



# Regional Model Code on Anti-Corruption Compliance for Enterprises

## **Abstract**

The COMESA Business Council (CBC) has engaged multi stakeholders in the COMESA region to input into an easy to implement model - Regional Code on Anti-Corruption Compliance for Enterprises. The Report was developed as part of CBC grant partnership with Centre for International Private Enterprise (CIPE) to strengthen measures to curb Anti-Corruption Compliance (ACC) and promote business integrity for enterprises in the region. The project objective is to build the capacity of the private sector to curb corruption and enhance their participation in transparency and reform initiatives for business, thereby achieve a good and enabling business environment.

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The COMESA Business Council (CBC) is a Business Member Organization and recognized private sector institution of the Common Market of Eastern and Southern Africa (COMESA).

CBC, Ben Bella Road, P. O. Box 30051, Lusaka, Zambia  
(<http://www.comesabusinesscouncil.org>)

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## List of Abbreviations and Acronyms

ACC	Anti-Corruption Commission
ACC	Anti-Corruption Compliance
ACCT	Anti-Corruption Compliance Trainer
AfDB	African Development Bank
AU	African Union
AUCAC	African Union Convention Against Corruption
AUCPCC	African Union Convention on Preventing and Combating Corruption
BAZ	Bankers Association of Zambia
BIP	Business Integrity Project
BMO	Business Member Organisation
BOD	Board of Directors
BOZ	Bank of Zambia
CBC	COMESA Business Council
CBD	Central Business District
CEO	Chief Executive Officer
CIPE	Centre for International Private Enterprise
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EITI	Extractive Industries Transparency Initiative
EU	European Union
FDI	Foreign Direct Investment
FMCG	Fast Moving Consumer Good
FGD	Focus Group Discussion
GCB	Global Corruption Barometer
GDP	Gross Domestic Product
HDI	Human Development Index
ICAC	Independent Commission Against Corruption (Mauritius)
ICT	Information and Communication Technologies
ISO	International Standards Organisation
IT	Information Technology
MBO	Membership Based Organisation
M&E	Monitoring and Evaluation
MS	Member State
NBFI	Non-Bank Financial Institution

NCCG	National Code of Corporate Governance
NFP	National Focal Point
NGO	Non-governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PACT	Private Sector Anti-Corruption Taskforce
POCA	Prevention of Corruption Act
PPPAC	Public Private Partnership Against Corruption
PSF	Private Sector Federation
RBC	Responsible Business Conduct
SADC	Southern African Development Community
SET	Self-Evaluation Tool
SME	Small and Medium sized Enterprise
SOE	State Owned Enterprise
SP	State Party
SSA	Sub-Saharan Africa
TI	Transparency International
TOR	Terms of Reference
UN	United Nations
UNCAC	United Nations Convention Against Corruption
WEF	World Economic Forum
ZABS	Zambia Bureau of Standards
ZAM	Zambia Association of Manufacturers
ZCM	Zambia Chamber of Mines

## **i. Acknowledgement**

COMESA Business Council seeks to promote a unified position of engagement for the COMESA private sector – as a driving force in the creation of a market driven economy that embraces regional integration, competitiveness, trade and investment. As a responsible regional organization that believes in driving business from regional to global markets, CBC promotes transparency and ethics in business operations.

The Report has been supported under the CBC grant from Centre for International Private Enterprise (CIPE). The code is informed by country reports developed by four certified experts from Mauritius, Zambia, Rwanda and Ethiopia. The regional code was developed by Dr. E. D. Wala Chabala through research, online consultations and engagements with various experts. Special appreciation goes to CIPE's program officer, Mrs. L. Adekanye and the CBC Business Policy and Programs Manager, Ms. K. Madzivanyika for the hard work, technical inputs and support in the development of this report. Further to, all stakeholders who have contributed their time and valuable insights in the development of this report.

## ii. Executive Summary

Corruption is a scourge that undermines economic development efforts in Africa, and this is readily demonstrated by the fact that approximately US\$ 148 billion is lost to corruption annually on the African continent (AfDB, 2015). Indeed, the United Nations contends that corruption is not only an insidious plague, but that it also leads to violations of human rights and distorts markets, among other things. The UN classifies corruption as an “evil phenomenon” which is prevalent in all countries, and it has the most destructive effects on the developing world. The World Economic Forum estimates that corruption increases the cost of doing business by up to 10% on average. Therefore, failure to address corruption can affect the cost of goods, deter local and foreign direct investment and cause a huge dent into the growth of businesses and the economy.

Combating corruption is a pre-requisite to enhancing private sector growth and regional integration in COMESA. There is a positive nexus between strong transparency, integrity and business ethics with increased capital flows, investment and integration into regional and global chains. Whilst efforts have been concentrated on what governments can do to curb corruption, it is imperative for the private sector to take center stage, for real progress to be achieved.

It is for the aforementioned reasons that the COMESA Business Council (CBC) took a leading role in promoting anti-corruption compliance and business integrity for its members (*private sector*) to actively participate in regional and global markets. Therefore, CBC launched a Business Integrity Project with the support of the Centre for International Private Enterprise (CIPE). The aim of the project is to build the capacity of the private sector to address the challenge of corruption and improve the participation of businesses in transparency and reform initiatives, that would achieve an enabling environment in which to conduct business effectively.

The general findings from the trainings and country reports show that while a majority of countries in COMESA have applied anti-corruption regulations and established anti-corruption institutions, the application of these instruments in business, especially within small and medium enterprises (SMEs), is very low, and yet it is feasible that this is where high corruption levels prevail. It was further noted that as part of their governance structures, large corporates and multi-national companies are obliged to implement compliance policies which include ethics, ethical conduct and anti-corruption codes and therefore for them, there are clearly spelled out punitive consequences for violation of these policies.

The overarching output of this work is the Regional Code on Business Integrity and anti-corruption compliance which addresses a number of dimensions, but specifically gives the anti-corruption principles that are structured such that the drive or impetus to entrench them is either at member state level, or at the level of business member organisations and chambers of commerce. While the principles are articulated such that they can be readily applied at the level of business entities, in addition, some specific policies and procedures, which could be adopted by businesses, have also been included. Finally, business member organisations and chambers of commerce in COMESA, together with their members, will be expected to take a pledge to adhere to the principles articulated in the Code.



## 1. Introduction

### 1.1 Background

The COMESA Business Council (CBC) established by the Treaty of the Common Market for Eastern and Southern Africa (COMESA) is a policy organ defined as the Consultative Committee of the Business Community in COMESA. Under this mandate CBC has been established as the apex body of the Private Sector in the 21 member states of COMESA. It is the private sector institution of COMESA. As a business member organisation (BMO), it brings together a diverse group of businesses and associations in the region with the overall mission of becoming the leading private sector organisation in Africa, aiming to promote competitive and interconnected industries to actively participate in regional and global markets. CBC carries out its mandate mainly through advocacy, business facilitation and enterprise development.

One of the dimensions that have been identified as key to achieving the above objectives of CBC is ensuring that an environment obtains of business ecosystems of member states that promotes anti-corruption compliance and business integrity in general. To this end, CBC launched a Business Integrity Project to be implemented with CIPE. The aim of the project is to build the capacity of the private sector to curb corruption and enhance the participation of businesses in transparency and reform initiatives that would achieve an enabling environment for business.

CIPE seeks to strengthen democracy around the globe through private enterprise and market-oriented reforms. CIPE is one of the four core institutes of the National Endowment for Democracy and a non-profit affiliate of the US Chamber of Commerce. For more than 35 years, CIPE has worked with business leaders, policymakers and journalists to build the civic institutions vital to a democratic society. CIPE is an ideal partner for CBC to work with on the Business Integrity Project because its core programme areas include enterprise ecosystems, business advocacy, democratic governance and anti-corruption.

In Africa, corruption remains a persistent problem existing in and affecting both the public and private sectors. The cost of corruption is very high and can become an excessive cost to productivity and has a humungous adverse effect on the growth of enterprises. This is of grave importance to economies in COMESA and the rest of the African continent which are primarily composed of Small and Medium sized enterprises that are looking for growth opportunities in terms of access to capital, finance, and trade integration in regional and global supply chains. Larger companies are increasingly demanding anti-corruption compliance from business partners and SMEs need to ensure they don't risk losing out on potential partnerships and

supply chain integration due to non-compliance. A key solution for SMEs to addressing corruption within their businesses is promoting and implementing strong transparency, integrity and ethics.

The Business Integrity Project was developed with the aim of giving the private sector a proactive stance on issues of anti-corruption compliance and business integrity. It is divided into two components. The first part was the training of at least 200 enterprises (>50 per country) in four COMESA member states namely Ethiopia, Mauritius, Rwanda, and Zambia (pilot countries). A country report was developed by licensed anti-corruption compliance experts in each country. It should be noted that the reports are comprised of independent views of the experts based on market research, collection of literature and experiences in the field within their country of jurisdiction. The specific private economic sectors that were represented included manufacturing, health service, mineral trading, agro-industry and services. Services included financial, transport and tourism. This aspect of the project leveraged CIPE's anti-corruption compliance expertise and the network of certified Anti-Corruption Compliance Trainers (ACCTs) across Africa. The trainers provided technical assistance to the companies which participated and sought to improve their anti-corruption compliance systems including benchmarking them against international best practices. The training of the participating enterprises in the pilot countries was done by hosting two-day workshops which also included the aim of training compliance officers or persons responsible for compliance or mitigation of corruption within the respective companies.

