

Economic Community of West African States Protocol on the Fight against Corruption

Preamble

We, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS);

Considering that the aims and objectives of the Community are to achieve the integration of its members;

Mindful of the provisions of Article 5 of the revised Treaty calling on Member States to take all necessary measures to harmonise their strategies and policies and to refrain from any action that may hinder the attainment of the said objectives;

Recalling the provisions of Articles 48 and 49 of the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace keeping and Security that call on ECOWAS Member States to eradicate corruption and adopt measures for combating money laundering and to promote transparency, accountability and good governance within their territories;

Conscious of the grave consequences of corruption on investment, economic growth and democracy;

Convinced that transparency and good governance strengthen democratic institutions;

Recognising the role of States in the prevention and suppression of corruption;

Convinced that the success of the fight against corruption requires sustained cooperation in criminal matters;

Mindful of the ECOWAS Convention on Mutual Assistance in Criminal Matters and the Convention on Extradition;

Expressing satisfaction at the efforts of the United Nations Organisation, as well as the global efforts of international, regional and non-governmental organisations in the fight against corruption;

Convinced of the need to adopt preventive and suppressive measures to combat corruption and more particularly to take appropriate measures against persons who engage in acts of corruption in the exercise of their public and private functions;

Resolved to join the efforts of our States in the fight against corruption;

Have agreed as follows.

Article 1
Definitions

"Assets" means property of any kind, whether moveable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets.

"Authority" means the Authority of Heads of State and Government of ECOWAS established by Article 7 of the Treaty;

"Community Court" means the Community Court of Justice established pursuant to Articles 6 and 15 of the Treaty;

"Council" means the Council of Ministers established by Article 10 of the Treaty;

"Executive Secretary" means the Executive Secretary of ECOWAS appointed in accordance with the provisions of Article 18 of the Treaty;

"Foreign Public Official" means any person exercising a public function in enterprises or a public establishment in another Member State;

"Legal person(s)" means any entity having such status under the applicable national law and includes other public bodies and public international organisations.

"Member State(s)" means a Member State of the Community as defined in paragraph 2 of Article 2 of the Treaty;

"Predicate offence," means any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in Article 6 of this Protocol.

"Public function" means any temporary or permanent, paid or honorary activity, performed by a natural or legal person in the name of the State or under its direction, control, and authority. The term "State" comprises the national, provincial, regional, local, and municipal levels and other public agencies.

"Public official(s)" means any person who has been selected, appointed or elected and who performs public functions on a permanent or temporary basis.

"State Party or State Parties" means States which have acceded to this Protocol and includes ECOWAS Member States;

"Treaty" means the revised ECOWAS Treaty dated 24 July 1993 and includes any amendments thereto;

Article 2
Aims and Objectives

The aims and objectives of this Protocol are:

- i) to promote and strengthen the development in each of the State Parties effective mechanisms to prevent, suppress and eradicate corruption;
- ii) to intensify and revitalise cooperation between State Parties, with a view to making anti-corruption measures more effective;
- iii) to promote the harmonisation and coordination of national anticorruption laws and policies.

Article 3
Scope

1. This Protocol shall be applicable whenever an act of corruption is committed or produces some effects in a State Party.
2. This Protocol shall also be applicable whenever a national institutional system fails to provide the most basic preventive measures enumerated in Article 5 below.

Article 4
Jurisdiction

1. Each State Party shall adopt the necessary measures to exercise its jurisdiction in respect of criminal offences established in accordance with Articles 6, 7 and 12 of this protocol as long as:
 - a) the criminal offence was committed in its territory;
 - b) the criminal offence was committed by one of its nationals or by a permanent resident.
2. A State Party in whose territory an alleged offender is found, and which does not extradite such person in respect of an offence to which the ECOWAS Convention on Extradition applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purposes of prosecution.
3. Each State Party shall review its legislation with a view to ascertaining whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials, and where it is not, it shall take appropriate remedial measures.
4. State Parties shall consult when more than one State Party asserts jurisdiction with a view to determining the most appropriate jurisdiction for prosecution.

