption to the public sector. Furthermore, most definitions describe corruption within the context of financial value. However, its evolution has shown that its acts are not limited to monetary value; rather, some acts of corruption seek to derive a non-monetary advantage, as is the case, for example, with nepotism and favouritism.

Irrespective of the forms it takes or the parties involved in its perpetration, the impact of corruption is manifold and directed towards its victims. For instance, it worsens inequality gaps in the allocation of resources; weakens state institutions; undermines the rule of law; erodes public trust; affects the quality of goods and/or services delivered by the state; causes others to experience personal loss by paying bribes to receive state services; and distorts procedural fairness. Perceived as an evil by those who do not benefit from it, corruption, it may be argued, poses a threat to sustainable economic development and, by extension, ultimately affects the entire world. It does so, for instance, by playing a role in the allocation of state resources, weakening corporate, public governance, and eroding the regulation of public procurement.

In the African context in particular, corruption threatens the efforts and aspirations of African states towards regional economic integration. The African Continental Free Trade Area (AfCFTA), entered into force in 2019, aims at boosting the continental market by creating a single market for goods and services. The maximisation of the trade area will, however, be impacted by the continued existence of corruption despite domestic

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1 Munyai A *Overcoming the corruption conundrum in Africa: A socio-legal perspective* Newcastle: Cambridge Scholars Publishing (2020) at 13.

2 Jong-Sung Y & Khagram S "A comparative study of inequality and corruption" (2005) 70(1) *American Sociological Review* 136 at 136.

3 Aidt TS "Corruption, institutions, and economic development" (2009) 25(2) *Oxford Review of Economic Policy* 271 at 271.

measures aimed at eradicating it. Continentally, efforts towards the eradication of corruption are evident in the adoption of the Convention on Preventing and Combating Corruption.[4] Unfortunately, the Convention falls short in terms of having of an independent investigative institution. In addition, the AfCFTA itself does not make provision for measures aimed at fighting corruption and the challenge it presents to the fulfilment of its objectives.

Employing a textual analysis methodology, this article commences with an overview of corruption and its impact on Africa. This will be followed by a synopsis of the AfCFTA. Thereafter, the article interrogates the Convention on Preventing and Combating Corruption and argues that the absence of an investigative anti-corruption institution to implement the convention is a flaw that would need to be addressed in order to help ensure the success of the AfCFTA.

2 UNDERSTANDING CORRUPTION IN AFRICA

Corruption varies across the world. As such, constructing a watertight definition that encapsulates its diversity and the different global perspectives on it has proven to be impossible. Generally, corruption is understood as conduct in which an official misuse his or her public duties for private gain.[5] A limitation of this understanding, however, is that it assumes that corruption is limited to public office and thus excludes private sector corruption, which may be understood as "a misdirection of organisational resources for a personal or corporate benefit".[6]

Generally, there are two scales of corruption: grand and petty. The latter is often perpetrated by bureaucrats or administrators, and involves small amounts of money relative to those at issue in grand corruption.[7] As noted by Transparency International, petty corruption is "everyday abuse of entrusted power by public officials in their

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[4] Adopted on the 2nd ordinary session of the Assembly of the African Union, Maputo, 11 July 2023. Entered into force on 5 August 2006.

[5] Andvig J "Corruption in China and Russia compared: Different legacies of central planning" in Rose-Ackerman S (ed) *International handbook on the economics of corruption* Massachusetts: Edward Elgar (2006) 281.

[6] See Mahmud NM et al. "The supply-side of corruption: A review of scenario, cause and prevention measure" (2021) 29(1) *Journal of Financial Crime* 34 at 35.

[7] Munyai (2020) at 28–29.

interactions with ordinary citizens, who often are trying to access basic goods and services …"[8]

Grand corruption, by contrast, is understood as being perpetrated by political elites who exploit their political power in the performance of their duties.[9] It may be understood as "the abuse of high-level power that benefits the few at the expense of the many".[10] As with the limitations on the definition of corruption outlined above, grand corruption is often conceptualised in such a way as to limit it to public domain and thus focus solely on high-level public officials or political elites. Caution ought to be exercised because grand corruption may indeed also be perpetrated by elites in the private sector through their relationships or interactions with political elites or officials, junior public officials, or ordinary citizens.

Corruption has been a constant and consistent feature in human interaction.[11] It continues to exist and thrive in the global community given its ability to infiltrate social, economic and political spheres. There are two theories of corruption: principal-agent theory and the collective action theory.[12] Principal-agent theory considers the interaction and interrelations between public bodies.[13] The analysis is based on two key assumptions: (1) there is a goal conflict between the principals and the agents, and (2) agents have more information than the principals, resulting in information asymmetry.[14] According to this theory, the principals delegate some administrative tasks to the agents, which may result in the agents (1) having information about the task and not being willing to disclose to the principal, or (2) having their private motivations override the delegated task.[15] Thus, the agent betrays the interest of the principal to pursue his or her private interest.[16] In such instances, the principal, due to lack of all the relevant information that

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8 Transparency International "Petty corruption" (n. d.) *Transparency International* https://www.transparency.org/en/corruptionary/petty-corruption (accessed 2 August 2023).

9 Munyai (2020) at 28.

10 Transparency International (n .d.).

11 Aidt (2009) at 271.

12 Persson A, Rothstein B & Teorell J "The failure of anti-corruption policies: A theoretical mischaracterization of the problem" (2010) 19 *QoG Working Paper Series* (2010) 1 at 4.

13 Persson et al. (2010) 1 at 4.

14 An "agent" denotes a person whose authority is delegated. The "principal" denotes someone who delegates. See Persson et al. (2010) at 4.

15 Persson et al. (2010) at 4.

16 Persson et al. (2010) at 4.

the agent has, might not be in a position to know which agent behaves honestly because the agent knowns more than they (principal) do.[17]

This outcome points to corruption, in particular the abuse of power for private gain. In the principal-agent theory, it is open to question as to who the agent is and who, the principal. In the context of bureaucratic corruption, agents are at times the bureaucrats and the principals, the elected officials; in a quest to establish a corruption-free society, the interests of these parties may be in conflict, creating a tension between self-interest and the public interest.

Considering this, Klitgaard developed a formula to support a holistic approach towards the fight against corruption: "corruption = monopoly + discretion – transparency".[18] Klitgaard perceives corruption as rooted in power centralisation, discretion, and weak accountability. In other words, in terms of the principal-agent theory, when opportunities for unethical acts are enhanced, "agents impose their monopoly power on clients, accompanied by discretion and lack of accountability towards the principal".[19] At the same time, the rulers also need to be governed. From this perspective, they become the agents and the citizens assume the role of a principal.[20]

The collective action theory, however, challenges the assumption that every society holds at least one group of actors willing to act as "principals".[21] Contrary to the principal-agent theory, the collective action theory assumes that all actors, that is, rulers, agents and citizens, seek ways to maximise their own self-interest, which does not necessarily imply that they are "corrupt" per se.[22] This theory suggests that corruption should be understood as a collective action, particularly so in the context of systematic corruption.[23] In the latter instance, a collective-action approach is paramount and may be more effective than a principal-agent one in the promotion and implementation of ant-corruption mechanisms.

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17 Persson et al. (2010) at 4.