The theme of the workshops was: "Towards strengthening business integrity for SMEs in COMESA" and it was envisaged that at the end of the training workshops, the participants were going to be able to:

Investigate and articulate the need for corruption prevention within their businesses;

Appreciate and understand the methods for mapping and developing an effective compliance program that meets international standards;

Operationalize components of the anti-corruption ethics and compliance program within their companies. The output from the workshops culminated in the development of country reports on anti-corruption compliance procedures, processes, activities and systems.

The second part of the Project is the development of a Regional Model Code on Anti-Corruption Compliance for Enterprises (which is this Report). The overall objective of the Code is to provide a guide that can be used by enterprises in developing and implementing anti-corruption compliance within their respective enterprises within the COMESA region.

This Report is structured as follows:

- It begins with insights from the country reports on the business practices related to anti-corruption compliance in four COMESA countries.
- It then covers Conceptual Issues and presents the business case on anti-corruption compliance for enterprises in COMESA
- The Regulatory frameworks concerning anti-corruption compliance in COMESA member states, and the Regional Code, which consists of the business principles for anti-corruption compliance follow on.

## **1.2 Insights from the Country Reports: Ethiopia, Zambia, Rwanda and Mauritius**

The country reports informed the researcher on key insights on the levels of implementation on business integrity practices at a national level. While the reports captured regulatory reforms within the countries, they primarily focused on implementation at an enterprise level.

One country report gave an overview of the interactions amongst businesses that participated in the two-day workshop. The discussions gave the most prevalent forms of corruption as being tax evasion, bribe during renewal of certificates, unfair pricing, security blockade for exporters, quality and quantity problem during fulfilment of tenders, procurement, travel of BOD [Boards of Directors], poor time management from employees and lack of commitment from BOD. Other examples of corruption given included facilitation payments and bribes being necessary to keep land leased from the state or in order to obtain government contracts. The main drivers given for the prevalence of these acts of corruption included absence of good corporate governance and poor systems of implementing the existing policies and procedures. A majority of participants also mentioned that they did not have a focal point person for Anti-Corruption Compliance in their organisations. The country report also indicated, presumably from the literature, a number of areas as being corruption prone which included the judiciary, the police, and land administration. Other areas mentioned as being prone to corruption included tax and customs administration.

Overall, the major take-away from this country report was that business often had to pay some form of facilitation fees or an occasional bribe to attain services. Most disconcerting for the business stakeholders is the disconnect between the government official assertion that government officials are not corrupt and the reality that business operators continue to experience high or the same levels of corruption in most of their dealings with the public sector.

There are four key recommendations for businesses to champion and implement in order to demonstrate responsibility to proactively tackle corruption. The first one was to adopt anti-

corruption policies in line with the global best practices anti-corruption compliance tools and to put in place the checks and balances necessary for strengthening accountability and transparency; The second one was for businesses to establish their own credible review mechanisms to audit businesses' probity; and thirdly to invest in developing the public integrity infrastructure of their businesses. The final dimension to implement was to create an environment whereby internal wrong-doing could be reported and whistleblowers protected.

The second country report reviewed by the researcher highlighted that forty-two business enterprises were involved in the anti-corruption compliance training workshop drawn from various sectors and consisted of Small and Medium Enterprises (SMEs) as well as some large corporates. This country report painted a picture of the dilemma that businesses face between giving of gifts on one hand and the issue of paying "gratification" or a bribe to a public official on the other hand. While apparently, in the traditional culture of that country, giving of gifts is viewed as a social obligation, it was acknowledged that highlighting situations where giving of gifts could constitute a bribe should be a key component of employee training on anti-corruption compliance.

The country report also demonstrated through surveys that the perception of corruption in the country was much higher than the actual manifestation or experience. Indeed, according to the Global Corruption Barometer-Africa, while only 5% of the public service users paid a bribe to access a service, 62% think that the government of this country needs to strengthen its capacity to curb corruption. Therefore, efforts for strengthening efforts to curb corruption at business and public sector levels are still essential.

The third country report reviewed, highlighted that discussions with different companies in the business sector specifically indicated the most common forms of corruption as being bribery, fraud, nepotism, influence peddling, facilitation payments and embezzlement. It was further indicated that these forms of corruption are mostly found in high risk departments in businesses and that the procurement department was the one with the highest risk of bribery and fraud. In tender processes, procurement officers are exposed to potential bribery due to weak policies and procedures that are found in most companies especially SMEs. The Human resource department is also at high risk for bribery and nepotism, especially in the recruitment process where human resource officers are at risk for potential violations of the weak procedures and policies in their companies.

It was also observed that most SMEs do not have compliance policies and programs in place though they tend to include anti-corruption clauses in contracts. Large size companies mostly have a compliance department that oversees compliance as a whole, though not only anti-

corruption compliance. The policies and procedures for large companies are more advanced than SMEs but they still do not address corruption issues to an international standard.

Finally, the fourth country report highlighted very interesting insights on how corruption was defined at an enterprise level. It emerged that SMEs were not aware that an 'appreciation token' could be viewed as facilitation fee since it would be expected in future. On the other hand, the big corporates represented indicated that they already had the necessary anti-corruption policies in place, but that their area of concern was in Training & Communication as well as Monitoring and Evaluation (M&E).

The main recommendation of improvement was that the training should include a coaching session for SMEs as they make the transition to anti-corruption compliance. This is because the majority of participants felt that this may prove to be a challenge at the beginning i.e. being able to conduct business in a transparent manner when the environment demands that one must 'facilitate' to get things moving. Other recommendations included the development of an effective anti-corruption compliance program, which covered training sessions in auditing, reporting, investigation, gift policies and conducting due diligence of the various organisational stakeholders.

A summary of the key points and analysis from all the reports highlight the following:

- Private sector suffers the brunt of corruption whether it is mostly petty corruption i.e. the frequent demands for bribes, or its high-level corruption as per the afro barometer survey. Indications suggests most businesses feel more efforts are needed to tackle corruption in a country where petty corruption is at the lowest level, or whether it is corruption that occurs within the company's own operations in the form of nepotism.
- The recommendations point to business accountability as the main response with more specific discussion of what form that sort of collective business accountability should take.
- There is a clear recognition that business has the power and influence to act against corruption provided they act collectively and proactively but to first regulate behavior and practices in the business space , then compel the government to take steps to make the business environment more friendly, transparent and uneasy for corrupt officers in actions.
- Need to strengthen corporate governance systems for small and medium enterprises as essential to promoting anti-corruption compliance within their businesses.

### **1.3 The Development of a Regional Anti-corruption Compliance Code for Enterprises.**

The second part of the project draws heavily from the workshops and country reports undertaken in the first part to develop the Regional Code on Anti-Corruption Compliance for Enterprises, as presented in this report. The report also draws from research on a larger sampling of COMESA countries, with a focus on the compliance regulations and their impact on improving efficiency of enterprises.

The rest of this report is structured as follows. The second chapter deals with conceptual issues regarding anti-corruption compliance and business integrity, while the third chapter dwells on the business case for anti-corruption compliance for enterprises in COMESA member states.

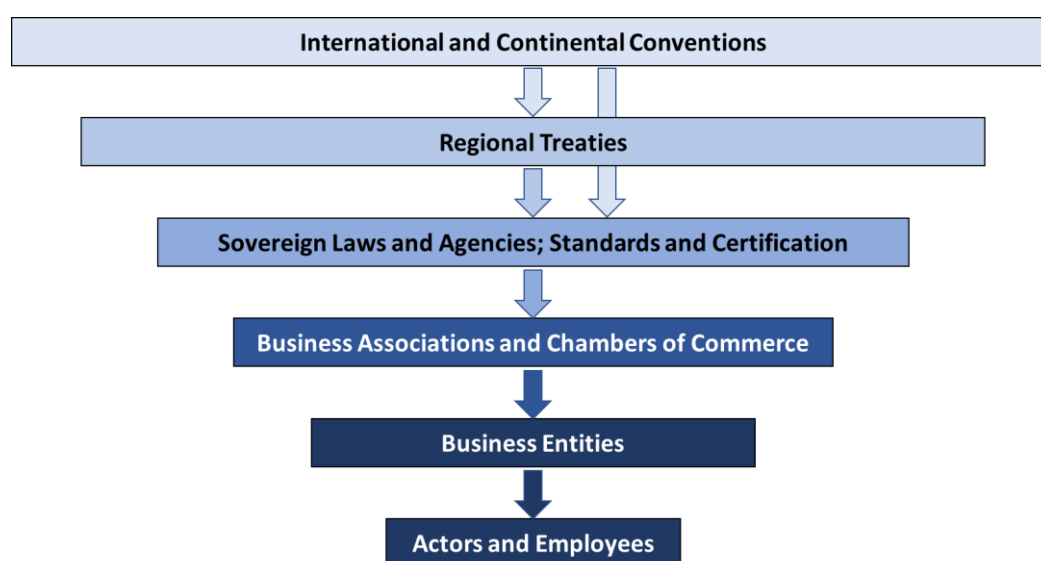
The fourth chapter of the report covers the framework of laws and regulations on anti-corruption compliance in COMESA. This chapter first considers the conventions and rules at global and continental level, before looking at the sovereign laws, regulations and practices. But it is noteworthy that standards and supervisory structures were also considered significant especially as they were regarded as impinging upon control of corruption and bribery.