Article 5
Preventive Measures

In order to realise the objectives set out in Article 2 above, each State Party shall take measures to establish and consolidate:

- a) National laws, ethical guidelines, regulations and codes of conduct that would eliminate conflicts of interest, emphasise methods of recruitment based on merit and provide thorough measures aimed at guaranteeing reasonable standards of living;
- b) transparency and efficiency in the procurement and disposal of goods, works and services and in the recruitment of personnel into the public service;

- c) Laws and other measures deemed necessary to ensure effective and adequate protection of persons who, acting in good faith, provide information on acts of corruption;
- d) Laws and regulations aimed at discouraging corruption of national and foreign officials;
- e) participation of civil society and Non-Governmental Organisations (NGOs) in efforts to prevent and detect acts of corruption;
- f) revenue collection systems that eliminate opportunities for corruption and tax evasion and provide for regulations which require companies and organisations to maintain adequate financial books and records and adhere to internationally accepted standards of accounting;
- g) policies that oblige public officials to disclose assets, liabilities and copies of their income tax returns. The disclosure rules should be extended to at least the spouses and dependent children of the public officials. Provisions should be made to ensure that the information provided shall not be misused;
- h) specialised anti-corruption agencies with the requisite independence and capacity that will ensure that their staff receive adequate training and financial resources for the accomplishment of their tasks;
- i) freedom of the press and the right to information; and
- j) policies to ensure that public officials do not take official decisions related to private business in which they have an interest.

Article 6

Acts of Corruption

1. This Protocol shall be applicable to the following acts of corruption:

- a) a public official demanding or accepting, either directly or indirectly through a third party, any object of pecuniary value such as a gift, offer, a promise or an advantage of any nature, whether for himself or for another person, in exchange for an act or an omission in the discharge of his duties;
- b) offering or giving a public official, either directly or indirectly, any object of pecuniary value such as a gift, a favor or an advantage, whether for himself or another person, in exchange for an act or an omission in the discharge of his duties;
- c) Any person who promises to offer or to grant directly or indirectly any undue advantage to any person who declares or confirms that he can exercise some influence on decisions or actions of persons occupying positions in the public or private sector, whether or not this influence had been exercised or not, or whether the supposed influence had the desired result or not;
- d) any person who declares or confirms that he can exercise some influence on decisions or actions of persons occupying positions in the public or private sector, whether the influence is used or not, and whether or not the supposed influence had the desired result; and asking for or accepting directly or indirectly any undue advantage from whatever quarters;
- e) a public official diverting from its initial purpose, either for his own benefit or for the benefit of another person, any assets, whether moveable or immovable, or deeds and securities belonging to the State, an independent agency or an individual, given to the public official by virtue of his position and for the needs of the State for safe-keeping and for other reasons.

2. Each State Party shall adopt necessary legislative and other measures to make the acts of corruption enumerated in this Protocol criminal offences.

3.(a) A significant increase in the assets of a public official that he cannot reasonably

explain in relation to his lawful earnings shall be considered an illicit enrichment and an act of corruption for the purposes of this Protocol among those State Parties for which it is a criminal offence.

(b) Any State Party, for which illicit enrichment is not an offence, shall, provide such assistance to and cooperation with the other State Parties.

4. Each State Party shall adopt necessary legislative and other measures to establish as offences liable to criminal or other sanctions the following acts or omissions, in order to commit, or conceal the offences referred to in this Protocol:

a) Creating or using an invoice or any other accounting document or record containing false or incomplete information.

b) Unlawfully omitting to make a record of payment. 5. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following acts:

a) Promising to offer or giving public officials or employees of companies of the private sector, either directly or indirectly to themselves or to third parties, in order to carry out or abstain from carrying out an action in violation of their functions;

b) Public officials or employees of companies of the private sector, asking for or receiving, directly or indirectly, bribes for themselves or third parties, in order to carry out or refrain from carrying out an action in contravention of their duties.

6. Each State Party shall adopt necessary legislative and other measures to establish as criminal offences the act of aiding and abetting in any of the criminal offences established in accordance with this Protocol.

7. This Protocol shall also be applicable by mutual agreement between two or several State Parties, to any other act of corruption which is not included in these provisions.

Article 7

Laundering of proceeds of corruption and similar criminal offences

1. Each State Party shall adopt, in accordance with the fundamental principles of its national law, such legislative and other measures as may be necessary to establish as criminal offences:

(a) (i) The conversion or transfer of assets, knowing that such assets are the proceeds of crime, for the purpose of concealing the illicit origin of the assets or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment of the true nature, source, location, disposition, movement or ownership of or rights with respect to assets, knowing that such assets are the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of assets, knowing at the time of receipt, that such assets are the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit, aiding and abetting in facilitating and concealing the commission of any of the offences established in accordance with this article.

2. (a) Each State Party shall seek to apply paragraph 1 of this Article and consider as predicate offences, those acts stipulated in articles 6, 7 and 12 of this Protocol;

(b) For purposes of sub-paragraph (a), predicate offences shall include offences committed both within and outside the jurisdiction of the concerned State Party. However, offences committed outside the jurisdiction of a State Party shall constitute predicate

offences only where the relevant conduct is a criminal offence under the domestic law of the State Party implementing or applying this Article had it been committed there.

