



Editorial Board

Prof Mzukisi Njotini, Chairperson of the Board,
Professor and Dean of Law, University of Fort Hare

Prof Patrick C. Osode, Managing Editor,
Professor of Law, University of Fort Hare

Prof Nomthandazo Ntlama-Makhanya, Member,
Professor of Law, University of Fort Hare

Prof Enyinna S. Nwauche, Member,
Professor of Law, University of Fort Hare

Prof Arthur van Coller, Associate Editor,
Associate Professor of Law, University of Fort Hare

Dr Tapiwa Shumba, Associate Editor,
Senior Lecturer in Law, University of Fort Hare

Dr Nombulelo Lubisi-Bizani, Associate Editor,
Senior Lecturer in Law, University of Fort Hare

Dr Ntandokayise Ndhlovu, Associate Editor,
Senior Lecturer in Law, University of Fort Hare

Adv Shandukani Muthugulu-Ugoda, Associate Editor,
Senior Lecturer in Law, University of Fort Hare

Adv Sibulelo Seti, Associate Editor,
Senior Lecturer in Law, University of Fort Hare

Ms Lulama Gomomo, Assistant Editor,
Lecturer in Law, University of Fort Hare

Ms Asanda Mbolambi, Assistant Editor,
Lecturer in Law, University of Fort Hare





Speculum Juris

ISSN 2523-2177 • Volume 39 Number 2 (2025)

Special Issue on SADC Community Law Guest Editor: Professor Retselisitsoe Phooko

Editorial

Africa's Regional Integration Agenda: An introduction
by Retselisitsoe Phooko 277–280

Articles

The Development of a Uniform Cross-Border Insolvency Law in SADC: Drawing from the OHADA Experience Regional Legal Practice under the GATS: A SADC Perspective
by Andre Boraine and Ngaundje Doris Leno 281–301

The Missing Piece of the Puzzle: The Indispensable Role of Freer Movement of Persons in Implementing the AfCFTA
by Adetutu Oluwaseyi and Victor T Amadi 302–324

Re-calibrating Private Parties' Access to Trade Dispute Resolution under the SADC and AfCFTA Regimes
by David Kanyenda 325–341

Regional Legal Practice under the GATS: a SADC Perspective
by Yolanda N Mambure, Lonias Ndlovu and Tharien van der Walt 342–361

Aligning SADC and Continental Strategies: to what Extent Does Violence against Women in South Africa Constitute an eEent seriously Disturbing Public Order?
by Shunelle de Beer and Kim-Leigh Loedolf 362–378

Critical Analysis of the Capacity of SADC in Addressing Vulnerability to Climate Change: Prospects and Challenges on Climate Risk Management Strategies under Africa Agenda 2063
by Patrick Pikisayi Maweto and Ademola Oluborode Jegede 379–398

Another Missed Opportunity of Using International Law as an Interpretative Aid of Domestic Law in Botswana
by Moses Retselisitsoe Phooko and Nokuzola Pangwa 390–402

Examining the Domestication and Implementation of the African Union Convention on Prevention and Combating Corruption: Comparative Synopsis on the DRC and Botswana
by Anzanilufuno Munyai 403–416

The Role of the Principle of Free, Prior and Informed Consent in Fostering Development through Participatory Democracy
by Naledzani Mukwevho 417–436

Special Issue on SADC Community Law

Guest editor
Professor Retselisitsoe Phooko

Vol 39 No 2 (2025)
Published 31 January 2026

ISSN 2523-2177



Cite as: Munyai “Examining the Domestication and Implementation of the African Union Convention on Preventing and Combating Corruption: Comparative Analysis of the DRC and Botswana” 2025 (39) Spec Juris 403–00



University of Fort Hare
Together in Excellence

Examining the Domestication and Implementation of the African Union Convention on Preventing and Combating Corruption: Comparative Analysis of the DRC and Botswana

Anzanilufuno Munyai*

Senior Lecturer, African Centre for Transnational Criminal Justice, Faculty of Law, University of the Western Cape
<https://orcid.org/0000-0002-8832-2842>