The next chapter deals with the Regional Code: COMESA principles for business integrity and anti-corruption compliance for enterprises, while the penultimate chapter is on policies and procedures for anti-corruption compliance in key areas. The final chapter gives recommendations for rolling out and adoption of the COMESA Regional Code for Anti-Corruption Compliance.

## 2. Conceptual Issues

### 2.1 Overarching frameworks

Conceptual issues are best captured in a conceptual framework that establishes who all the actors and parties are in the anti-corruption and business integrity arena and how they are all related, as demonstrated below in Figure 1. This framework also gives the context for business enterprises to appreciate that the fight against corruption is not limited to their national boundaries, and per chance to increase their motivation with regard to anti-corruption compliance.



**Figure 1:** Conceptual framework for demonstrating the span, and cascading effect, of conceptual issues with regard to business integrity and anti-corruption compliance.

In the discussion of conceptual issues, it should first and foremost be appreciated that there are conventions at the international and continental levels that seek to address corruption, as it relates to the private sector. There should be no doubt that all COMESA member states have signed and ratified these conventions and the enactment of the sovereign anti-corruption laws is based on the same conventions. Most, if not all, member states have also set up agencies and commissions to deal with corruption as a consequence of being signatories to these conventions. The conceptual challenge that arises is whether the enactment of laws and establishment of anti-corruption agencies in sovereign states suffices with regard to aims and objectives of international and continental conventions, or there is also a need to delve into the efficacy of the entities in the state parties and member states.

Furthermore, another conceptual challenge that arises is whether the treaties establishing regional economic community bodies also draw upon the international or continental conventions on anti-corruption. This does not appear to be the case with COMESA and hence there may be a perceived gap in addressing corruption and business integrity as drawn from the Treaty. For instance, the Articles relating to private sector development in the Treaty that establishes COMESA make no reference to corruption or anti-corruption compliance, though reference is made to creation of an enabling environment for the private sector (Article 151) and strengthening the private sector (Article 152).

At levels of national sovereign states, concepts of anti-corruption laws and anti-corruption agencies also need to be appreciated, especially as regards them relating to the private sector. It can be argued that by and large, most private sector players are inclined to think that anti-corruption laws and agencies are for the public sector. Furthermore, in addition to anti-corruption laws, there are at the national level concepts of standards and certification for businesses which if appreciated and embraced could in many ways contribute to addressing and averting the need for corruption in businesses. Promotion of standards could also come with drives and initiatives such as anti-bribery management systems adapted from the ISO 37001 which can be driven by national standards bodies to complement this effort by the CBC. Apparently, the implementation of this standard promotes identification of corruption risks, documenting policies and procedures that would lead to prevention or reduction of bribery.

There is also the concept of business member organisations (BMOs) and chambers of commerce within countries. It can be argued that not all business entities in countries appreciate the role that these bodies play and the benefits of businesses being members. It should be highlighted in this case that COMESA implores member states to promote the growth of private or business sector organisations engaged in all types of economic activities (Article 152.2(a)). Furthermore, the Treaty also urges Member States to recognize and contribute to efficient operations of region-wide business representation organisations, which it can be argued would also be reference points for promoting anti-corruption compliance in businesses.

Ideally, the BMOs and Chambers of Commerce should champion the fight against corruption and other related vices among their members. COMESA's encouragement of member states to promote the establishment of business sector organisations testifies to the appreciation of the efficacy envisage in using these entities to effectively reach and engage private sector players in these countries. The role of these business or private sector organisations can be cascaded down to levels such as private sector enterprises relying on BMOs and Chambers



of Commerce to clarify some grey areas such as giftings versus bribery; appreciation versus facilitation.

It should also be appreciated that there are conceptual issues around business entities themselves especially that they happen to be in different sectors, are of different sizes and in some instances under the purview of different regulatory authorities. Even the matter of businesses in the same sector and of similar sizes, but operating in different jurisdictions, would make them have different approaches and attitude to anti-corruption compliance. Therefore, while conceptually, there is need to ensure anti-corruption compliance principles cover all businesses agnostically, there is on the other hand the need to take cognisance of the size, sector and regulatory issues, and the matter of jurisdiction.

State Owned Enterprises (SOEs) and Public Interest Entities (PIEs) are entities either wholly or majority owned by government which engage in business activities on behalf of government other than offering of public goods. SOEs and PIEs are also central to the discussion on promoting anti-corruption compliance, not only within themselves, but with entities, especially SMEs, that they may have to do business with. Public Interest Entities, as defined by the Financial Reporting Act 2004 of Mauritius and these include entities listed on the Stock Exchange of Mauritius, financial institutions regulated by the Bank of Mauritius, certain financial institutions regulated by the Financial Services Commission, large companies or group of companies (as set out in the Financial Reporting Act), among other institutions.

In terms of the conduct of business enterprises themselves, even taking into account different jurisdictions, there is the conceptual challenge of distinguishing between gifting, or token of appreciation, versus facilitation or bribery. There are some jurisdictions where the notion that it is impossible to do business without paying bribes seems to be an entrenched position, while in another jurisdiction there is the belief that there is no such thing as a corruption-free environment. Other jurisdictions indicate that it is difficult for a business enterprise to survive without political connections.

Other notions that form part of the conceptual issues for anti-corruption compliance for business enterprises in COMESA would include such concepts as accountability, transparency and conflict of interest. Across the region, there is need to have uniform appreciation, definition and application of anti-corruption compliance concepts or laws.

Finally, there is a critical need to have officers in charge of anti-corruption compliance in business enterprises and organisations. This is not only an alien concept to many businesses, especially those in the SME bracket, but many may not even have resources to afford such an appointment. There is, however, on the other hand the notion that the fight against

corruption should involve all employees and that environments should be established where whistleblowing can be encouraged to report acts of corruption. An issue that ensues from the foregoing is the need to ensure that there is adequate protection for whistleblowers.

The fight against corruption in businesses in COMESA Member States will benefit tremendously in not only clarifying conceptual issues, but in also ensuring that they are not in themselves impediments to embracing business integrity and anti-corruption compliance as best practice for the business community.

## 2.2 Definitional Issues

### Corruption

Corruption in most jurisdictions includes the crimes of bribery, extortion, fraud, deception, collusion, coercion, and money laundering. However, there is no uniform or harmonized definition of corruption.

Most literature cite the definition of corruption as provided by Joseph Nye as commonly accepted, defined as follows:

Behaviour which deviates from the normal duties of a public role because of private-regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behaviour as bribery (use of rewards to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of inscriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses.

United Nations Convention against Corruption (UNCAC) does not explicitly define corruption. Rather it specifies acts of corruption: bribery, embezzlement, money laundering, concealment and obstruction of justice.

The AU provides a more comprehensive definition of corruption Article 4, Clause 1 of the African Union Convention on Preventing and Combating (AUCPC).

Corruption and Related Offenses:

- a) The solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.
- b) The offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favor, promise or

advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.

- c) The diversion by a public official of any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the state or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position.

However, as comprehensive as AUCPCC's definition is, it pays attention to abuse of public trust and is silent on private sector accountability hence the need for regulatory expansion or review at national level to accommodate it.

Some COMESA country definitions of corruption are:

**Ethiopia:** Proclamation no. 881-2015 Corruption Crimes Proclamation cites corruption related offences to include undue advantage, bribery, and acceptance of gifts or advantage in exchange for a service (facilitation payments/ traffic in influence).

**Uganda:** The Anti-Corruption Act, 2009 provides a wide definition of corruption covering aspects of bribery, undue advantage, gratification, nepotism, some instances of conflict of interest and diversion of property.

**Zimbabwe:** Prevention of Corruption Act Chapter 9:16 highlights acts of corruption to include bribery, facilitation payments, restrictions on gifts, undue advantage, theft, fraud and misappropriation.

**Egypt:** The Egyptian Anti-Bribery Law (the "Law") is contained in the Penal Code. Articles 103 to 106 of the Law prohibit a public official from "requesting," "accepting" or "taking for him/herself or another," a "promise," a "gift" or a "benefit," whether material or non-material, for "performing" or "abstaining from performing" an inherent function of his or her position, even if he or she mistakenly believes such a function falls within the scope of his or her "official duties."

**Democratic Republic of Congo:** The anti-corruption legislation is mainly governed by the Penal Code Official Journal Special No. 30 November 2004 Article 147-151 which prohibits corruption including bribery, abuse of office and trading in influence (receipt of donations or presents to carry out service).

Most if not all COMESA countries have criminalized corruption and provide for a definition within their national legislative systems. Therefore, local regulation does provide guidance on the meaning and interpretation of corruption within each country. For the purposes of the regional code the AUCPC and UNCAC should offer some guidance where parties have ratified the instruments.