18 Klitgaard RE *Controlling corruption* California: University of California Press (1988) at 75.

19 Elsayed (2020) at 13.

20 Persson et al. (2010) at 4.

21 Persson et al. (2010) at 5.

22 Persson et al. (2010) at 5.

23 Marquette H & Peiffer C "Collective action and systematic corruption" (2015) 32 *DLP Research Paper* 1 at 2.

There are two differing perceptions on the effects of corruption on society. Generally, corruption is perceived, on the one hand, as negatively affecting the functioning of a state and a hindrance to societal welfare; on the other, some perceive it as a tool to grease the wheels of transactions and thus regard it as potentially necessary to foster growth and development.[24] This argument suggests that corruption may be a beneficial and necessary tool for trade and promotive of efficiency.[25]

Yet despite the perception that corruption greases the wheels,[26] it has an enormous impact on the African continent. For a start, it undermines the rule of law. The essence of the rule of law is that law is impartial and independent and that no one is above it. A corrupt justice system and judiciary violates people's rights to equal access to justice in that they may be faced with requests for extortion, or an accused may be in a privileged position to bribe judges or law enforcement officers.[27] In such situations, people may be denied due process, in addition to which trust in the ability of the justice system to secure the rule of law is tarnished.[28]

By implication, when corruption distorts the nature of the law, it often results in the protection of authoritarianism and enables the exercise of arbitrary power.[29] For example, the President of Equatorial Guinea, Teodoro Obiang Nguema Mbasogo, has been serving for more than three decades, and his son, the Vice President, was fined 30 million euros by a Paris court for embezzling state funds.[30] Consequently, as in Equatorial Guinea and other African states, corruption erodes the essence of a democracy, in turn restricting citizens' public and political participation. Accompanied by the centralisation of power,

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[24] Alshubiri FN "Corruption, government effectiveness, and financial development: An empirical analysis" in Rafay A (ed) *Concepts and cases of illicit finance* Pennsylvania: IGI Global (2023) 119.

[25] Aidt (2009) at 271. See also Mitchell C *A short course in international business ethics: Combining ethics and profits in global business* California: World Trade Press (2003) 32; Spyromitros E & Panagiotidis M "The impact of corruption on economic growth in developing countries and a comparative analysis of corruption measurement indicators" 10 (2022) *Cogent Economics & Finance* 1 at 3.

[26] See Bayley DH "The effects of corruption in a developing nation" (1966) 19(4) *The Western Political Quarterly* 719.

[27] Brooks G *Criminal justice and corruption state power: Privatization and legitimacy* London: Springer International Publishing (2019) at 153.

[28] Mirzazadeh I "The nexus between corruption and the rule of law" (2021) *SSRN Electronic Journal* 1 at 6.

[29] Mirzazadeh (2021) at 8.

[30] Chrisafis A "Son of Equatorial Guinea's president is convicted of corruption in France" (27 October 2017) *The Guardian* available at https://www.theguardian.com/world/2017/oct/27/son-of-equatorial-guineas-president-convicted-of-corruption-in-france (accessed 23 February 2024).

this promotes a lack of transparency, accountability, and good governance that weakens the enforcement of laws aimed at detecting illegal activities.[31]

A state whose rule of law is undermined will be unable to fully protect and promote human rights. In such circumstances, arbitrary decisions and abuse of power are likely to prevail, thus eliminating the observation of accountability and transparency; as a result, human rights violations may go unchecked with no legal ramifications or redress. Similarly, where rule of law is unobserved, corruption thrives. This too hinders the protection and promotion of human rights. The latter rights exist so as to ensure that everyone is afforded equal opportunity, a sense of equality and non-discrimination, and protection of his or her life. This is evident in the universal understanding that everyone has an equal right to, inter alia, life, education, and health. Thus, the fight against corruption can be attributed to the need to protect and promote human rights.[32] When corruption undermines or hinders the attainment of these rights, it may be perceived as a barrier to human rights.

In Africa, when corruption impairs the development of states, it hinders the exercise of the right to development[33] as well as civil, political, economic and social rights,[34] thus hindering states from meeting their obligations as duty-bearers of human rights. For example, access to basic housing is a basic human right, but when public funds are misappropriated or stolen, vulnerable members of society are deprived of funds aimed at providing access to service delivery, thus resulting in a violation of their human rights.[35] In another example, access to health care is a basic human right; however, when health practitioners require bribes from patients, particularly the impoverished, this restricts their access to health care, hence again violating their human rights.[36] A state in which

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31 Munyai (2020) at 71.

32 Mantzaris EA "Corruption as a violation of basic human rights in South Africa and Russia" (2017) 9 *African Journal of Public Affairs* 15 at 17.

33 Nkwain AK "The effects of corruption on the right to development and the challenge in combating it in Cameroon" (2023) 7 *International Journal of Research and Innovation in Social Science* 1216 at 1218.

34 In 2024, Nigeria prosecuted officials of the Independent National Electoral Commission and political party members for electoral offences that included vote-buying. See Habib G & Olasupo A "Govt begins prosecution of INEC officials, others for electoral fraud" (3 March 2024) *Punch Nigeria* available at https://punchng.com/govt-begins-prosecution-of-inec-officials-others-for-electoral-fraud/ (accessed 17 May 2024).

35 Mantzaris (2017) at 18.

36 The looting of public funds in Zimbabwe has affected its health sector. See Bagnetto LA "Zimbabwe's health system is failing because of 'looted' funds, says journalist" (17 October 2021) *RFI* available at https://www.rfi.fr/en/africa/20211017-zimbabwe-s-health-system-is-failing-because-of-looted-

human rights are not promoted and protected may be characterised by high poverty rates.[37] For this reason, poverty is aggravated by the persistence of corruption. The latter generates poverty traps, making it difficult to engage in economic and political transactions aimed at the development of the state.[38] Moreover, the deep-rooted nature of corruption in African democracies exacerbates income inequality, thus contributing to alarming rates of poverty.[39] Overall, a corrupt system of governance will fail in its efforts at socio-economic development, which in turn hinders continental economic integration.

2.1 Corruption and economic integration

Economic integration entails promoting the free operation of market forces between states; in Africa in particular, the AfCFTA attempts to establish a single market for all African states.[40] However, the prospects for such integration may be dashed, given that the extent of corruption could destroy incentives for integration; thus, although the impact of corruption cannot be strictly quantified, its impact on economies can severely affect the welfare of the people.[41] For example, economic integration expands economic opportunities and enhances access to markets; however, when bribery becomes an additional cost of economic participation, market access becomes limited to those who can afford paying bribes.[42] Put simply, while economic integration increases capital flows and market expansion, corruption morphs into a *quid pro quo*, distorting the wealth distribution and undermining inclusive and socio-economic development.[43]

Some scholars maintain that in order to estimate the impact of corruption on economic growth, two effects should be quantified: "a direct effect resulting from the exploitation

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funds-says-journalist-hopewell-chin-ono-graft-corruption-moyo (accessed 17 May 2024). See also Mantzaris (2017) at 18.

37 The ongoing civil war in Somalia has resulted in numerous serious abuses of international humanitarian and human rights law. Moreover, in 2023, Somalia was rated as the most corrupt country in the world in the Transparency International Corruption Perceptions Index.

38 Aidt (2009) at 271.

39 Odusote OT *Investigating and prosecuting corruption in Nigeria: An empirical analysis of legal and institutional frameworks* (PhD thesis, University of Surrey 2020) at 52.

40 Onuwa GC & Adedire O "Intra-regional economic integration: The African Continental Free Trade Area Initiative" in Carvalho MAM and Rodrigues MA (eds) *Sustainable consumption experience and business models in the modern world* Pennsylvania: IGI Global (2023) 1–4.

41 See Spyromitros & Panagiotidis (2022).

42 See Gauthier B, Goyette J & Kourmé W "Why do firms pay bribes? Evidence on the demand and supply sides of corruption in developing countries" (2020) *World Bank Group Policy Research Working Paper No. 9441*.