Abstract

Corruption is a scourge in Africa and a barrier to progress. In response to its effects on the continent, the African Union Convention on Prevention and Combating Corruption (AUCPCC) was adopted in July 2003. As of 2025, 48 African States have ratified the Convention. This paper examines the domestication and implementation of Article 5 of the AUCPCC through a comparative analysis of Botswana and the Democratic Republic of Congo. Whilst both states have ratified and adopted legislative and institutional measures to combat corruption, there is a considerable difference in their respective corruption outcomes. The paper interrogates the approaches of treaty incorporation. Moreover, grounded in the good governance theory, the paper analyses the contributing factors to formal compliance with Article 5 of the AUCPCC. It concludes that the effective implementation of the

* LLB (University of Venda), LLM, LLD (North-West University) amunyai@uwc.ac.za.

obligations set out in Article 5 requires more than the formal incorporation of the treaty into the domestic legal systems of Botswana and the Democratic Republic of Congo.

Keywords: corruption; AUCPCC; domestication; implementation; good governance; Botswana; DRC

1 INTRODUCTION

Corruption impedes the development of states,¹ and Africa loses billions of dollars to it that could have contributed to her development.² Cognisant of the impact of corruption on socio-economic development and acknowledging that corruption undermines African democracies, transparency, and accountability, the African Union adopted the African Union Convention on Preventing and Combating Corruption (AUCPCC) in 2003, to which most African States have ratified.³ In light of the objectives of the AUCPCC set out in Article 2(2), Article 5 urges States Parties to establish anti-corruption legislative frameworks and other measures. This paper examines how Botswana and the Democratic Republic of Congo (DRC) have domesticated and implemented Article 5 of the AUCPCC. Generally, domestication of international instruments is the process of incorporating an international treaty into a state's domestic legal system, whether a monist or dualist system.⁴

Article 5 of the AUCPCC mandates that states strengthen national anti-corruption measures by establishing, maintaining, and strengthening independent institutions and by adopting anti-corruption legislative frameworks. The discussion in this paper will be limited to the DRC and Botswana because they represent the two extremes of the corruption perception spectrum in the SADC region. Furthermore, the paper focuses on the AUCPCC rather than the SADC Protocol Against Corruption, for the simple reason that a comparative analysis enables continental uniformity in assessing anti-corruption efforts.

The paper adopts a doctrinal research and comparative analysis methodology. These methodological approaches allow for an assessment, evaluation, and development of rules and legal frameworks.⁵ There was a notable constraint in the examination of anti-corruption measures in the DRC. Many of DRC's primary instruments, legislative frameworks, and measures are only available in French. This constraint restricted accessibility and the evaluation of anti-corruption legislative frameworks or measures.⁶ Despite this predicament, the paper relied on credible secondary sources, including literature and external data from organisations such as Transparency International and Afrobarometer. Having said that, the reader should consider this constraint in the interpretation of the presented findings. Moreover, the paper will review secondary data.

Against this background, the paper commences with an overview of corruption in Botswana and the DRC. This discussion will be preceded by a discussion of the legal framework of the AUCPCC, followed by a comparative analysis of the domestication of Article 5 of the AUCPCC. Thereafter, the paper will evaluate the effective implementation of Article 5 of the

1 Fon "Bureaucratic Corruption and Human Development in Sub-Saharan Africa: A Comparative Case Study of Cameroon and Botswana" 2025 *J Asian Afr Stud* 1.

2 See Mouchili *et al* "Does Corruption Starve Africa? The Mitigating Effect of Political Distribution of Power" 2024 *J Policy Model* 171–197.

3 African Union (2003) African Union Convention on Preventing and Combating Corruption, Maputo.

4 Ruhangisa "The Scope, Nature and Effect of EAC Law" in Cuyvers *et al* (eds) *East African Community Law: Institutional Substantive and Comparative EU Aspects* (2017) 150.

5 Coetsee and Buys "A Doctrinal Research Perspective of Master's Degree Students in Accounting" 2018 *SAJHE* 71–72.

6 Loi No 18/019 du 9 Jul 2018 *Portant Création, Organisation et Fonctionnement de l'Agence de Prévention et de Lutte contre la Corruption*.