## **Bribery**

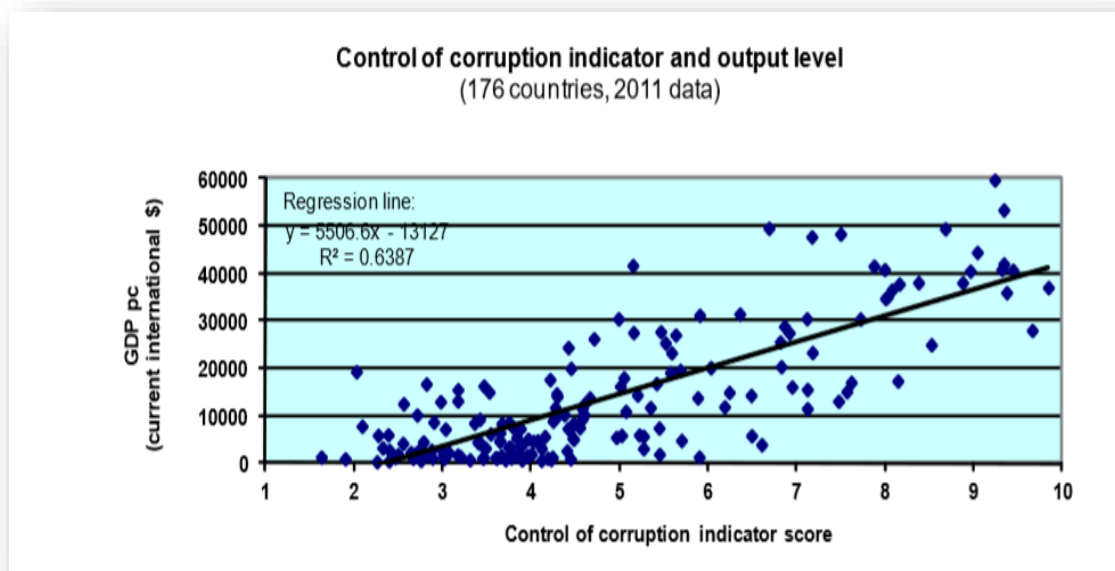
Bribery is one of the most common forms of corruption, and it is important to have some conceptual understanding of the term.

The OECD (2016) report offers some guidance to understanding anti-bribery policies in Africa. The report defines bribery as, "... the act of intentionally offering, promising or giving of an undue advantage to induce a person to act or refrain from acting in relation to performance of official duties, in order to obtain or retain business or other forms of improper advantage in the conduct of business". It distinguishes bribes from facilitation payments, suggesting the latter usually refer to smaller payments often known as "grease payments" given to a public official to ensure they expedite a service they are legally supposed to perform. The Report further suggests that most countries, still prohibit any form of facilitation payments in the text of the law, but not in actual practice. This is also showcased in the above COMESA countries' legislations where facilitation payments or trading in influence is prohibited.

Facilitation of payments or trading influence is usually linked to public servants, and hence the practices can still be rampant in private sector without any guidance or restrictions. In fact, some companies or cultures openly practise "corporate hospitality" or "gift giving" as reflected in insights from the country reports. Nonetheless, as private sector it is imperative that the law is respected when dealing with public servants. Furthermore, when dealing in private – private relationships, transparency and integrity will still need to be applied. Businesses should put in place clear procedures for receiving and giving gifts to guide the practice.

### 3. Business Case for Anti-Corruption Compliance for Enterprises in COMESA

According to the United Nations, “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish”. The UN points out that this “evil phenomenon” is found in all countries, but that it is in the developing world where its effects are most destructive. Furthermore, it can be argued that one of the key elements in economic underperformance is corruption and that it is a major obstacle to poverty alleviation and development (UN, 2004). This certainly establishes a very strong business case for the anti-corruption drive. In fact, AfDB (2015) as cited in OECD (2016) suggests that Africa loses more than US\$ 148 billion annually due to corruption.



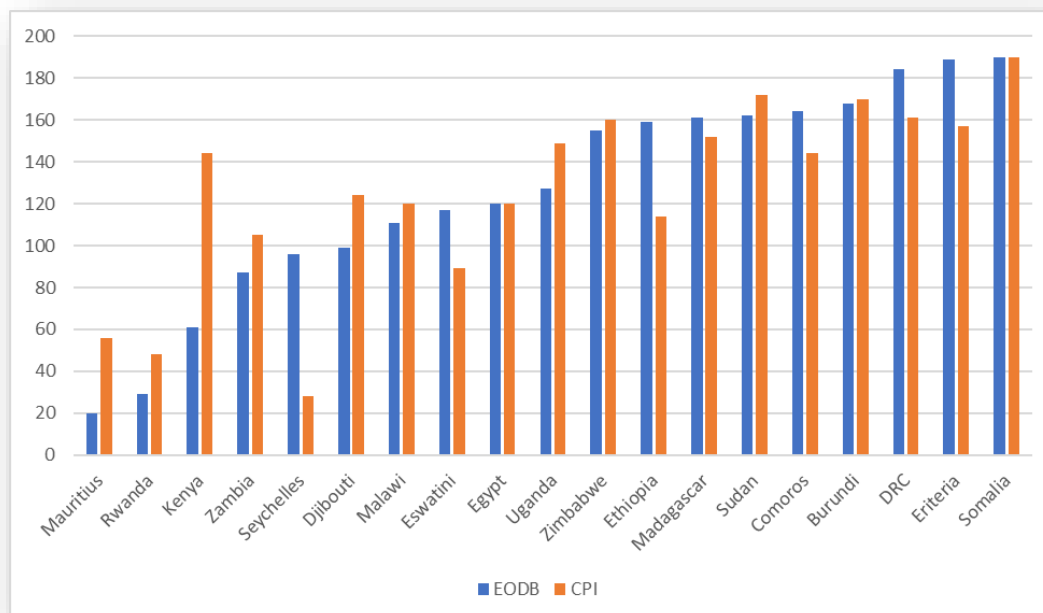
**Figure 2<sup>1</sup>:** Control of corruption indicator score against GDP per capita shows strong correlation, implying high corruption levels have very high likelihood to lead to damped economic performance levels

While the business case against corruption is most directly made at the level of a business entity, it should be appreciated that where correlations have been made between levels of corruption and the performance of an economy, as represented in Figure 2 above, corruption has a negative impact on the economic growth of countries. More precisely, it has been found that corruption reduces investment and consequently affects economic growth. Indeed, that the higher and less predictable corruption levels are in a given country, the more negatively

<sup>1</sup> **Source:** Stocktaking of Anti-Corruption and Business Integrity Measures for Southern African SOEs, OECD Corporate Governance Working Papers, 2015.

affected is foreign direct investment. Moreover, it has been demonstrated that corruption reduces expenditure on public goods such as education, health, security, etc. Some studies have also described corruption as a tax on enterprises because it has the same effect as one.

It should further be appreciated that corruption can be closely related to poor economic performance as demonstrated in the general rankings of the member states of COMESA on global indices. Some examples of these include the Ease of Doing Business by the World Bank which ranks COMESA Member States from 20 (the best) to 190 (the worst) with average of 126 versus countries in other regions such as ASEAN where the average is 83. But specifically, in terms of ranking specific to corruption, COMESA Member States are ranked from 28 to 190 on the Transparency International (TI) Corruption Perceptions Index (CPI), with average of 126, again. For ASEAN countries, the average was 92, for the 2018 rankings.

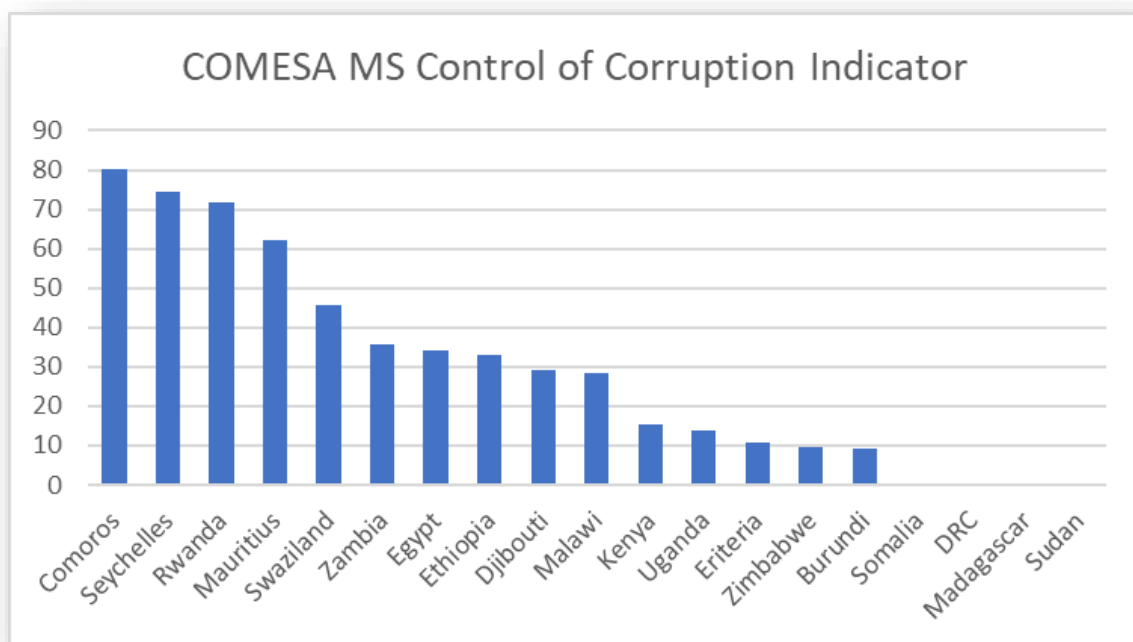


**Figure 3:** Comparing the rankings on Ease of Doing Business and Corruption Perception demonstrates that the worse the corruption perception seems to imply the poorer the ease of doing business. Exceptions are Kenya and Syechelles, where the former has a worse corruption perception compared to ease of doing busiens, and for the latter it is the exact opposite.