43 Shera A "Corruption and the impact on the economic growth" (2011) 2 *Journal of Information Technology and Economic Development* 39 at 41.

of public investments and an indirect effect determined by the allocative inefficiency of public investment decisions".[44] For any state wherein people's economic choices are restricted, corruption further restricts individual economic growth by limiting access to participate in the economy.[45] This can be observed where officials require bribes in order to issue permits or licenses: those who are unable to pay bribes may have their participation in the economy hampered.[46]

Furthermore, corruption by public officials takes different forms, which include the misappropriation, expropriation, and theft of state funds. The existence of any of these forms of corruption results in the depletion of state monetary resources that could have contributed to the economic growth of the state and its people.[47] Corruption may also reduce growth by causing a deterioration in the quality of public infrastructure and service delivery through the diversion or misappropriation of public funds; by decreasing tax revenue through, for example, the payment of bribes to evade traffic fines; and by distorting government expenditure through theft and misappropriation of public funds.[48]

A weakened democracy and an economy devastated by corruption may be inferred from poverty rates, allowing that corruption is often considered the enabler of high poverty rates.[49] For example, in 2023, Nigeria had the highest rate of extreme poverty in Africa,[50] while also experiencing widespread corruption characterised by, for example, neo-patrimonialism and bribery.[51] Among African states, corruption occurs despite the presence of stable democracies and anti-corruption measures.[52] From this perspective, it

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44 Shera (2011) at 41.

45 Ionescu L "The adverse effects of corruption on growth and development" (2014) 9 *Economics, Management and Financial Markets* 125 at 126.

46 Fisman R & Golden MA *Corruption: What everyone needs to know* Oxford: Oxford University Press 2017) at 136.

47 Ionescu (2014) at 127.

48 Shera (2011) at 46.

49 See Justesen MK and Bjørnskov C "Exploiting the poor: Bureaucratic corruption and poverty in Africa" (2014) 58 *World Development* 106 at 106–107.

50 Galal S "Extreme poverty as share of global population in Africa 2023" *Statista* available at https://www.statista.com/statistics/1228553/extreme-poverty-as-share-of-global-population-in-africa-by-country/ (accessed 23 February 2024).

51 Oldfield J "Nigeria: Corruption and anti-corruption" (26 October 2023) *CMI U4 Anti-Corruption Resource Centre* available at https://www.u4.no/publications/corruption-and-anti-corruption-efforts-in-nigeria (accessed 23 February 2024).

52 Ngumbi E "Reconstructing the elusive fight against corruption in Africa: The quest to re-characterise political corruption as an international crime" (2020) 8 *International Journal of Business & Management* 98.

may be argued that states that uphold the principles of democracy and anchor themselves on transparency do not suffer the same effects as states that do not adhere to democratic principles. In other words, where a state promotes transparency and upholds the rule of law, corruption is benign in that corrupt activities are likely to be reported and combatted.[53] For example, Denmark is both one of the least corrupt democracies and, in 2023, a top-ranking country in the World Justice Project's Rule of Law Index.[54]

A weakened democracy has no likelihood of successfully combatting or reducing corruption. In fact, for Africa, the institutionalisation and internalisation of corrupt practices makes the fight against this scourge a Herculean task in that it (corruption) has become a way of life.[55] Moreover, the fight against corruption becomes impossible to combat where systems of accountability are weak and accompanied by poor leadership and a culture of impunity.[56]

Although no state is immune to corruption, such a culture of impunity often persists where there are high levels of political corruption – the latter is a form of corruption which is particularly difficult to combat and prevent.[57] This is because political corruption involves high-level politicians infiltrating state institutions in order to transform them into instruments for private self-enrichment. A high level of political influence on government institutions may result in state capture,[58] as evidenced in South Africa, where allegations of corruption were made in regard to the Gupta family and the then President, Jacob Zuma.[59] The gravity of these allegations led to the establishment of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the

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53 Assiotis A & Sylwester K "Do the effects of corruption upon growth differ between democracies and autocracies" (2014) 18 *Review of Development Economics* 581.

54 World Justice Project "WJP Rule of Law Index 2023 global press release" (25 October 2023) *World Justice Project* available at https://worldjusticeproject.org/news/wjp-rule-law-index-2023-global-press-release (accessed 23 February 2024).

55 Osei-Hwedie BZ & Osei-Hwedie K "The political, economic, and cultural bases of corruption in Africa" in Hope KR & Chikulo BC (eds) *Corruption and development in Africa* New York: Palgrave Macmillan (2000) at 40.

56 Ngumbi (2020) at 99.

57 Ngumbi (2020) at 99.

58 Ngumbi (2020) at 100.

59 Georg C "Flashback 2016: The R600m bribe & other state capture scandals that shook SA" (12 August 2016) *News24* available at https://www.news24.com/fin24/flashback-2016-the-r600m-bribe-other-state-capture-scandals-that-shook-sa-20161208 (accessed 18 May 2024).

Public Sector including Organs of State in 2018.[60] In 2022, the Commission concluded its operations and subsequently found instances of state capture.[61]

Given the above, it may be said that corruption undermines the fundamental values of African unity captured in the Constitutive Act of the African Union,[62] values which include justice, democracy, good governance, and the rule of law. Empowered by the Act, the African Union is the custodian of Africans and its intentions are to ensure the progress of all on the continent.[63] This commitment is evident in various proclamations, resolutions and projects.[64] The AfCFTA was adopted as a trade pact creating a single market for goods and services.[65] Notwithstanding the potential this trade area holds, corruption remains its biggest threat because, amongst other things, it may disrupt investment in both physical and human capital, thereby contributing to the political imbalance of a state.[66] Furthermore, foreign investments may be affected by corruption in that investors would lose confidence in institutions, a factor thus limiting prospects for investment.[67]

In addition, those considered to be in the lower class of the economy, that is, street-level or low-levelofficials, often engage in petty corruption. Where there is a high frequency of its perpetration, petty corruption runs the risk of having an impact on development and takes the form of systemic corruption. The latter ultimately underlines the pervasive nature and extent of the embeddedness of corruption.[68]

Ultimately, it is imperative for anti-corruption instruments to exist domestically and continentally. However, these instruments must be accompanied by active political and public will to implement them successfully. In other words, within the scope of the AfCFTA, public officials and the general public have a role to play in fighting corruption so

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60 Warnes C *Writing, politics and change in South Africa after apartheid* Cambridge: Cambridge University Press (2023) at 114.

61 Cameron R *Public sector reforms in South Africa 1994-2021* Bingley: Emerald Publishing (2022) at 82.

62 Constitutive Act of the African Union, adopted 11 July 2000, OAU Doc. CAB/LEG/23.15, entered into force on 26 May 2001.

63 See article 3 of the Constitutive Act of the African Union.

64 Examples include not only the AfCFTA (discussed in this paragraph) but the Convention for the Establishment of the African Centre for Fertilizer Development, as well as the African Union Decision on Fast Tracking the Implementation of Commitments for Accelerating the Achievement of Water and Sanitation Goals in Africa Doc. Assembly/AU/16 (XXIV).

65 Onuwa & Adedire (2023) at 1–4.

66 Ionescu (2014) at 125.

67 Odusote G & Aduak Y "Implementing the African Continental Free Trade Area Agreement (AfCFTA) and the challenges of corruption in Africa" (2022) 12 *Open Journal of Political Science* 321 at 326.