AUCPCC and outline challenges and best practices for compliance.

2 AN OVERVIEW OF CORRUPTION IN THE DEMOCRATIC REPUBLIC OF CONGO AND BOTSWANA

For years, the Afrobarometer, an independent Pan-African non-partisan survey research network, has provided data on African experiences and evaluated democracy, governance and the quality of life of Africans.⁷ The 2023 report made several findings, including that corruption is one of the factors that affect governance and development in African states as it weakens democracies, diverts public resources from public to private use, and erodes public trust in governments.⁸

Corruption manifests and impacts Botswana and DRC differently. Corruption in the DRC is endemic.⁹ Despite organisations such as Transparency International and the African Development Bank Group Country Policy and Institutional Assessment declaring DRC as one of the most corrupt countries in Africa due to, amongst others, weak governance,¹⁰ it may be argued that extreme poverty increases the risk of corruption.¹¹ Poverty may be attributed to the West's exploitation of natural resources.¹² Besides poverty, poor governance, inadequate management of mining resources, and a lack of transparency, these factors also contribute to socio-economic issues in the DRC and the prevalence of corruption.¹³

The ongoing conflict in DRC is exacerbated by weak governance.¹⁴ This has allowed rebel groups to operate across the country, thus leading to state fragility. This can be traced to key factors, including ethnic tensions. The failure of the state to provide security, justice and basic services erodes its legitimacy and perpetuates corruption.¹⁵

Additionally, the political instability in the DRC directly erodes democratic principles. This is affirmed by Freedom House, an organisation that advocates for democracy, which categorised the DRC as “not free” following scores of 4/40 for political rights and 15/60 for civil liberties.¹⁶ When democratic principles in the DRC are compromised, they further weaken state institutions and, consequently, contribute to the mismanagement of public funds, resources, and illicit flows.¹⁷

Although it is considered Africa's least corrupt state,¹⁸ corruption in Botswana exists, as demonstrated in the Transparency International Corruption Perception Index,¹⁹ and the World

7 Dulani *et al* “Amid Rising Corruption, Most Africans Say They Risk Retaliation if They Speak up” 2023 *Afrobarometer Dispatch* 1.

8 *Ibid.*

9 Rorison *Democratic Republic of the Congo* (2025) 65.

10 Transparency Intl “Corruption Perception Index” (2023) <https://www.transparency.org/en/cpi/2023/index/cod> (accessed 18-10-2024); African Development Bank Group Country Policy and Institutional Assessment “Governance” <https://cpia.afdb.org/?page=results&subpage=overview> (accessed 19-06-2025).

11 Bergin (ed) *Left Behind: Corruption in Education and Health Services in Africa* (2024) 24.

12 Mufungizi “Mineral Potential Facing Socio-economic Development Challenges: Case Study of the Democratic Republic of Congo, a ‘Geological Scandal’” 2024 *Intl Geol Rev* 10; See Fairchild *Colonial Trade Impact* (2025).

13 Mufungizi 2024 *Intl Geol Rev* 10–11; See Kazongo *DRC Richest and Poorest Country* (2016).

14 Yahaya *An Analysis of Africa's Unconstitutional Government Transitions* (2024) 569.

15 See *Ibid* 569, 571.

16 See “Methodological Approach on the Calculation of Global Freedom Status” <https://freedomhouse.org/country/democratic-republic-congo/freedom-world/2024> (accessed 18-10-2024).

17 See Monga *Financial Machiavellianism in the Democratic Republic of Congo* (2025).

18 Transparency Intl “Corruption Perception Index” (2023)

19 Transparency Intl “Corruption Perception Index” (2024) <https://www.transparency.org/en/cpi/2024/index/bwa> (accessed 20-06-2025).