(c) If required by fundamental principles of the national law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offences;

(d) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 8

Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection to witnesses in criminal proceedings who give testimony concerning offences covered by this Protocol from potential retaliation or intimidation and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this Article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

a) Establishing procedures for the physical protection of such persons, such as to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. State Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 9

Assistance and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Protocol, in particular in cases of threat, retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Protocol.

3. Each State Party shall permit the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings in a manner not prejudicial to the rights of the defense.

Article 10

Sanctions and measures

1. Each State Party shall provide, in respect of those criminal offences established in accordance with this Protocol, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2. Each State Party shall ensure that legal persons held liable in accordance with Article 11, shall be subject to effective, proportionate and dissuasive criminal or non-criminal

sanctions, including monetary sanctions.

3. Each State Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Protocol, or assets the value of which correspond to such proceeds.

Article 11

Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, and consistent with its legal principles, to establish the liability of legal persons for participation in offences established in accordance with articles 6, 7 and 12 of this Protocol.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions, disqualification from commercial activities, judicial winding-up orders, and placements under judicial supervision.

Article 12

Acts of corruption concerning foreign public officials

1. Each State Party shall prohibit and punish the act of offering or giving to a foreign public official, either directly or indirectly, any object of pecuniary value such as gifts, promises or favors, to compensate the public official for an act or an omission in the exercise of his official functions.

2. State Parties that have enacted laws making transnational corruption a criminal offence shall, for the purposes of this Protocol, consider such an act as an act of corruption while State Parties which have not passed such laws shall provide the necessary assistance and cooperation set out in this Protocol.

Article 13

Seizure and forfeiture

1. Each State Party shall adopt measures, where necessary, that would permit:

a) the competent authorities to identify, locate and seize assets or items for eventual forfeiture;

b) the forfeiture of proceeds from crimes established in accordance with the provisions of this Protocol or other assets whose value is equal to the value of the crime.

2. In order to implement the measures referred to in this Article, each State Party shall empower its courts to order the surrender or seizure of bank, commercial or financial documents and shall not invoke banking secrecy in order to refuse the assistance requested by another State Party.

3. The requesting State Party shall undertake to use the information provided only for the purposes for which it was required.

4. In accordance with their national laws, treaties and other relevant agreements, State Parties shall assist each other in the identification and seizure of the assets or items

acquired or used in committing the crimes.

5. Subject to its national laws, a State Party may transfer all or a part of the assets specified in the first paragraph of this Article to another State Party which has assisted it in carrying out investigations or prosecuting the crime.

Article 14 Extradition

1. The criminal offences which come under the scope of application of this Protocol shall be considered as crimes leading to extradition and as forming part of the ECOWAS Convention on Extradition and any other extradition Treaties existing between the parties. The parties undertake to include such crimes in all extradition Treaties as crimes that may lead to extradition.

2. A State Party which receives an extradition request from another State Party with which it has not entered into any extradition treaty may consider this Protocol as the legal basis of its request in relation to offences which fall within the context of this Protocol.

3. State Parties, which do not require the existence of a Treaty before they execute an extradition order, shall recognise the crimes established in accordance with the provisions of this Protocol as crimes leading to extradition.

4. The extradition shall be carried out in accordance with the provisions of the laws of the requested State Party or of the extradition Treaties in force, including reasons for which the requested State Party is rejecting the extradition request.

5. Where the extradition request submitted in accordance with the provisions of this Protocol is rejected on the basis of the nationality of the person whose extradition is sought or because the requested State feels it is competent to handle the matter, the requested State shall hand over the case to its competent authorities as soon as possible, except where other arrangements have been concluded with the requesting State Party, and shall inform the requesting State Party promptly of the outcome.

Article 15 Mutual legal assistance and law enforcement cooperation

1. In accordance with the provisions of their national legislation and the Treaties in force, State Parties undertake to assist each other by expediting action on requests submitted by competent authorities and to take necessary measures to facilitate the procedures and formalities relating to investigation and prosecution of acts of corruption.

2. State Parties undertake to assist each other as much as possible in the area of law enforcement cooperation so as to strengthen measures to prevent, detect and suppress acts of corruption.

3. The provisions of this Protocol shall not in any way affect the bilateral and multilateral Treaties which govern mutual assistance in criminal matters. No provision of this Protocol shall be considered as denying a State Party the right to favor the forms of mutual assistance set out in its national laws in its dealings with another State Party.