68 Odusote & Aduak (2022) at 324.

as to ensure the maximisation of the AfCFTA. Where challenges exist as a result of poverty, for example, or of officials being underpaid, such individuals will be susceptible to acts of corruption in an attempt to supplement their low wages or salaries.[69]

3 AN OVERVIEW OF THE AFRICAN CONTINENTAL FREE TRADE AREA

Regional economic integration may be defined as the outcome of treaties or agreements between groups of states within a geographical region seeking to "reduce, and finally remove tariff and non-tariff barriers to the free movement of goods, services, and factors of productions between each other", [70] reduce government tax revenue, and contribute to alleviating poverty and unemployment.[71] Years after the establishment of the Organisation of African Unity, the Lagos Plan of Action for the economic development of Africa was adopted in 1980 to address Africa's economic problems and call for economic liberation. This was followed by the Abuja Treaty, which established an African Economic Community to, inter alia:

- promote economic, social and cultural development and integration of African economies; and
- establish a framework for the development, mobilization and utilization of resources of Africa for self-reliant development.[72]

In 2015, the African Union's Agenda 2063 was adopted.[73] It reflects the desire of African states to unite in order to promote peace, improve human security, and advance the development of the continent.[74] Among other things, Agenda 2063 calls for socio-economic transformation, with one of its flagship projects being the AfCFTA, which was launched in March 2018 in Kigali. Article 2 of the AfCFTA explicitly established the free

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69 Odusote & Aduak (2022) at 326.

70 Cole K et al. "Regional economic integration" (1999) 2 *The Review* 70 at 70.

71 Jibrilla A "African Continental Trade Area (CFTA) and its implications for Nigeria: A policy perspective" (2018) 2 *International Journal of Research and Innovation in Social Sciences* 164.

72 Article 4 of the African Union Treaty Establishing the African Economic Community, adopted on 3 June 1991 and entered into force on 12 May 1994.

73 African Union *Agenda 2063: The Africa we want* available at https://wedocs.unep.org/bitstreams/6b84b1db-ccf6-4806-baad-f742fa1b8456/download (accessed 18 May 2024).

74 Naldi G "The contribution of the AU Human Rights Agreement to an emergent AU law" in Magliveras KD et al. (eds) *The emergent African Union law: Conceptualisation, delimitation, and application* Oxford: Oxford University Press (2021) at 322.

trade area.[75] On 7 July 2019, the operational phase of the AfCFTA began, thus establishing five operational instruments governing the AfCFTA. These instruments are the Rules of Origin; the online negotiating forum; the monitoring and elimination of non-tariff barriers; a digital payments system; and the African Trade Observatory.[76] Additionally, in an attempt to realise the objectives of the African Economic Community, state parties to the AfCFTA decided to progressively liberalise trade-in services.[77]

As of February 2023, 54 African Union member states had signed the AfCFTA and 44, ratified it (with Eritrea the only country that has neither signed nor ratified it).[78] The AfCFTA is the largest free-trade area in the world in terms of the number of participating states. Generally, a free trade agreement is an agreement between two or more states whereby the states agree on obligations that affect the trade of goods and services.[79] The AfCFTA was established to strengthen economic relations among African states and develop international trade and economic corporation. One of the important features of the AfCFTA is simultaneous negotiation on both goods and services.[80]

Article 3 of the AfCFTA lays out eight general objectives, whilst article 4 provides specific objectives aimed at fulfilling and realising article 3. The AfCFTA is inclusive of a Protocol on Trade in Goods ("Protocol") in an effort to expand intra-African trade. Article 2 of the Protocol provides for the objectives of the Protocol, one of which is to "create a liberalized market for trade in goods …" Additionally, the article provides that the specific objective of the Protocol is to boost intra-African trade through, amongst other things,

- progressive elimination of tariffs and non-tariff barriers;
- development and promotion of regional and continental value chains; and

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75 African Union "Agreement establishing the African Continental Free Trade Area adopted 21 March 2018, entered into force 30 May 2019" available at https://ghalii.org/akn/aa-au/act/agreement/2018/african-continental-free-trade-area/eng@2018-03-21/publication (accessed 18 May 2024).

76 Apiko P et al. "The promise of the African Continental Free Trade Area (AfCFTA)" (2020) 287 *ECDPM Discussion Paper* 2.

77 Simo RY "Trade in services in the African Continental Free Trade Area: Prospects, challenges and WTO compatibility" (2020) 23 *Journal of International Economic Law* 65 at 66–67.

78 See Agreement establishing the African Continental Free Trade Area.

79 Athukorala P "Free trade agreements in the world trade system: Substance and semantics" (2019) Foreign Trade Review 1.

80 Simo (2020) at 66.

- enhanced socio-economic development, diversification and industrialisation across Africa.

The AfCFTA is multifaceted, considering the various continuous negotiations in multiple phases, as well as the cooperation and coordination required from stakeholders locally and continentally to address "technical and political questions that will vary by place and by sector".[81] Participation in global trade is regarded as a necessary component of economic growth.[82] One of many key challenges for African states is the lack of capacity to participate fully in international trade. For example, lack of skilled human capital and institutional capacity may affect participation in international trade. In other instances, lack of proper infrastructure to support international trade may limit participation in international trade. This has fuelled the need for regional economic integration on the African continent.[83] Holistically, the free trade area established by the AfCFTA is intended to connect at least 1.3 billion people across Africa and yield a combined gross domestic product (GDP) of USD 3.4 trillion.[84]

The AfCFTA is indeed an economic game-changer for the development of the African continent. It will enable states to integrate competitively in the global economy, promote economic inclusion, and enhance productivity and job creation, thereby contributing to the elimination of poverty.[85] The overall benefits of the AfCFTA include a reduction of tariffs, the implementation of non-tariff barriers (NTBs), and the development of a continental system for trade in goods and services. Additionally, the AfCFTA grants member states opportunities to harmonise trade-related policy regulations, something which will assist in spurring economic growth.[86]

The AfCFTA is unique in that it is centred on the three dimensions of development – the social, economic, and cultural – and its realisation will boost these dimensions. Nonetheless, barriers to development exist, with poverty and unemployment (discussed

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81 Apiko (2020) at 1.

82 United Nations Conference on Trade and Development "The role of international trade in the post-2015 development agenda" Trade and Development Commission, sixth session, TD/B/C.I/33 (5-9 2014) Geneva.

83 Simo (2020) at 67.

84 Kuwonu F "Africa's free trade area opens for business" (7 January 2021) available at https://africarenewal.un.org/en/magazine/africas-free-trade-area-opens-business (accessed 19 March 2021).

85 Apiko (2020) at 3.

86 Apiko (2020) at 3.

below) being of particular importance. The AfCFTA may, however, contribute to the reduction of poverty and unemployment in Africa through the identification of trade specialties. This prospect is supported by one of the key findings in research by the World Bank, which estimated that by 2035 the AfCFTA would contribute to lifting at least 30 million people from extreme poverty and 68 million, from moderate poverty.[87]

As noted, the AfCFTA will be the largest free trade area in the world, measured by the number of states participating in the trade market. Increasing trade can provide the impetus for reforms that boost productivity and job creation and hence reduce poverty. This suggests that the AfCFTA could also boost regional output and productivity, leading to a reallocation of resources across sectors and states. By 2035, the total production of the continent is projected to almost reach USD 212 billion, which is higher than the baseline.[88] These projections reflect how the AfCFTA could rescue many millions of people from extreme poverty and promote economic inclusion. However, this is strongly dependent on the appropriate implementation of strategies and reform policies on poverty, together with trade measures.[89] Furthermore, given that poverty and unemployment reinforce each other,[90] the AfCFTA has the potential to increase and create employment opportunities. Though this may be a possibility, what is paramount is that households should not have a monthly per capita income below the poverty threshold.[91] In other words, a state of poverty should not be a reality for Africa.