Justice Project Rule of Law index.²⁰ However, in contrast to other African countries such as Zimbabwe,²¹ corruption in Botswana is not endemic nor a way of life.²² Besides the existence of both grand and petty corruption, numerous reported cases of public officials engaging in or being immersed in corrupt conduct exist. For example, the National Petroleum Fund scandal involved senior government officials who embezzled millions of dollars from the fund.²³ Additionally, civilians engage in acts of corruption, for example, paying bribes to obtain favourable decisions from public officials.²⁴

Numerous studies and surveys have been conducted to gain deeper insights into corruption in Botswana. In 2020, Global Advance Network reported that corruption in Botswana is moderate.²⁵ Additionally, other areas deemed to be at moderate risk included the judicial system, the police force, and tax administration.²⁶ Low-risk areas were identified as the public service sector, land administration, customs, and natural resources. An identified high-risk sector was public procurement.²⁷ The public procurement sector in Botswana is heavily influenced by government officials' nepotism and patronage, who award contracts to companies owned by relatives or close friends without disclosing conflicts of interest.²⁸

Aside from the Global Advance Network report, the 2020 Dispatch report by Afrobarometer on Botswana found, amongst other things, that there were allegations of high-level corruption in military procurement contracts during the administration of Khama; and that people risk retaliation if they report corruption to law enforcement institutions.²⁹ Additionally, the 2024 Dispatch report made several key findings, including how most citizens of Botswana want the president to be accountable to Parliament; 79 per cent indicated that some officials in the office of the president are corrupt; and that 76 per cent hold the view that the president should regularly account to Parliament on how the government spends its taxpayers' money.³⁰

In light of both countries experiencing corruption and differing systemic consequences, the following discussions will highlight Article 5 of the AUCPCC's state obligations and the anti-corruption frameworks of both countries to evaluate their implementation.

3 THE LEGAL FRAMEWORK OF THE AUCPCC AND ARTICLE 5 OBLIGATIONS

Article 5 sets out the undertakings of State Parties regarding anti-corruption measures. At the outset, the article urges State Parties to adopt legislative frameworks and other measures to establish the offences set out in the Convention. Furthermore, State Parties ought to develop, maintain and strengthen independent national anti-corruption authorities or agencies. In

20 World Justice Project "Botswana" (2024) <https://worldjusticeproject.org/rule-of-law-index/country/2024/Botswana/Absence%20of%20Corruption/> (accessed 19-06-2025).

21 Zinyama "Systematic Corruption in Zimbabwe" 2021 *AJPA* 132.

22 Fon 2025 *J Asian Afr Stud* 8.

23 Bonga "Corruption Prevalence in SADC Regional Bloc" (2021) *JRHSS* 10.

24 *Ibid* 11.

25 GAN Integrity "Botswana Risk Report" <https://www.ganintegrity.com/country-profiles/botswana/> (accessed 02-11-2024).

26 For Police Corruption in Botswana, see Mashaka *et al* "Police Oversight in the Republic of Botswana: Challenges and Prospects" 2024 *ASR* 437.

27 *Ibid*.

28 Fon 2025 *J Asian Afr Stud* 8.

29 Isbell and Seabo "Corruption Crossroads? Rising Perceptions of Graft Weaken Citizen Trust, Threaten Botswana's Democratic Standing" 2020 *Afrobarometer Policy Paper* 1.

30 Seabo and Molefe "Rising Perceptions of Corruption, Weak Trust, and Low Approval Rating Mark Botswana Assessment of their President" 2024 *Afrobarometer Dispatch* 4.

an effort to promote transparency and accountability, Article 5 of the AUCPCC urges State Parties to adopt legislative measures to strengthen auditing systems and to protect informants and witnesses. The Article further encourages State Parties to adopt measures to ensure that citizens report instances of corruption without fear. The Article also urges State Parties to adopt legislative measures that punish those who make false and malicious reports. It also encourages State Parties to adopt measures to foster awareness in the fight against corruption and related offences. In summation, the general analysis of Article 5 is that it seeks to provide States with anti-corruption frameworks and institutions.

