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THE AFRICAN UNION CONVENTION ON CORRUPTION AND NEPAD'S AFRICAN PEER REVIEW MECHANISM

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1. Introduction

Esteemed representatives of the peoples of the world, I am honoured and privileged to convey the sincere sentiments of friendship of the people of South Africa. On behalf of my Government, I thank the Government of the Republic of Korea for hosting this ceremony. I am grateful for the opportunity to address this workshop on Public Service Ethics and Trust in Government. The focus of my intervention is the progress of implementing the African Union Convention on Preventing and Combating Corruption and the New Partnership for Africa's Development (NEPAD) African Peer Review Mechanism.

2. African Union Convention on Preventing and Combating Corruption

Countries on the African continent differ in many respects, including size, population, GDP and legal traditions, a majority with common law system and a few with the civil law system.

Corruption is a common feature in all political systems, despite whatever differences may exist in their governing philosophies or their geography. Nation-states are clearly aware that corruption presents a serious threat to their core principles and values, and hinders social and economic development. As a result, there is a common acceptance of the need to address the problem in a co-ordinated and sustainable way. The decisions of the various regional and international bodies to establish agreements against corruption show that the international community is serious about developing workable solutions and implementing them at the multilateral level.

Three important multilateral instruments that are of relevance to Africa were finalised between 2001 and 2003. They are the Southern African Development Community (SADC) Protocol against Corruption, the African Union (AU) Convention on Preventing and Combating Corruption and the United Nations (UN) Convention against Corruption. All three aim at promoting and strengthening the development of mechanisms and policies that would prevent, detect and punish corruption, and contain many provisions that are similar or have similar objectives.

On the 11 July 2003 the African Union Heads of State adopted the Convention on Preventing and Combating Corruption in Maputo, Mozambique. To date, out of 53 AU countries, 35 countries have signed the Convention and 9 countries have ratified it. South Africa is one of the signatories and is in the process of ratifying the Convention. I want to underscore that ratification of this Convention will express the commitment of African Governments to lend support to the continental community's attempt to articulate a broad strategy for the prevention and combat of corruption. Once ratified by States Parties, the AU Convention on Preventing and Combating Corruption will enhance co-operation among governments and help standardise the way in which individual countries deal with corruption in their national legislation.

OVERVIEW OF THE CONVENTION

The object of the African Union Convention on Preventing and Combating Corruption is, as the title suggests, promoting and strengthening measures to prevent and combat corruption in Africa. This includes the facilitation of co-operation in respect of anti-corruption measures and the harmonisation of anti-corruption policies and legislation among States Parties.

Prevention

Measures such as the establishment of anti-corruption bodies and enhanced transparency are addressed in the Convention. The Convention calls on countries to actively promote the involvement of civil society and the media to raise public awareness of corruption.

Criminalisation

Countries are required to establish criminal and other offences to cover a wide range of acts of corruption. This includes not only basic forms of corruption, such as bribery, but also concealment and "laundering" of the proceeds of corruption and illicit enrichment.

International Cooperation

Countries agree to co-operate in the fight against corruption, including prevention and investigation activities, and the prosecution of offenders. The Convention also binds countries to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries must also undertake measures to support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Implementation Mechanisms

The Convention needs 15 ratifications to come into force. An Advisory Board on Corruption shall be established within the African Union in terms of Article 22. Its purpose will be to review implementation and facilitate activities required by the Convention.

For many countries of Africa, a key challenge lies in the implementation of the relevant multilateral instruments against corruption, which broadly complement each other. This requires a revision of the existing regulatory framework, the amendment of certain laws and, in many instances, the introduction of new laws in order to accommodate the requirements of these instruments. It makes sense to deal with all three matters at the same time, especially given the fact that they bear many similarities. There is also the added benefit of saving scarce government resources and time that would result from a simultaneous implementation process.

The African Union Convention on Preventing and Combating Corruption is one of the first to stem from the new AU. The priority that was given to its finalisation is indicative that the Convention is supportive of a stated aim of NEPAD: that institutional reforms be adopted that will enable effective measures to combat corruption and embezzlement. This AU anti-corruption Convention roots itself in democratic principles, good governance, transparency and accountability in the management of public affairs. The Southern African Development Community (SADC) has developed a programme for the implementation of the SADC Protocol against Corruption. The provisions of these African agreements are in line with those of the UN Convention against Corruption. It therefore becomes apparent that these frameworks reflect a real political will to change the continental approach to combating and preventing corruption and represents an exciting instance of regional and global synchronisation.