Another barrier to economic development within states relates to infrastructure.[92] In addressing this barrier and contributing to economic growth, the AfCFTA will boost trade

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87 United Nations Office of the Special Adviser on Africa "Global concept note" available at https://www.un.org/osaa/africa-dialogue-series/africa-dialogue-series-2023/global-concept-note (accessed 23 February 2024).

88 Maliszewska M et al. "The Africa Continental Free Trade Area: Economic and distributional effects" available at https://ageconsearch.umn.edu/record/333178/files/9747.pdf (accessed 23 February 2024).. The report does not explicitly outline a baseline figure.

89 Ngcaweni B "Analysis of China-Africa cooperation on poverty reduction" in Wei H & Wang L (eds) *Poverty reduction in China: Achievements, experiences and international cooperation* Singapore: Springer (2022) 222.

90 Van der Westhuizen M & Swart I "The struggle against poverty, unemployment and social injustice in present-day South Africa: Exploring the involvement of the Dutch Reformed Church at congregational level" (2015) 1 *Stellenbosch Theological Journal* 731.

91 Feder J & Yu D "Employed yet poor: Low-wage employment and working poverty in South Africa" (2020) *Development Southern Africa* 363 at 367.

92 Widarni EL & Bawono S "Technology investment, consumption and economic growth in poverty eradication efforts in Indonesia" in Sergi BS & Sulistiawan D (eds) *Modelling economic growth in contemporary Indonesia* Bingley: Emerald Publishing (2022) at 218.

in Africa by fostering trade-enhancing infrastructure such as roads, railways lines and seaports. Additionally, once the AfCFTA gets under way, trade in natural resources among African states – in conjunction with the nationalisation of natural resources through the exercise of permanent sovereignty over these resources – will result in the fulfilment of this form of development. The infrastructure of a state contributes to its economic activity.[93] A state without proper infrastructure is limited in its ability to deliver services such as sanitation, education, transport and housing.

There can be no doubt that, historically, the African Union is centred on accelerating the continent's political and socio-economic integration and both protecting and promoting human and peoples' rights. Nonetheless, there are challenges that impede these goals – notably corruption and partisan political leadership. These challenges, unfortunately, are not emphasised in the objectives of the AfCFTA. Other challenges were outlined in the First Continental Report on the Implementation of Agenda 2063 ("First Continental Report"), which was made public in February 2020 at the 33rd Ordinary Summit of the African Union.[94] The report is an assessment of progress by 31 African Union member states and six regional economic communities in achieving Africa's master plan for sustainable development and economic growth. The three challenges identified were as follows:

- there were inadequate human and financial resources for the completion of negotiations on phase I issues as well as for starting phase II;
- some member states and partners have been negotiating bilateral trade and investment agreements with third parties, which is not only against the spirit of the Nouakchott Decision but also jeopardises the AfCFTA; and
- the AfCFTA's implementation is heavily reliant on progress in other projects such as the Programme for Infrastructure Development in Africa, the Comprehensive Africa Agriculture Development Programme, the Single African Air Transport Market, and the protocol on free movement of people.[95]

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93 Widarni & Bawono (2022) at 218.

94 African Union First Continental Report on the Implementation of Agenda 2063 (2020) at 31 available at https://au.int/sites/default/files/documents/38060-doc-agenda_2063_implementation_report_en_web_version.pdf (accessed 1 April 2021).

95 African Union (2020) at 31.

Financial obstacles are an enemy to progress in that a lack of government funding hinders the initiation of projects. Additionally, the debt accumulation of African states presents a major barrier to the AfCFTA's progress. The higher debt accumulation is, the harder it is for Africa to achieve its economic independence due to the inability of states to support economic activities within their markets. According to the Center for European Policy Studies, Africa's foreign debt

> *[has been] estimated at $417 billion and in 2018 … 36% of African government external debt … [was] owed to multilateral organisations such as the World Bank and IMF, 32% to bilateral creditors (including 20% to China) and another 32% to private lenders.*[96]

The reality of these statistics is that as debts accumulate, the more difficult it becomes for Africa to achieve economic independence.

Non-tariff barriers are policy trade restrictions that prohibit, or impose market requirements on, the importation or exportation of products to make trading difficult and/or costly.[97] Realisation of the objectives of the AfCFTA requires the abolition of non-tariff barriers; in other words, the reduction or elimination of non-tariff barriers can enhance economic progress, contribute to the intra-Africa imports and exports, and aid the development of continental trading terms.[98] The difficulty with the elimination of non-tariff barriers arises for states, such as Malawi and Lesotho, whose economies depend on tariffs for revenue. Nonetheless, in collaboration with the United Nations Conference on Trade and Development, the African Union developed an online platform for anyone to report non-tariff-barrier-related issues.[99]

In truth, notwithstanding the other challenges to the AfCFTA, corruption remains its most significant obstacle, making it imperative for it to acknowledge this, provide preventative measures, and emphasise the importance of state co-operation in ensuring the implementation of the agreement. Conversely, silence on this pertinent issue will have an

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[96] Dubuysere L "Why the EU should take the global led in cancelling Africa's debt" (16 April 2020) *Center for European Policy Studies* available at https://www.ceps.eu/why-the-eu-should-take-the-global-lead-in-cancelling-africas-debt/ (assessed 30 March 2020).

[97] Viljoen W "The intra-Africa non-tariff barrier dilemma – the challenges facing the AfCFTA approach" (March 2019) *Tralac Trade Law Centre* available at https://www.tralac.org/documents/events/tralac/2739-tralac-brief-the-intra-africa-ntb-dilemma-the-challenges-facing-the-afcfta-approach-march-2019/file.html (accessed 30 March 2021).

[98] Viljoen (2019).

[99] United Nations Trade and Development "Non-tariff barriers: Monitoring, reporting and eliminating mechanisms" available at https://unctad.org/topic/trade-analysis/non-tariff-measures/NTMs-policy-support/monitoring-and-reporting (accessed 18 May 2024).

impact on economic rejuvenation in that an increase in corruption rates in Africa will diminish optimism about the AfCFTA. [100] The drafting and subsequent adoption of the AfCFTA has proven to be a missed opportunity to address corruption. All things considered, the AfCFTA might be futile in view of the continent's increased rates of corruption, given that it cannot co-exist with corruption. Below is a discussion that serves to buttress this position.

3.1 Market access, integration and corruption

Having access to foreign goods and services may be beneficial for developing economies, as this assists export earnings, employment opportunities, and mobilisation of resources for development.[101] Market access can be understood as involving competing relations between a country's domestic and imported products. From an international trade perspective, it includes conditions, tariffs and non-tariff measures that countries agree to for cross-border trading.[102] Essentially, this implies that there will be access to the market of a given country in order to sell and obtain revenue without obstacle.[103] Considering that market access entails opening markets to foreign goods and services, this often covers different types of trade barriers to entry and operation.[104]

It is evident that market access promotes economic growth, development and economic integration; thus, market access supports the essence of the AfCFTA. As such, one may deduce that there would be a stimulation of trade following the expansion of businesses, especially when trade barriers are reduced.[105] Certainly there would be an enhancement of economic growth due to foreign funds entering the market as well as the host state. Importantly, too, economic growth is often accompanied by competition. Thus, when the market grows, so does competition among businesses, especially small- and medium-

[100] Odusote & Aduak (2022) at 321–322.