The interaction of Article 5 of the AUCPCC within a state's domestic legal system depends on the approach it takes to facilitate its relationship with international law. Generally, the principle set out in Article 26 of the Vienna Convention emphasises matters of domestication of treaties. Article 26 of the Vienna Convention on the Law of Treaties, also referred to as the *Principle of pacta sunt servanda*, provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith."³¹ Thus, once a treaty is ratified, it is binding on the state party, and the state must perform in good faith. Additionally, the AUCPCC is a multilateral treaty creating relations between states.³²

International treaties are generally a source of law in various countries. When a state agrees to a treaty's provisions and subsequently ratifies it, it accepts the obligations and responsibilities arising from those provisions.³³ Ratification and domestication of treaties are distinct but related processes. The domestication of treaties is a process by which a state incorporates the treaty into its domestic legal system, thereby making it binding within the state's national law.³⁴ Generally, the process of incorporating treaties into domestic law involves either a dualist or a monist approach. However, some states, such as South Africa, adopted a hybrid approach.³⁵

A monist approach entails the direct incorporation of international law into national law, without necessarily domesticating the treaty³⁶ or incorporating it into the state's law through a constitutional provision. In such instances, international instruments serve as a source of law when a state signs and ratifies them.³⁷ In contrast, a dualist approach distinguishes between domestic law and international law instruments. States that adopt this approach provide that an international law instrument entered into by the state does not automatically become a source of law. The international instrument does not bind a dualist state unless it recognises it.³⁸ Thus, such states require that the instrument undergo the domestic legislative process after domestication.³⁹ This is to maintain state sovereignty and observe the principle of separation of powers. Furthermore, a dualist process allows states to address any inconsistencies or

31 UN "Vienna Convention on the Law of Treaties" Treaty Series 1155 (May 1969); See Dugard *et al Dugard's International Law: South African Perspective* (2018) 608.

32 Dugard *et al Dugard's International Law* 608, See Schill (ed) *Schreuer's Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (2022) cxxvii.

33 Onomrerhinor "A Re-examination of the Requirement of Domestication of Treaties in Nigeria" 2016 *NAUJILJ* 17.

34 Bělohávek "The Czech Republic" in Shelton (ed) *International Law and Domestic Legal Systems Incorporation, Transformation, and Persuasion* (2011) 198.

35 See Agusman *Treaties under Indonesian Law: A Comparative Study* (2014) 464.

36 See Dugard *et al Dugard's International Law* 57.

37 Mutubwa "Monism or Dualism: The Dilemma in The Application of International Agreements Under the South African Constitution" (2019) *JCMSD* 27.

38 Spaak "Kelsen on Monism and Dualism" in Novakovic (ed) *Basic Concepts of Public International Law: Monism and Dualism* (2013) 324, 322–343.

39 See *Ibid* 323, 322–343; See Mutubwa 2019 *JCMSD* 27.

contradictions between the instrument and existing national laws.⁴⁰

As outlined above, the legal effect of a treaty may be shaped by a state's adoption of a monist or dualist approach. However, at times, the nature of the treaty is important, as it may require domestic implementation upon ratification, even in monist states. In other words, the treaty becomes enforceable as domestic law.⁴¹ In Botswana's legal system, treaties are not self-executing; to be enforceable and applicable, they must be incorporated into domestic law by legislative enactment.⁴² However, in the DRC, Article 215 of the Constitution suggests that international treaties ratified by the DRC can apply directly, provided they are not contrary to law and custom.⁴³ The language in Article 5 of the AUCPCC disqualifies the convention as a self-executing treaty. When the article urges states to "... adopt legislative and other measures that are required to establish as offences ...", it suggests the need for domestication and implementation through domestic legislation, thus disqualifying it from automatically applying directly into domestic law or being treated as a self-executing treaty.

Botswana and the DRC have ratified both the AUCPCC and incorporated the treaty into their respective legal systems, in line with their approaches to the domestication of international instruments. Botswana adopts a dualist approach, requiring parliamentary action to domesticate international treaties and give them legal effect.⁴⁴ This was confirmed in *Mmusi v Ramantele*, which affirmed that Botswana is a dualist state and that international law is not directly applicable domestically.⁴⁵ In contrast, DRC adopts a monist approach, under which ratified international instruments may be automatically incorporated into Congolese national law.⁴⁶ This is further supported by Article 215 of the Constitution.