4. State Parties shall consider concluding bilateral or multilateral agreements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more State Parties, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements, joint investigations may be undertaken by agreement on a case-by-case basis. The State Parties involved

shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

5. If permitted by the basic principles of its domestic legal system, each State Party shall take the necessary measures to allow for the appropriate use of other special investigative techniques, in accordance with its domestic laws.

6. For the purpose of investigating the offences covered by this Protocol, State Parties shall conclude, when necessary, appropriate bilateral or multilateral agreements for using such special investigative techniques.

7. In the absence of an agreement or arrangement as set forth in paragraph 6 of this Article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and agreements with respect to the exercise of jurisdiction by the State Parties concerned.

8. State Parties shall not decline mutual legal assistance on the basis of Bank secrecy.

Article 16

Central authority

1. Within the framework of the cooperation and mutual assistance established in this Protocol, each State Party shall designate a Central Authority.

2. The Central Authorities shall be responsible both for formulating and receiving the requests for cooperation and assistance set out in this Protocol. They may establish direct lines of communication between themselves.

Article 17

Application in time

1. Acts of corruption committed before the entry into force of this Protocol may, at the request of State Parties, form the basis of judicial cooperation, on condition that national and international standards in the area of extradition are respected.

2. This provision shall in no way affect the non-retroactive nature of criminal law.

Article 18

Harmonisation of national legislation

1. State Parties undertake to develop and harmonise their national legislation with a view to realising the aims and objectives of this Protocol.

Article 19

Establishment of a technical commission

1. State Parties undertake to establish a Technical Commission, in accordance with the provisions of Article 22 of the revised ECOWAS Treaty, which shall be called the Anti-corruption Commission. The Commission shall:

a) Monitor the implementation of this Protocol both at the national and sub-regional levels;

b) Gather and disseminate information among State Parties;

c) Regularly organise relevant training programmes;

d) Provide State Parties appropriate additional assistance.

2. The Technical Commission shall comprise experts from the Ministries in charge of Finance, Justice, Internal Affairs and Security of States Parties.
3. The Technical Commission shall meet at least twice every year.
4. The Technical Commission shall establish an appropriate balance between the confidentiality and transparency of its activities, and its deliberations shall be conducted on the basis of consensus and cooperation amongst its members.
5. Reports of meetings of the Technical Commission shall be submitted to the Council of Ministers.

Article 20

Relations with other treaties

This Protocol repeals all preceding provisions relating to acts of corruption in all bilateral Treaties existing between two States Parties.

Article 21

Notification

In the course of application of the provisions of Articles 7, 13 and 18, the State Parties shall notify in advance, the Executive Secretariat of their domestic laws on these issues; which shall in turn inform the other State Parties.

Article 22

Ratification and entry into force

This Protocol shall enter into force upon ratification by at least nine (9) signatory States, in accordance with their respective constitutional procedures.

Article 23

Depositary authority and registration

This Protocol and all instruments of ratification and accession shall be deposited with the ECOWAS Executive Secretariat which shall transmit certified true copies of this Protocol to all State Parties and notify them of the dates of deposit of the instruments of ratification and accession. The Executive Secretariat shall register this Protocol with the Organisation of African Unity, the United Nations Organisation and such other organizations as the Council may determine.

Article 24

Accession

Any non-ECOWAS Member State may accede to this Protocol.

Article 25

Amendments and revision

1. Any State Party may submit proposals for the amendment or revision of this Protocol.
2. All such proposals shall be submitted to the ECOWAS Executive Secretariat which shall notify State Parties not later than thirty (30) days after the receipt of such proposals.

Amendments or revisions shall not be considered by the Authority unless State Parties shall have been given at least three (3) months' notice thereof.

3. The amendments or revisions adopted by the Authority shall be submitted for ratification by all State Parties in accordance with their respective constitutional procedures. They shall enter into force in accordance with Article 89 of the Treaty.

Article 26

Denunciation

1. This Protocol shall be concluded for an indefinite period of time. It may, however, be denounced by any State Party. The instrument of denunciation shall be deposited with the Executive Secretariat. The Protocol shall cease to have any effect on State Parties that have denounced it one year after the instrument of denunciation has been deposited.

2. During the period of one year, the denouncing State shall continue to comply with the provisions of this Protocol and shall be bound by its obligations under this Protocol.

Article 27

Settlement of disputes

1. Any dispute which may arise between the State Parties regarding the interpretation or application of this Protocol shall be amicably settled through direct agreement.

2. In the event of failure to settle the dispute, the matter may be referred to the Community Court of Justice by a party to the dispute, a State Party or the Authority, and the decision of the Community Court of Justice shall be final.

Signed on 21 December 2001