Figure 3 seems to demonstrate that for COMESA member states, there is a correlation between the ease of doing business and perception of corruption, in line with Figure 2. Other rankings include the World Economic Forum (WEF) Global Competitiveness Report (COMESA Member States ranked from 52 to 139 in 2018), while the Worldwide Governance

Indicators (WGI) – Control of Corruption Measure<sup>2</sup> ranked the COMESA Member States as given in Figure 4 below.

Indeed, the benefits of preventing corruption by enterprises is quite apparent. Compliance with anti-corruption laws and regulations that ensure transparency and business accountability will prevent a given business from engaging in misconducts that create the risk of legal liability, severe financial losses (from civil/criminal financial liability), reputational harm. The latter would then likely lead to loss of customers, affect recruitment, and may affect investment and funding.



**Figure 4<sup>3</sup>:** Control of corruption indicator score for COMESA member states.

Transparency International insists that companies with anti-corruption management systems and ethics programs are found to suffer up to 50% fewer incidents of corruption, and to be less likely to lose business opportunities than companies without such programmes.

Implementing effective compliance practices in order to decrease the risk of corruption by enterprises has a real possibility of benefitting an enterprise’s culture, brand, and long-term value creation. For instance, by having strong codes of ethics and adequate internal reporting

<sup>2</sup> Control of Corruption Indicator reflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

<sup>3</sup> **Source:** World Bank Worldwide Governance Indicators, 2017.

mechanisms, enterprises can foster an organisational culture of integrity, openness, trust and improve the morale of employees.

Furthermore, having sound procedures and practices, also has other positive effects on enterprises. The cost of doing business is reduced (less expenses for litigations, damage control strategies, penalties, etc.). But it should also be appreciated that reputational gain helps to attract ethical investments. Indeed, ethical organisations may therefore acquire a competitive edge compared to other players.

Another aspect of the business case would be to look at matters from a standards point of view. It can be argued that adhering to standards, such as those based on International Standard Organisation (ISO) ensures adherence to standards and allows for easier cross border trade through promotion of transparency and integrity.



#### **4. Framework on Laws/Rules/Guides on Anti-Corruption Compliance within COMESA**

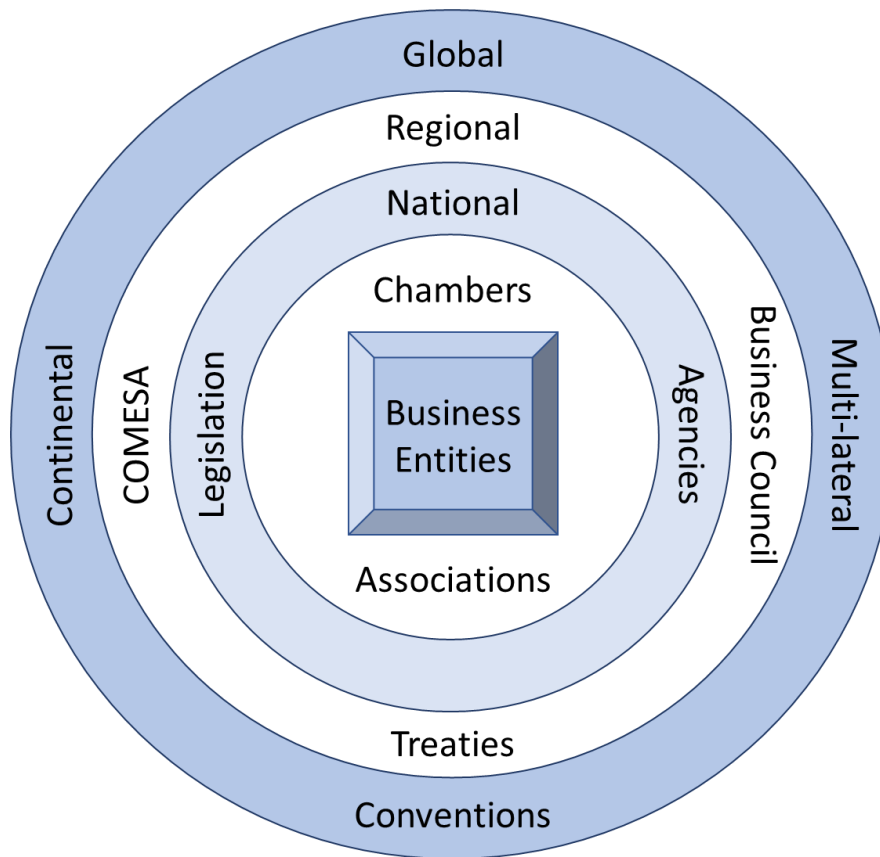
The context for the Business Integrity Project and Anti-Corruption Compliance drive by CBC is firstly that most, if not all COMESA Member States are parties to the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). The United Nations Conventions against Corruption (UNCAC) is an international anti-corruption multilateral treaty. This treaty imposes obligations on State Parties.

The AUCPCC sets out objectives, principles and scope of application of the convention on preventing and combating corruption. The convention is applicable to State Parties in Africa that have ratified or acceded to the convention.

While the UN and AU conventions against corruption sets the tone at the global and continental levels for fighting against corruption, at the levels of State Parties and Member States, legislative measures have been put in place to address and deal with corruption. In this case, most countries have Anti-Corruption Laws in one form or another which not only criminalise identified and specified corruption activities, but also imposes penalties and other deterrent measures. In addition, in most jurisdictions, the Anti-Corruption Laws also establish Anti-Corruption Agencies or Bodies that have the specific mandate of investigating and prosecuting cases of corruption.

Figure 5 below is a schematic that seeks to demonstrate how the role of CBC fits into the interplay between international and continental conventions on one hand, sovereign pieces of legislation on the other hand and Business Associations and Chambers of Commerce that all seek to effect business integrity and anti-corruption compliance among businesses in one way or another.

Figure 5, also demonstrates the different stakeholders and role-players for CBC can be vital to entrench and implement the business integrity and anti-corruption compliance drive.



**Figure 5:** While there are many levels at which anti-corruption compliance and business integrity efforts are made towards businesses, efficacy remains a challenge. Hence need for projects like the one by CBC and CIPE...

#### 4.1 Laws and Regulations from the countries part of the training phase

All the four COMESA Member States( Ethiopia, Rwanda, Mauritius, and Zambia) that were part of the scoping project for the development of the regional code are signatories to the UNCAC and to the AUCPCC. While all four countries have domestic anti-corruption legislations and enforcement structures and mechanisms, there are varying degrees of strength and depth in implementation and participation by the business community towards ensuring that the anti-corruption laws address business integrity issues broadly. For instance, in addition to specific anti-corruption legislation, Mauritius has included in its Companies Act corporate governance principles that impose upon company directors a duty of care regarding some acts of corruption. Zambia is implementing the anti-bribery management systems based on ISO 37001 driven by the Zambia Bureau of Standards. The standard is available to both the public and private sectors and training is available on the same. The implementation of the standard promotes identification of risks, documenting policies and procedures that would lead to

prevention or reduction of bribery. The overview below highlights the legislative framework of the four Member States in the scoping project.

### **Ethiopia**

The Ethiopian anti-corruption law is primarily contained in The Revised Federal Ethics and Anti-corruption Commission Establishment Proclamation and the Revised Anti-Corruption Law which criminalize major forms of corruption including active and passive bribery, bribing a foreign official, and money laundering. Facilitation payments/ trading in influence is illegal, as it is forbidden for civil servants to accept gifts or hospitality that may affect their decisions. However, apparently the legal anti-corruption framework is rarely enforced. While the Federal Anti-Corruption Commission is at the federal level, there are branches at each regional level. A structure that is unique to Ethiopia is that of having provision for an Ombudsman who follows up on any administrative issues and abuses and uses grievance hearing structures in each government organization to address any forms of abuse or maladministration.

The anti-corruption legislation in Ethiopia is for any corrupt activity whether it is done by a private business or not. However, there has to be a government organ involved in giving or receiving a bribe for the anti-corruption Law to apply. Where corrupt activities are engaged in between two private sector entities, the proclamation is not readily applicable. The law primarily focusses on the public sector, it would appear there is also need to ensure private sector is also accountable.

Ethiopia also has a corporate governance code that although is not very well recognized, has the following provisions to address corruption, among others.

- The Company should have an Ethics and Anti-Corruption Policy and should encourage and protect staff whistle blowing when observing and reporting illegal practices
- The Company should maintain open and transparent relations with taxation authorities, paying its justified taxes and avoiding all forms of tax evasion.