In this spirit of global co-operation, it is equally important to share our experiences with other regions of the world about the initiatives being undertaken. Globalisation has brought with it increased interdependence and a wide range of cross-border pullovers, including criminal activities. Our participation in forging regional agreements such as the SADC Protocol against Corruption and the African Union Convention on Preventing and Combating Corruption is emphasised because they are the stepping stones to improved international relations.

3. Public Sector Ethics

The impact of unethical and criminal practices in the public sector is unsupportable in the development of nations, resulting in a loss of confidence in public institutions and an erosion of the rule of law itself. The public service, as an institution, has a critical role to play in the development of a nation. But in many countries in the region, the public service has been downsized as a requirement of structural adjustment programmes and has had to operate under shrinking resources. On the one hand, many countries have made improvements to their public service as a consequence. On the other, there have been unintended consequences such as erosion of professionalism and ethics.

Certain corruption perception studies show a high degree of mistrust by the public of their governments. Some countries have conducted ethics campaigns through mass exhortations, codes of conduct exercises and focussed training. Some countries are also beginning to push for better ethical standards in other segments of society beyond the government through introducing private sector and NGO codes of conduct. The provisions of the relevant multilateral instruments addressing corruption inspire many of these initiatives. The African

Union anti-corruption convention, for example, requires the promotion of an enabling environment for the respect of ethics [Article 5(8)] and the establishment of a public service code of conduct whose implementation must be monitored and there must be training and awareness raising in this respect [Article 7(2)].

4. THE AFRICAN PEER REVIEW MECHANISM OF NEPAD

NEPAD is an Africa-wide initiative that is self-consciously democratic in its roots and aspirations. This gives it an African voice rooted in principles of democracy and human rights. It is a voice that can speak externally, to the court of world opinion, and internally, to African nations themselves. The African Peer Review Mechanism (APRM) has been proposed as a key element of the New Partnership for Africa's Development (NEPAD). It is an instrument that has to date been acceded to by 23 Member States of the African Union as a self-monitoring mechanism. Its mandate is to ensure that policies and practices of participating states conform to the agreed political, economical and corporate governance values contained in the Declaration on Democracy, Political, Economic and Corporate Governance. Although the APR does not specifically focus on ethics, it is an issue that is woven like a golden thread through the fibre of the process.

The APRM Structure

The supreme political authority of the APRM is the committee of the Participating Heads of State and Government (PHSG). This committee appoints a Panel of Eminent Persons to direct and manage the APRM. As required and expected, although panel members are appointed as individuals, the panel has diversity of representation from different parts of Africa. It is also interesting, and heartening, to see that three out of the seven members of the panel are women, and the Chair is also a woman. The **Panel of Eminent Persons** will oversee the conduct of the APRM process, and ensure its integrity. The **APR Secretariat** will provide the secretarial, technical, co-ordinating and administrative support services. The **APR teams** comprise a pool of technical expertise to review progress with a country's National Programme of Action. The **Country Support Missions** have been established to ensure a common understanding of the philosophy, rules and processes of the APRM, and to support participating countries with processes should such a need be indicated.

The actual process is completed in five stages from background preparation for the review to a tabling of a final country report. The first stage involves a background study and collection of information from different sources by the APRM Secretariat, including the completion of a detailed questionnaire by the government of the country being reviewed. In the second stage, the APRM Review Team will pay a visit to the country to consult with the government, political entities such as the parliament and political parties, and civil society broadly construed. In the third stage the report is prepared in draft form, and discussed with the government. The government's responses are to be attached to the report as it goes to the next stage. The fourth stage is the crux of the process. The report is submitted to the Participating Heads of State and Government and considered by them. The final approved report is then tabled publicly.

Key Challenges

Technical capacity to conduct the review is essential. The guideline document prepared by the Secretariat urges countries to seek this capacity from within Africa. The independence of the reviewers is also emphasised and must be maintained. Any suggestion of influence on the reviewers, either from those reviewed or from forces extraneous to the review, would undermine the integrity of the review.

The success of the APRM, to a large extent, depends on a country's assessment seeds falling on the fertile soil of a vibrant civil society dialogue. This requires a civil society that is itself competent to understand and respond to the APRM assessments.

CONCLUSION

Fabrizio Pagani in his 2002 work on "Peer Review: A Tool for Co-operation and Change" starts with the following useful definition:

"Peer review can be described as the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles. The examination is conducted on a non-adversarial basis, and it relies heavily on mutual trust among the States involved in the review, as well as shared confidence in the process. When peer review is undertaken in the framework of an international organisation, as is usually the case, the Secretariat of the organisation also plays an important role in supporting and stimulating the process. With these elements in place, peer review tends to create, through this reciprocal evaluation process, a system of accountability."

I think this aptly sums up the objective of NEPAD in embarking on the APR process. I am certain that the process will greatly contribute to the promotion of good governance principles throughout the continent.