[101] McGuire G "Trade in services-market access opportunities and the benefits of liberalisation for developing economies" (United Nations Policy 2002) *Policy Issues in International Trade And Commodities Study Series* No. 19 at 1.

[102] Toumi M & Jaroslawski S "Introduction to market access for pharmaceuticals" in Wertheimer A & Koçkaya G (eds) *Pharmaceutical market access in developed markets* Torino: SEEd (2018) at 3.

[103] Toumi & Jaroslawski (2018) at 3

[104] Papaconstantinou GA *A WTO, FTAs, and competition law analysis* London: Bloomsbury (2024) at 28.

[105] Abrego L et al. *The African Continental Free Trade Area: Potential economic impact and challenges* Washington: International Monetary Fund (2020) at 16–17.

sized one. In turn, this can be linked directly to the reduction of poverty, as employment opportunities may increase.[106] Lastly, continental integration would be strengthened.[107]

In the light of the above, corruption affects market access in a variety of ways, but most importantly, it could make it difficult for new and small businesses to enter the market. This may lead, for example, to favouritism towards certain businesses or bribery to influence procurement processes.[108] Additionally, corruption can result in individuals and corporations undermining regulations and institutions, which entails the simultaneous undermining of the rule of law. As previously stated, corruption takes different forms, with bribery one of the most common such forms.[109] In most instances, one or more individuals solicits a bribe whilst the other gives the bribe.[110] Within the context of government officials engaging with corporations, either the official or the corporation may solicit a bribe in order to bypass required regulatory actions.[111] Money laundering is another act of corruption that may be detrimental to AFCFTA, given its ability to affect the tax revenue of a state. Simply put, hiding money from legitimate economic activity hinders the state from consolidating its taxable income.[112]

One aspect of money laundering is trade-based money laundering. This takes place when the proceeds of crime are disguised and moved through trade transactions in order to legitimise their illicit origin. The sole purpose of the process is to disguise the origin of the proceeds through the integration of the funds in a financial system.[113] It may thus be argued that bribery and money laundering are financial crimes that pose a high risk of hampering the success of the AFCFTA. It is hence important for all African states, individually and collectively, to adopt effective and adequate policies, procedures and

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[106] Abrego et al. (2020) at 9.

[107] Abrego et al. (2020) at 16–17.

[108] See Dikmen S & Çiçek HG "Fighting against corruption and bribery in public procurements during the Covid-19 pandemic" in McGee RW & Benk S (ed) *The ethics of bribery: Theoretical and empirical studies* Cham: Springer International Publishing (2023) at 317.

[109] Li S *Bribery and corruption in weak institutional environments: Connecting the dots from a comparative perspective* Cambridge: Cambridge University Press (2019) at 28–31.

[110] Li (2019) at 28–31.

[111] Bowling C "Corruption and FTAS: Does an implicit cause of action exist for corruption claims in ISDS?" (2019) 51 *International Law and Politics* 921 at 922.

[112] Esoimeme EE "A critical analysis of the cross-border financial crime risks inherent in the African continental free trade area" (2023) *Journal of Financial Crime* 1 at 7.

[113] Esoimeme (2023) at 6–7.

controls to detect and prevent these acts of corruption.[114] Generally, all corrupt acts would exploit the import and export system of the AfCFTA,[115] but those acts that directly contribute to illicit trade and financial crimes are likely to be the most detrimental to the promotion of economic growth and investment between African states.[116]

3.2 Corruption and corporations

Corruption contributes to illicit trade in developing economies, especially where it affects branches of government linked to illicit trade, such as customs and border patrol law enforcement.[117] Considering that the AfCFTA will involve corporations, the interaction between corporations and public officials in the various sectors is important and if left unchecked, acts such as bribery will thrive. For instance, bribery may exist where a public official involved in issuing licenses "requests, agrees to receive or accepts an advantage …", thus leading to improper performance of the office's duty.[118] Alternatively, bribes may be requested or accepted to allow a corporation to pass through an illegal route.[119]

Given that corruption is associated with the promotion of private gain or self-interest, it also promotes self-enrichment by logical implication. For African states, it may thus be argued that there is an increased need for power accumulation and commission opportunities from their public offices.[120] In the process, democracy is undermined, as is the functioning of the state. Moreover, considering that corruption does not promote transparency and accountability, it instead distorts economic and political institutions.[121] Corruption affects the proper functioning of governments and economic and political institutions, hampers transparency, exploits the human person for selfish interests, renders respect for rules obsolete, and is a manifestation of structural sin.[122]

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[114] Esoimeme (2023) at 1.

[115] Esoimeme (2023) at 7.

[116] Esoimeme (2023) at 2–3.

[117] Shelley IL "Corruption and illicit trade" (2018) 147 *Journal of the American Academy of Arts & Science* 127 at 130.

[118] Esoimeme (2023) at 5.

[119] Esoimeme (2023) at 6–7.

[120] Chike O & Madumelu M "Corruption and regional integration in Africa: The West Africa experience" (2017) 2 *International Journal of Advanced Research in Public Policy, Social Development and Enterprise Studies* 188 at 196–197.

[121] Chike & Madumelu (2017) at 196–197.

[122] Verstraeten J "Institutionalised corruption and integrity: A theological-ethical clarification of a complex issue" in Weisstub D, Richet JL & Dion M (eds) *Financial crimes: Psychological, technological, and ethical issues* Switzerland: Springer International Publishing (2016) at 242.

Considering the essence of the rule of law and the AfCFTA, it may be argued that the rule of law is a crucial component for the success of the AfCFTA.[123] The latter comprises legal instruments or frameworks on trade arrangements and obligations to be implemented by member states in order to facilitate the agreement. The facilitation of the latter requires respect of the rule of law. Additionally, the successful implementation of the AfCFTA requires, for example, transparency (a pillar of the rule of law) in trade policies or regulations. Therefore, it may be deduced that in corruption's undermining of the rule of law, it affects the success of continental integration, investment and growth, in particular capital inflow and the productivity of capital.[124] Thus, it may also be deduced that, from an economic-integration perspective, corruption can prevent countries from succeeding in the elimination of trade barriers, thus impeding the distribution of goods and services, capital, and human resource.[125] In other words, one of the biggest threats to the AfCFTA is corruption, as it is anathema to economic integration and opportunities for collective development.

The emergence of economies has led to multinational corporations exploring these markets, and more often than not this includes looking for opportunities for cheap labor.[126] Some of these corporations invest in the region and navigate the corruption terrain, thereby making corruption a part of their corporate culture accepted as a transactional necessity.[127] As outlined below, both the United Nations and African Union acknowledge the impact of corruption on the development of economies. Unfortunately, notwithstanding anti-corruption instruments, corruption persists in the interactions between public officials and the private sector. Across the African continent, numerous corruption cases involve foreign companies (often shell companies) which are engaged in money laundering, fraud or bribery.[128]

Multinational corporations are key to the implementation of the AfCFTA, given their involvement in trade and investment. However, where there is lack of respect for the rule

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123 Erasmus G, Kuhlmann K & Traub L *Cultivating trade: The AfCFTA and agriculture* Institute for Free Trade (2024) at 9.

124 Esteve-Pérez S, Gil-Pareja S, Llorca-Vivero R & Paniagua J "Corruption and international trade: A Re-assessment with intra-national flows" (2021) 15 *De Gruyter* 187.