### **Mauritius**

Similar to other Member States of COMESA, Mauritius has an anti-corruption law in form of the Prevention of Corruption Act (POCA) which criminalises corruption both in the public and private sectors and sets up the Independent Commission Against Corruption (ICAC). But a novel structure that has been established in Mauritius is the Public Private Partnership Against

Corruption (PPPAC) which seeks to engage around the high-risk areas of corruption in the Mauritian society. One area that it is seeking to address is that of acceptance of gifts and hospitality and intends to come up with recommendations and models for gift policies for both public and private sectors.

Furthermore, as said above, beyond the anti-corruption laws and agencies, the Mauritian Companies Act creates corporate governance principle that directors and key officers of a company have a legal duty of care with respect to the organisations and their responsibility to avoid foreseeable harm to the company. Thus, regarding acts of corruption, a director of a company has a duty of care to:

- Prevent the distribution or receiving of bribes;
- Avoid conflicts of interest, and disclose and manage any potential conflicts of interest;
- Protect company assets from internal and external fraud; and
- Be loyal to the interests of the company, its shareholders, and stakeholders.

Another key structure that Mauritius has in place is the National Code on Corporate Governance (NCCG) which consists of a set of corporate governance principles accompanied by a guidance on how to implement them in practice. This code applies particularly to public interest entities, as defined in Conceptual Issues. In addition to the NCCG, the Institute of Directors (MIoD) has played a significant role in setting business accountability standards publishing an ethics guide for directors and managers of enterprises.

Finally, Mauritius also has the Private Sector Anti-Corruption Taskforce (PACT) with one of its projects being the Integrity Pledge Project (IPP)<sup>4</sup> to which businesses can become members upon satisfying certain levels of anti-corruption measures and mechanisms. Businesses upon becoming members of the IPP sign an Integrity Pledge.

## **Rwanda**

The structures and mechanisms that are in place in Rwanda to mitigate corruption involving the business community, include a new anti-corruption law which was promulgated in 2018. The new law aims to prevent, and punish corruption in public organs, civil society, private institutions and international organisations operating in Rwanda.

Under the new law; there are a number of obligations for private institutions to adhere to, these include:

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<sup>4</sup> There would be need to benchmark how the Integrity Pledge Project works. There may be by need to visit Mauritius to establish this.

- Implement mechanisms for prevention of corruption
- Carry out activities in transparency
- Submit a report to the relevant authorities
- Ensure there is no corruption practices within the institution
- Present activities that were performed in the prevention of corruption upon request by a competent organ.
- Have a document describing modalities and timeframe for decision making
- Collaborate with other institutions in line with the required timeframe while presenting the activities performed or providing any information required by another institution
- Ensure equal treatment of clients and timely delivery of services

In addition to the anti-corruption law, there are other laws that contain provisions on corruption. These include the Law on public procurement, law on the leadership code of conduct, Law on prevention and penalizing of crime of money laundering and financing terrorism. Others include the Presidential order determining the responsibilities, organisation and functioning of the advisory council to fight against corruption and injustice and the office of the Ombudsman which outlines different roles of the public institutions, private sector and civil society in the fight against corruption.

The Republic of Rwanda also has an Anti-corruption policy which states that the business community still needs to be sensitized to adhere to the anti-corruption law, and to encourage best practices in a number of key business dealings like transparency in financial matters, eliminating corruption, ensuring product quality, proper treatment of workers, compliance with business laws, etc. and that it is the responsibility of the Private Sector Federation (PSF) to promote those ethical standards. Finally, there is also in Rwanda the Rwanda Governance Board (RGB), an independent state agency established to monitor and assess transparency, accountability, good governance and control of corruption within the public sector.

### **Zambia**

There are a number of pieces of legislation in place that seek to address corruption and corrupt activities generally, the principal of which, sets up the Anti-Corruption Commission (ACC). The

principal anti-corruption law of the country is the Anti-Corruption Act which criminalises attempted corruption, active and passive bribery, extortion, bribing a foreign official, abuse of office, and money laundering, among other provisions. This Act, unlike others, prohibits bribery of foreign public officials and not only prohibits private sector bribery, but the Act criminalizes private sector bribery.

Other pieces of legislation that deal with corruption include the Prohibition and Prevention of Money Laundering Act which criminalises money laundering, imposes penalties for financial crimes, and requires financial institutions to report suspicious transactions. The other piece of legislation in this regard is the Financial Intelligence Centre Act which establishes the Financial Intelligence Centre (FIC) with the powers to receive, analyse and disseminate disclosure of suspicious transactions.

Besides legislative instruments, there are other national practices and policies that seek to curb corruption such as anti-bribery management systems adapted from the ISO standard and driven by the Zambia Bureau of Standards (ZABS) to complement the anti-bribery aspects of the anti-corruption law. The standard is available to both the public and private sectors and ZABS also offers training on the same. The implementation of the standard promotes identification of risks, documenting policies and procedures that would lead to prevention or reduction of bribery.

Furthermore, in Zambia there are supervisory authorities in the economy that in one way or another regulate business conduct and the conduct of agents of businesses with a view to ensuring accountability. These include the Central Bank, the Pensions and Insurance Authority, the Capital Markets regulator and the Registrar of Co-operatives. Others are the Patents and Companies Registration Agency, the Registrar of Estate Agents and the Associations for Lawyers and that of Accountants. In one way or another, the supervisory authorities and the pieces of legislation that establish them seek in many ways to articulate the legal conduct expected of supervised entities and the nationals, including foreigners, at large, involved in them, and the penalties that would accrue in the event of infringement and/or corruption.

There is also in Zambia at the business level, practices and activities that seek to address corruption such as governance structures in form of Boards of Directors which in most instances have Audit and Risk Committees and, in some cases, even go so far as implementing Codes of Conduct or Ethics. All statutory and supervisory bodies, State Owned Enterprises (SOEs) and some public entities are required by Law, to have boards.

## 4.2 Perspectives from Other Countries

### **Kenya**

Apart from the cases of anti-corruption law enforcement and other rules and guides from the pilot countries, there is great value in examining practices in other COMESA Member States to broaden the knowledge base for the development of the Regional Anti-Corruption Code.

For instance, as a start, in Kenya, the Bribery Act of 2016 and the Anti-Corruption and Economic Crimes Act of 2003 prohibit both financial and non-financial forms of bribe and the giver and receiver are both liable. Private sector bribery is also forbidden, as is facilitation payment, and there is duty to report an act of bribery within 24 hours or face the same punishment. The penalty for bribery if found guilty is up to 5 million points fine and 10 years imprisonment and disqualification for holding similar office for individual and for a company up to 5 million points fine and 10 years disqualification from bidding for government contracts.

Furthermore, the Capital Markets Act provides that the Board shall

- formalize its ethical standards through the development of a Code of Ethics and Conduct and shall ensure that it is complied with
- periodically review its Code of Ethics and Conduct. Besides, a summary of this code shall be made available on the company's website
- set standards of ethical behavior required of its members, senior executives and all employees and ensure observance of those standards
- establish and put into effect a whistle blowing policy for the company.

### **Sudan**

The anti-bribery law in Sudan forbids both Financial and Non-financial forms of bribes, including Promises, Requests & Offers. All actors in the bribery could be liable including giver, receiver, agents & anyone who profits from the bribery. Private Sector bribery is also prohibited. Penalties for bribery could be imprisonment for up to 7 years for private sector bribery or 10 years for bribing a public officer.

Furthermore, the Company Registrar has prosecutorial powers for fraud and corruption in companies and the Company Act provides for investigation and audit by the Company Registrar or appointee with the main purpose of this inspection being to make sure that the

company's affairs were managed correctly and that the company's financial information is accurate and true. In addition, that:

- the business of the company is being or has been conducted without intent to defraud creditors or members or any other person or otherwise for a fraudulent or unlawful purpose; or
- in a manner, oppressive to any part of its members or that it was formed for any fraudulent or unlawful purpose; or
- or that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
- that its members have not been given all the information with respect to its affairs which they might reasonably expect.

### **Tanzania**

Tanzania's Prevention and Combating of Corruption Act prohibits financial & non-financial forms of bribe, including and promise and demand. The liable parties are the giver, receiver, principal and agents. While not explicit, the law does seem to prohibit bribery even in the private sector as well as facilitation payments. There is a duty to report acts of bribery to law enforcement and in the case of being convicted, there are fines to be paid as well as imprisonment of up to 5 years, including disgorgement and asset forfeiture.

### **Uganda**

In Uganda Anti-Corruption Act, 2009 and the Whistleblowers Protection Act, 2010 forbid both Financial and Non-financial forms of bribery and all parties involved including giver' receiver, agents and accessories could be liable. Private Sector bribery is also prohibited as well as facilitation. Penalties upon conviction could be imprisonment up to 10 years, with inclusion of an unspecified fine.

Another example from Uganda is the Capital Markets Corporate Governance Guidelines where there is provision for Fiduciary duty and duty of care and for internal controls and prevention of fraud and financial irregularities.



## **Zimbabwe**

Zimbabwe's Prevention of Corruption Act forbids both Financial and Non-financial forms of bribery, as well as Promises Requests and Offers. The liable parties are the giver, receiver and their agents. Private Sector bribery is also prohibited with regards to violations by employees at the expense of the company or its principal although there is no provision directly prohibiting corrupt practices perpetrated by the Company. The penalty if convicted of bribery is imprisonment up to 20 years, including a fine and forfeiture of proceeds to the State or employer/principal.

The above legislative review gave the researcher significant foundational basis to develop a model regional code that is to be considered by CBC's membership as an instrument to facilitate transparency and integrity in day to day business operations with internal and external stakeholders.

## **5. Regional Code: Principles of Business Integrity and Anti-Corruption Compliance in COMESA**

## 5.1 Preamble

WHEREAS, the Common Market of Eastern & Southern Africa Business Council (the COMESA Business Council), is a business member organization bringing together a diverse group of businesses and associations in the region; and is the recognized regional apex body of the private sector and business community in the COMESA region whose mission is to become the leading private sector organization in Africa, that promotes competitive and interconnected industries to actively participate in regional and global markets through advocacy, business facilitation and enterprise development.

MINDFUL of the high costs of corruption as it distorts market and competition, impedes private sector growth, stifles trade and investment, and causes a huge dent in the social and economic development of our countries.

RECOGNIZING the positive nexus between strong transparency, integrity and business ethics with increased capital flows, trade, investment and integration into regional and global chains.

UNDERSCORING the importance of private sector efforts in curbing corruption and taking a central role in tackling corruption within their own businesses and economies.

THEREFORE, in pushing towards promoting business integrity for SMEs in COMESA, CBC hereby articulates a Regional Code for Anti-Corruption Compliance to establish business integrity and anti-corruption compliance principles for enterprises in the COMESA region. It is CBC's belief that business enterprises in COMESA are by and in themselves desirous of being beneficiaries of operating in environments that promotes business ethics and integrity and that, therefore, with such benefits clearly articulated and demonstrated, many such business enterprises will readily be eager to pledge to operate according to this Regional Code of Business Practice.

## 5.2 Purpose

The Regional Code seeks to establish business integrity and anti-corruption compliance principles for enterprises in the COMESA region. It provides a guide that can be used by enterprises to customize, develop and/or implement anti-corruption compliance management systems to prevent corruption or fraud policies within the governance structures of respective enterprises in COMESA. It is also envisaged that this code will inform corruption mitigation measures within COMESA.

## 5.3 Scope

### 5.3.1 Overview

The Code consists of key principles specifying the key players involved in the establishing and enforcing of the given principles. It is to be appreciated that anti-corruption compliance and business integrity exist in an eco-system and in that regard the member states, Business Member Organisations, Chambers of Commerce in member states, and business entities in

their own rights are all key players in this ecosystem. They are all key to ensuring that such measures as broadly articulated below, being consistent with the domestic legal and legislative provisions and regional and international conventions, are adopted and implemented as part of the business integrity and anti-corruption compliance thrust.

### **5.3.2 Definitional Issues**

For the purposes of this Regional Code, corruption, in line with the African Union Convention Against Combating Corruption and guided by the national legislation of the country shall include but not be limited to bribery, extortion, fraud, deception, collusion, coercion, facilitation payments, trading in influence, nepotism, favoritism, and other forms of conduct involving an abuse of entrusted power and authority for personal interest.

Bribery is where a person offers, promises, gives or receives, demands or accepts a financial or other advantage to/from another person with the intention to bring about the improper performance by that other person of a relevant function or activity or to reward such improper performance. The interpretation shall be in line with the respective national legislation.

Facilitation payments are usually small payments or gifts made to public officials in order to speed up or “facilitate” actions that public officials are already duty-bound to perform. Most legislations including AUCAC and several COMESA countries’ legislation prohibit them. Companies shall endeavor not to pay any facilitation payments. The prohibition shall be guided by national legislation.

State Owned Enterprises (SOEs) and Public Interest Entities (PIEs) are entities either wholly or majority owned by government which engage in business activities on behalf of government other than offering of public goods.

### **5.4 Principles for State-Owned Entities and Public Interest Entities**

It is desirable that for business entities such as State-Owned Entities (SOEs) and Public Interest Entities (PIEs)<sup>5</sup> rules, regulations and incentives are articulated at the member state level, consistent with existing domestic legal provisions, for these entities to embrace the principles such as below and for them to champion the business integrity and anti-corruption compliance code overall:

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<sup>5</sup>The term Public Interest Entity (PIE) is one that is already in use in one of the member states: Mauritius, and as defined in Conceptual Issues. It is hoped that other member states could emulate this concept as part of putting structures in place which could close as many loop holes as possible in the fight against corruption.

***Principle 1: Prohibition of all forms of corruption with State-Owned Entities (SOEs) and Public Interest Entities (PIEs)***

The SOE or PIE shall prohibit all forms of corruption as defined in Article 5.3.2 and shall put in place specific mechanisms and policies to ensure compliance by its representatives, subsidiaries, agents, contractors and employees.

***Principle 2: Sound corporate governance systems in place***

***The governments of member states shall*** ensure that the entities guided by sound corporate governance systems and the management of the entities is free of undue political influence. This includes ensuring adequate financial and governance controls and oversight.

***Principle 3: Strengthened corporate governance within SOEs and PIEs***

Ensure that SOEs and PIEs are guided by and implement codes of corporate governance as articulated by institutes such as the Institutes of Directors (IODs) and publish their audited accounts and corporate governance reports periodically as guided by the corporate governance requirements.

***Principle 4: Anti-corruption compliance policies and programs in place***

Ensure that entities put in place holistic anti-corruption compliance policies and programs. Furthermore, demonstrate through measurable management systems, a commitment to corporate ethics and integrity utilizing recognized international and regional standards as benchmarks.

***Principle 5: Transparency in procurement***

Through government policies in procurement for public services, corporate taxation, in project finance and granting of concessions, entities are encouraged or required to demonstrate business ethics and integrity in measurable ways to be eligible. Furthermore, internally, entities in procuring services should ensure compliance with anti-corruption legislation, policies and procedures to ascertain they engage ethical businesses and service providers.

**5.5 Principles for Business Member Organisations and Businesses**

It is desirable that Business Member Organisations (BMOs) , or Chambers of Commerce and businesses in COMESA endeavour to ensure that they commit to: (a) Adopting and promoting the articulated principles of business integrity and anti-corruption compliance for themselves and diligently implementing them; (b) Adopting and promoting these principles of business integrity and anti-corruption compliance as part of membership requirement with some means of demonstration of adhering to the same by their members. Therefore, BMOs and or businesses should ensure compliance with the principles below:

***Principle 1: Prohibition of all forms of Corruption***

The BMO/Chamber of Commerce, their members or businesses prohibit all forms of corruption as defined in Article 5.3.2 and shall put in place specific mechanisms and policies( Code of Conduct, anti-corruption compliance policies, and other) to ensure compliance by its members, representatives, subsidiaries, agents, contractors and employees.

The Board, management and employees are fully cognizant of this Code, and the obligations therefore to ensure increased transparency and integrity within the business.

***Principle 2: Ensuring corporate governance systems in place with the Association or respective business***

Ensuring that governance structures, such as boards of directors and appropriate committees of boards, are put in place to ensure separation of business interests and activities from beneficial owners' interests that may be at variance with sound business judgement based on commercial principles and ethics. For smaller companies, with difficulty to implement the above focus can on putting in place a mechanism for ethical oversight by having an independent director.

***Principle 3: Putting in place effective anti-corruption compliance policies and programs with their Associations or businesses, benchmarked on international and regional best practices***

Putting in place and or implementing codes of conduct and ethics, policies and procedures for the correct, ethical and proper conduct and performance of activities of business. Businesses should build own internal corporate organizational code of ethics and practice through official policy adopted and endorsed by the most senior authority in the company. This includes implementing anti-corruption compliance programs,

promoting the use of good commercial practices, ensuring sound procedures and preventing conflicts of interest as much as possible in all business undertakings.

Furthermore, putting in place and implementing a continuous process of review and audit of to assess, report and improve on anti-corruption measures and mechanisms implemented by businesses, and on potential risks or acts of corruption in businesses. The International Chamber of Commerce guide on Anti-Corruption for associations provides a guide that can be used by Associations to this effect.

***Principle 4: Putting in place adequate policies and procedures, including financial controls to increase transparency, corporate governance and anti-corruption compliance.***

Putting in place and implementing adequate policies and procedures including financial controls to assist in preventing and detecting acts of corruption and financial reporting that is subject to appropriate auditing and demonstration of effective anti-corruption compliance.

***Principle 5: Earmarking resources or ensuring dedicated responsibility for the corruption prevention and business ethics repressibility in the organization or company.***

Designating and appointing anti-corruption compliance officer/s, or where resources may not permit such an appointment, ensuring a key aspect of the job description and performance of an identified executive involves anti-corruption compliance, for effective entrenching of corruption monitoring and avoidance activities in the business.

Furthermore, implementing business integrity and anti-corruption compliance training programmes that form part of professional development for employees of businesses.