125 See Odusote & Aduak (2022) at 321–322 and 327–331.

126 Kimemia D "Multinational corporations as suppliers of corruption in Africa" (2018) 48 *Africa Insight* 25 at 26.

127 Kimemia (2018) at 26.

128 Esoimeme (2023) at 2–3.

of law, such corporations often involve themselves in corrupt practices, unfair competition, and the manipulation of regulations. For example, in 2017, McKinsey and Co., a multinational consulting firm, agreed to repay R1 billion to Eskom for its role in corruption. This was as a result of an internal inquiry into unlawful payments for a 2016 contract.[129] In 2022, the National Prosecuting Authority indicted McKinsey South Africa on charges of fraud, theft and corruption.[130] In 2024, the National Prosecuting Authority recovered R1.1 billion for South Africa.[131] In a similar matter in Angola, Halliburton, an American multinational corporation, agreed to pay a fine of USD 29.2 million imposed on it by the Securities and Exchange Commission for bribing Angolan officials to obtain deals.[132] In another example, Kellogg, Brown & Root faced criminal fines and civil payments of USD 579 million for paying bribes worth USD 182 million to Nigerian officials to secure contracts.[133] More recently in 2024, SAP SE, a German multinational company, agreed to pay a fine totalling USD 100 million to settle bribery charges in Kenya, Tanzania, South Africa, Malawi, Ghana, Indonesia, and Azerbaijan.[134] In view of these examples, it is not suggested that domestic bribery involving national corporations is non-existent.[135]

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[129] "McKinsey to pay back R1bn to Eskom, trillion not part of deal" (6 July 2018) *CNBC Africa* available at https://www.cnbcafrica.com/2018/mckinsey-to-pay-back-r1bn-to-eskom-trillian-not-part-of-deal/ (accessed 13 May 2024).

[130] Cronje J "NPA charges McKinsey South Africa with fraud over Transnet locomotive debacle" (30 September 2022) *News24* available at https://www.news24.com/fin24/companies/npa-charges-mckinsey-sa-with-fraud-over-transnet-locomotive-debacle-20220930 (accessed 13 May 2024).

[131] Moodley N "McKinsey's R1.1-billion settlement a strategic victory for South Africa's fight against corruption" (6 December 2024) *Daily Maverick* available at https://www.dailymaverick.co.za/article/2024-12-06-mckinseys-r1-1-billion-settlement-a-strategic-victory-for-south-africas-fight-against-corruption/ (accessed 25 February 2026).

[132] Ibekwe N "Halliburton, which bribed Nigerian officials, agrees to pay $29.2 million for bribing Angolan officials" (27 July 2017) *Premium Times Nigeria* available at https://www.premiumtimesng.com/foreign/world-foreign/238376-halliburton-bribed-nigerian-officials-agrees-pay-29-2-million-bribing-angolan-officials.html?tztc=1 (accessed 13 May 2024).

[133] Kimemia (2018) at 29.

[134] Lawi J "German firm fined sh15.8bn for bribery to secure contracts" (14 January 2024) *The Star* available at https://www.the-star.co.ke/business/2024-01-15-german-firm-fined-sh158bn-for-bribery-to-secure-contracts/ (accessed 13 May 2024).

[135] Esoimeme (2023) at 4.

4 ANTI-CORRUPTION INSTRUMENTS AND MECHANISMS IN AFRICA

The discussion here focuses on the primary international anti-corruption instruments, namely the United Nations Convention against Corruption (UNCAC)[136] and the African Union Convention on Preventing and Combating Corruption.[137]

4.1 Corruption and the United Nations

In 1975, the United Nations General Assembly (UNGA) adopted what is deemed the first universal instrument against corruption.[138] It focused on international business transactions and urged states to enact legislation to prevent the practices it outlined. Almost 20 years later, the UNGA adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions ("the Declaration")[139] and the International Code of Conduct for Public Officials ("the Code").[140] The Declaration, as per its article 1, was enacted "to promote social responsibility and appropriate standards of ethics on the part of private and public corporations".

In 1998, the General Assembly adopted the International Cooperation against Corruption and Bribery in International Commercial Transactions.[141] This was followed by a recommendation to the General Assembly to adopt a draft resolution to negotiate an international legal instrument aimed at combatting corruption.[142] Recognising the general view that corruption fuels organised crime, the UNGA Resolution 53/111 on Transnational Organised Crime established "an open-ended intergovernmental Ad Hoc committee" in 1998 to elaborate on the United Nations Convention against Transnational

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136 United Nations Convention against Corruption, December 9, 2003, UN Doc. A/58/422 (2003).

137 Adopted at the 2nd ordinary session of the Assembly of the African Union, Maputo, 11 July 2023. Entered into force on 5 August 2006.

138 Measures against Corrupt Practices of Transnational and Other Corporations, Their Intermediaries and Others Involved, United Nations General Assembly Resolution 3514 (XXX), UN Doc. GAOR, 30th Session, 2441st meeting, UN Doc. A/RES/3514 (XXX) (1975).

139 United Nations Declaration against Corruption and Bribery in International Commercial Transactions, United Nations General Assembly Resolution 51/191, UN GAOR, 51st Session, 86th meeting, UN Doc. A/RES/51/191 (1997).

140 Action against Corruption, United Nations General Assembly Resolution 51/59, UN GAOR, 51st Session, 82nd meeting, UN Doc. A/RES/51/59 (1997).

141 International Cooperation Against Corruption and Bribery in International Commercial Transactions, United Nations General Assembly Resolution 52/87, UN GAOR, 52nd Session, 70th meeting, UN Doc. A/RES/52/87 (1998).

142 An Effective International Legal Instrument Against Corruption, United Nations General Assembly Resolution 55/61, UN GAOR, 55th Session, 81st meeting, UN Doc. A/res/55/61 (2001).

Organised Crime and its three protocols.[143] The Convention delineates a transnational crime and criminalises practices such as money laundering and acts of corruption.

The UNCAC was adapted by the UNGA on 31 October 2003,[144] and various African countries are state parties to it. The Convention criminalises conduct such as bribery. For example, according to article 12, measures must be taken to prevent corruption involving the private sector. To this end, the article provides suggested measures, which include developing standards that promote integrity and prevent conflicts of interest.

Likewise, article 15 criminalises acts of bribery perpetrated by national public officials, while article 16 criminalises acts of bribery of foreign public officials and the officials of public international organisations. Article 17 of the UNCAC criminalises acts of embezzlement, misappropriation or other diversion of property. Article 20 criminalises illicit enrichment. Article 21 criminalises bribery in the private sector by criminalising certain conduct when committed intentionally during economic, financial or commercial activities. Article 22 deals with the embezzlement of property in the private sector. It criminalises certain actions committed intentionally in the course of economic, financial or commercial activities. Article 23 criminalises laundering the proceeds of crime. Article 39 provides for cooperation between national authorities and the private sector in combating corruption. The article recognises the importance of cooperation between the state and the private sector in combatting corruption. As of October 2023, all African states had ratified the UNCAC.

4.2 African Union Convention on Prevention and Combating of Corruption

The African Union and its predecessor, the Organisation of African Unity, were established to advance the continent's political independence, socio-economic development and economic emancipation.[145] The Constitutive Act of the African Union stresses the need for unity, solidarity and cooperation among African states and their people.[146] At its core, it seeks to promote justice, democracy, good governance and the rule of law. In view of this,

[143] Transnational Organized Crime, United Nations General Assembly Resolution 53/111, UN GAOR, 53rd Session, 85th meeting, UN Doc. A/RES/53/111 (1999).

[144] United Nations Convention against Corruption, United Nations General Assembly Resolution 58/4, UN GAOR, 58th Session, 51 meeting, UN Doc. A/RES/58/4 (2003).

[145] Preamble.

[146] Preamble.

all the anti-corruption instruments of the African Union, as discussed below, are anchored on the objectives outlined in article 3 of the Constitutive Act. These include achieving unity and solidarity among African states, accelerating socio-economic integration, promoting African interests, and encouraging international cooperation and sustainable development.

Africa and its states have attempted to eradicate or reduce corruption. In particular, the adoption in 2003 of the Convention on Preventing and Combating Corruption (AUCPCC) by the African Union was a monumental event borne of the recognition "that corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent".[147] As of February 2023, the AUCPCC had 49 signatories while 48 states had ratified it.

The AUCPCC acknowledges the existence of corruption in the public and private sector, and hence criminalises all acts of corruption in these sectors. Article 5 urges member states to adopt legislative, administrative and other measures to combat corruption. The AUCPCC also outlines the relationship between corruption and human rights, albeit that it falls short of outlining the precise content of this relationship or providing a remedial framework governing compensation or restitution for individuals or groups whose human rights were violated as a result of corruption.[148] Nevertheless, the AUCPCC is guided by the principles set out in article 3 of the Constitutive Act, in particular the need to promote human rights, respect human dignity, and foster the promotion of economic, social, and political rights.[149] Additionally, it may be deduced that the adoption of the convention was an act of recognition by African states of the negative effects of corruption and the culture of impunity which has continued to cause imbalances in the political, economic, social and cultural arenas of the continent.

Furthermore, African states acknowledged that corruption undermines the essence of democracy, including accountability and transparency, and thus acts as a barrier to socio-economic development.[150] The realities of corruption propelled African states to root out

[147] Preamble.

[148] Olaniyan K "The African Union Convention on Preventing and Combating Corruption: A critical appraisal" (2004) 4(1) *African Human Rights Law Journal* 74 at 75.

[149] Constitutive Act of the African Union (11 July 2000) OAU Doc CAB/LEG/2315 (entered into force on 26 May 2001).

[150] Preamble.

the causes of corruption and criminalise various acts by implementing anti-corruption measures. Article 2 of the AUCPCC sets out the objectives of the Convention, which include promoting and strengthening development mechanisms to fight corruption. As such, the AUCPCC urges African states to take part in the promotion, facilitation, regulation and strengthening of mechanisms for the prevention, detection, punishment and eradication of corruption.[151] Ratifying states have enacted legislative frameworks and institutions to prevent, detect and punish corruption. For example, Cameroon established the National Anti-Corruption Commission; Kenya, the Ethics and Anti-Corruption Commission (in terms of section 3(1) of the Ethics and Anti-Corruption Act of 2011); and Botswana, the Directorate on Corruption and Economic Crimes (in terms of section 3 of the Corruption and Economic Crime Act of 2013).

Article 4 provides for acts of corruption and other related punishable offences similar to those in the UNCAC, whether involving a public official or member of the private sector. Article 5 acknowledges the existence of foreign corporations in a state by urging member states to ensure that the operations of such corporation respect domestic or national legislation. In turn, article 6 of the AUCPCC criminalises the laundering of the proceeds of corruption, while article 8 recognises illicit enrichment as a corrupt act or offence as defined in article 1. In regard to fighting corruption, article 5 lays out the preventative measures that state parties are enjoined to undertake. Article 7 urges states to commit to the fight against corruption in relation to public officials in the performance of their public service duties. Additionally, article 11 urges state to adopt measures to combat corruption in the private sector.

As noted, the African Union, in adopting the AUCPCC, has recognised that corruption hinders Africa's economic, political and social development. Therefore, ideally, the implementation of the convention should position African states to reduce corruption and contribute to the continent's socio-economic development. Regrettably, however, the AUCPCC falls short of establishing a continental independent anti-corruption institution, as it calls upon states to establish their own anti-corruption institutions. Thus, where there is a lack of political will, accountability, transparency and respect for the rule of law, the establishment and/or effectiveness of such national anti-corruption institutions may

[151] African Union "African Union Convention on Preventing and Combating Corruption" (June 2021) available at https://anticorruption.au.int/sites/default/files/files/2021-06/combattingcorruptionconventiona5v2enreduced.pdf (accessed 1 December 2025).

be compromised. In the place of an independent continental institution, article 22 of the AUCPCC provides for an Advisory Board on Corruption to be established within the African Union.

This disparity ought to be addressed. In other words, the AUCPCC necessitates an independent investigative anti-corruption institution aimed at promoting justice by holding perpetrators accountable, promoting the rule of law, and minimising corrupt opportunities and perpetration. This independent anti-corruption institution established by the AUCPCC should have the powers to implement the provisions of the AUCPCC and investigate and adjudicate on corruption matters in order to contribute to the fight against corruption, thereby simultaneously contributing to socio-economic development and enhancing the prospects of the AfCFTA.

Article 22 of the AUCPCC provides for the establishment of an Advisory Board on Corruption ("the Board"). The article also sets out the functions of the Board, which include promoting the adoption and application of anti-corruption measures in African states; collecting and documenting information on the nature and scope of corruption and related offences; and developing methodologies for analysing the nature and extent of corruption in Africa. Moreover, the Board has to submit regular reports to the Executive Council on the progress made by states in complying with the AUCPCC, as well as perform any other corruption-related tasks assigned by the policy organs of the African Union.[152] Article 22(7) requires states to communicate to the Board, within a year of the instrument having come into force, on their progress in implementing the AUCPCC. Furthermore, a state's anti-corruption institution should report to the Board at least once a year.

The role of the Board may further be aligned with the codes of conduct of public officials; African civil society; and the inputs of the African Commission on Human and Peoples' Rights and governmental and inter-governmental organisations.[153] Considering the various obligations in the AUCPCC, the latter does not explicitly provide for a system of mutual evaluation of the performance of states' on anti-corruption measures. According to Udombana, such a mechanism would be similar to that of the New Partnership for Africa's Development's peer-review mechanism, the African Peer Review Mechanism

[152] Article 22(5)(h)–(i).

[153] Udombana NJ "Fighting corruption seriously? Africa's anti-corruption convention" (2003) 7 *Singapore Journal of International & Comparative Law* 447 at 475.

(APRM).[154] The APRM aims to "foster the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional integration in the continent".[155] In the absence of such a body, the APRM ought to collaborate with the Board to realise the essence of the AUCPCC.

Another shortcoming of the AUCPCC is that it fails to provide guidelines on the reporting obligations of states.[156] In addition, it does not impose penalties on states that fail to comply with the provisions contained in the convention. This is not surprising, since (as noted) there is no definitive mechanism in place to monitor the implementation of the provisions of the convention. The non-existence of this mechanism implies that the implementation of the AUCPCC is centred on the political will of African states. In other words, "the presence of political will of African governments is a *sine qua non* to implementing the provisions of these instruments".[157]

5 CONCLUSION

The AfCFTA aims to facilitate and deepen economic integration among member states. It seeks to boost Africa's economy through an increase in income, the expansion of markets, and growth in the entrepreneurial sector and intra-African exports. These opportunities will help improve the quality of life of all on the African continent. Tragically, however, the plague of corruption remains the biggest obstacle to the AfCFTA, particularly given that the continent's primary anti-corruption instrument, the AUCPCC, falls short because it lacks an institution endowed with investigative or prosecutorial powers for addressing contraventions of the convention. Moreover, the AfCFTA itself has failed to acknowledge corruption or provide insight as to its commitment to combatting corruption and, therefore, to ensuring its own maximum fulfilment.

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