***Principle 6. Putting in place policy for addressing incidences of non-compliance that ensures effective enforcement mechanism through appropriate incentives and or appropriate consequences for violation.***

Putting in place and implementing processes and procedures for effectively addressing noncompliance with anti-corruption compliance policies, codes of ethics, policies and procedures. This should include an incentive and deterrent system.

***Principle 7: Effective mechanism for confidential reporting***

Building a trust based collaborative environment where people feel comfortable to report concerns and know how to make such reports including visa confidential channels. The mechanisms should protect the person(s) involved while ensuring that the matters reported are vigorously investigated and duly addressed using appropriate authorities. The organization must have strong measure to protect sources and prevent and address incidences of retaliation for good faith reports. The channels should be secure and easily accessible to all parties ensuring confidential reporting, recording and retention of information.

***Principle 8: Ensuring compliance with anti-corruption compliance regulations and policies in all dealings and relationships with third parties.***

Promoting transparency and anti-corruption compliance in all business dealings, especially those of a financial nature, and articulating incentives that promote the same and sanctions that deter non-transparent business dealings. This includes disclosure of conflict of interest and ensuring fairness and transparency in all procurements.

***Principle 9: Facilitation payments***

The Association or business shall endeavor to eliminate facilitation payments as guided by their respective legislations. However, in instances where this is not possible guidelines shall be provided on the cap and procedures if facilitation payments need to be paid to ensure transparency.

***Principle 10: Put in place guidelines for gift policies***

The Association or business shall put in place and implement clearly defined parameters and boundaries for what constitutes giving of gifts, versus gratification and giving of bribes, including maintaining a register of gifts in the business and a cap for all corporate gifts. Furthermore, gifts made to the government or public officials should be in line with national and international legislation; and shall not constitute bribes.

## **5.6 Policies and Procedures**

As part of the Regional Code for Anti-Corruption Compliance, this section outlines some policies and procedures that business entities could put in place to start implementing aspects of business integrity and anti-corruption compliance. Two examples, Gift Policies and Whistleblowing, are given here as demonstrations of how such policies can be implemented.



### 5.6.1 Gift Policy

One of the biggest challenges and grey areas is one of giving of gifts or providing corporate hospitality. The need to ensure the fine line between bribery/ trading in influence with gift as a token of appreciation.

Therefore, it is important to put in place guidelines on gifting and tokens of appreciation in form of the following:

- Specify the threshold of quantum of gift or token that would not be acceptable to receive by an officer of the business
- Orient all existing staff on the scourge of bribery and its detrimental effects on the business, and include in orientation of all new staff
- Maintain a gift register into which all gifts received by employees would need to be entered
- Clearly specify and display in prominent locations the sanctions that would be imposed for anybody caught in act of bribery
- Clearly articulate and display in prominent locations the adverse fate and disadvantage the business would suffer as a result of its officers being involved in acts of bribery.

### 5.6.2 Confidential Reporting

Confidential reporting also referred to as whistleblowing could, if properly implemented, be a tremendous tool in the fight against corruption in businesses. This is because there could both be incentives in place for this act, but also because there are individuals who may naturally be inclined to report illegal acts, and indeed acts of corruption. But, cardinal among the aspects of the policy on confidential reporting would be the protection of persons that undertake this activity. Therefore, the confidential reporting policies would need to have the following provisions:

- First and foremost, it needs to be clearly articulated and specified in the workplace that confidential reporting is encouraged as a means of combating corruption.
- The means and mechanisms for blowing the whistle should be such that they give confidence to the employee regarding their safety and protection.
- The process should be made very plain and clear for any person that may wish to utilize the channels.
- The onus is not on the person reporting to supply proof or engage in investigating the illegal act exposed. It needs to ensure confidentiality throughout the process.

- Although it may be necessary to expose the identity of the reporter for purposes of legal due process, there would be need for the business to ensure that no retaliation acts are suffered by the employee as a result.
- It needs to be appreciated that the fear of retaliation against the whistleblowers impedes many a potential reporter from engaging in the activity, hence it's important to provide assurances to employees of protection against such adverse reactions.
- Where possible, it may be necessary to refer to the pertinent legislation that provides for whistleblowing and for the protection of confidential reporters.
- It may also be necessary, through BMOs and Chambers of Commerce, to lobby for confidential reporting legislation in jurisdiction where there is no such law.
- Within the organisation, it would need to be clearly articulated what steps are followed upon the instance of confidential reporting.

## 5.7 The Pledge

- While COMESA member states pledge to continue providing environments conducive for anti-corruption compliance and business integrity through appropriate legal and non-legal frameworks,  
I ..... representing the  
business member organization , or chamber of commerce, or  
business.....  
hereby pledge to conduct all business activities in accordance  
with the principles articulated in this Regional Code.
- I further pledge that we will not condone or get involved in any activities and practices that are ethically questionable and fully commit to total compliance with all laws and regulations in the locations where we operate and conduct business, and to not knowingly operate in violation of any such laws or regulations. Furthermore, commit to ensure performing with honesty and acting professionally in all our business dealings and relationships.
- I will ensure that my company conducts all its business with transparency, integrity, and enforcing a zero-tolerance approach to bribery and corruption.

- I pledge to do the best I can to curb corruption within my Association/business/ thereby make practical steps to create an ethical culture leading to an ethical COMESA where business, trade and investment thrive.

Signed.....representing.....

Witnessed by .....

This .....Day of .....2020.

## 6. Conclusion

The Regional Code provides guidance and a framework for businesses and BMOs to strengthen their frameworks and business policies on anti-corruption compliance in COMESA. It consists of principles that foster corporate governance, ethics and anti-corruption compliance within all businesses including SOEs, PIEs, BMOs, Chambers of Commerce, and large/ medium or small enterprises within the region. The Regional Code sets pace for concerted private sector efforts in increasing awareness and putting in place effective and practicable measures to curb corruption and transform the economies of countries in COMESA.

### Recommendations

For the business integrity and anti-corruption compliance regional code developed in this report to be effective in strengthening business integrity for SMEs in COMESA, and for CBC to achieve its objective of promoting competitive and interconnected industries to actively participate in regional and global markets, the code would need to be adopted as widely and efficaciously as possible across the region. To achieve this, it is important to identify the key entry or linkage points in each member state for the adoption and adaptation of this code. It is therefore recommended as follows:

- CBC to present the Regional Code Principles for Anti-corruption compliance to COMESA for adoption.
- That through CBC, the code is effectively adopted by Business Member Organisations and Chambers of Commerce for onward adoption by their members.
- That through BMOs and Chambers of Commerce, a mechanism be devised such that business enterprises that sign up to adopt the code get incentives – this could be in form of preferred supplier to PIEs and SOEs, etc.
- Potentially to establish mechanisms for demonstration of attaining certain levels of the business integrity and anti-corruption compliance code which could become requirement in business dealings with public entities and with designated ones such as SOEs and PIEs for key business activities such as procurement, loan applications, etc.
- That where feasible, CBC to identify partners to work with in different member states, in conjunction with BMOs and Chambers of Commerce, to promote anti-corruption compliance and the implementation of this Regional Code.

## Bibliography and Resources

1. African Development Bank(2015) News: International Anti-Corruption Day: AfDB calls for stronger measures in Africa. Retrieved from <https://www.afdb.org/en/news-and-events/international-anti-corruption-day-afdb-calls-for-stronger-measures-in-africa-15205>
2. Business Anti-corruption Portal <https://www.business-anti-corruption.com/country-profiles/zambia/>, accessed 2/10/19.
3. [www.oecd.org/investment/pfitoolkit](http://www.oecd.org/investment/pfitoolkit) , accessed 24/10/19.
4. Worldwide Governance Indicators, World Bank, 2017.
5. Klaus Schwab, Ed., World Economic Forum, 2018.
6. Adekanye, L., Local Legislative Overview of Anti-Corruption Legislation and Governance Practices in Africa, CIPE.
7. Mary Crane-Charef, Stocktaking of Anti-Corruption and Business Integrity Measures for Southern African SOEs, OECD Corporate Governance Working Papers No. 18, 2015.
8. Governance for Africa: Rwanda Country Report: Business Integrity Project and Anti-Corruption Compliance, CBC, CIPE, 2018.
9. Fatma A. Elmaawy, Post Training Report on Anti-Corruption Compliance Training for Enterprises – a CBC Business Integrity Project, Milestones Resource Solutions, 2019.
10. Tibebe, Woinishet, Ethiopia Country Report: Business Integrity Project and Anti-Corruption Compliance, Addis Chambers, CBC, EICG, 2018
11. Chabala, Wala E.D., Zambia Country Report: Business Integrity Project and Anti-Corruption Compliance, CBC, CIPE, 2019
12. Transparency Mauritius, Mauritius Country Report: Business Integrity Project and Anti-Corruption Compliance, CBC, 2019
13. United Nations, United Nations Convention Against Corruption, New York, 2004
14. COMESA, Treaty Establishing the Common Market for Eastern and Southern Africa, Lusaka.

15. OECD. (2016). Anti-Bribery Policy and Compliance Guidance for African Companies, OECD Publishing, Paris. Retrieved from <https://www.oecd.org/daf/anti-bribery/Anti-Bribery-Policy-and-Compliance-Guidance-for-African-Companies-EN.pdf>