The domestication of a treaty is the first step towards implementation. Despite the approach adopted by the DRC, the succeeding discussion demonstrates that the implementation of Article 5 of the AUCPCC is superficial, thereby raising questions about the required commitment and political will. Having said that, the succeeding discussion evaluates anti-corruption mechanisms in Botswana and the DRC. This will be followed by an examination of the challenges associated with implementing Article 5 of the AUCPCC, highlighting the significant differences in the extent of corruption between the two countries.

4 AN EVALUATION OF THE IMPLEMENTATION OF ARTICLE 5 OF THE AUCPCC AND INSTITUTIONAL EFFECTIVENESS

As outlined above, Article 5 sets out the undertakings of State Parties regarding anti-corruption measures. At the outset, the article urges State Parties to adopt a legislative framework and other measures to establish the offences set in the Convention. Furthermore, State Parties ought to develop, maintain and strengthen independent national anti-corruption authorities or agencies. In an effort to promote transparency and accountability, Article 5 of the AUCPCC urges State Parties to adopt legislative measures to strengthen auditing systems and to protect

40 Mutubwa 2019 *JCMSD* 28.

41 See Bělohávek *International Law and Domestic Legal Systems* 197–198.

42 Achiliu *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of the Child* (2010) 121.

43 Olugbuo "Thematic Prosecution of International Sex Crimes and Stigmatisation of Victims and Survivors: Two Sides of the Same Coin?" in Bergsmo (ed) *Thematic Prosecution of International Sex Crimes* (2018) 132.

44 Tusseau "Debating Legal Pluralism and Constitutionalism: New Trajectories for Legal Theory in the Global Age" in Tusseau (ed) *Debating Legal Pluralism and Constitutionalism New Trajectories for Legal Theory in the Global Age* (2020) 19.

45 *Mmusi v Ramantele* 2012 2 BLR 590 HC.

46 Clark *Distant Justice: The Impact of the International Criminal Court on African Politics* (2018) 200.

informants and witnesses. The Article further encourages State Parties to adopt measures to protect witnesses and raise public awareness. The Article also encourages State Parties to adopt legislative measures that punish those who make false and malicious reports.

4.1 Botswana

There are two primary anti-corruption legislative frameworks in Botswana: the Penal Code No.2 of 1964 and the Corruption and Economic Crime Act 13 of 1994 (CEE). Sections 99-110 of the Penal Code (Division II) provide for offences against the administration of lawful authority. In other words, these are offences related to corruption and the abuse of office. Furthermore, Division VIII provides for offences pertaining to secret commissions and corrupt practices. On the other hand, the CEE came into effect in 1994 primarily to establish the Directorate on Corruption and Economic Crime. Part IV of the CEE, i.e. sections 24-34, outlines corrupt practices and related offences. These include an indication of corruption by or of a public official, bribery in respect of official transactions, acceptance of a bribe by a public official, promise of a bribe, etc.

Aside from the CEE outlining corrupt practices, the Act establishes the Directorate on Corruption and Economic Crimes (DCEC), the primary anti-corruption institution in Botswana. Section 6 of the CEE lays out the functions of the DCEC, which include investigating alleged corruption-related complaints, investigating alleged contraventions, assisting any law enforcement agency in investigating allegations of dishonesty, and examining practices that facilitate corruption.

Although the DCEC has no official website,⁴⁷ according to the official government website of Botswana, there are six sections or departments of this office.⁴⁸ Apart from the DCEC, another anti-corruption agency in Botswana is the Financial Intelligence Agency (FIA), which was established by the Financial Intelligence Agency Act of 2009. Although the FIA has no official website, in 2025, Botswana's leading news outlet reported on an investigation by the Botswana Congress Party into corruption involving the DCEC and the FIA targeting Vice President Gaolathe.⁴⁹

The Office of the Auditor-General, established by the Public Audit Act No.15 of 2012, is the official government body that examines public spending to promote accountability and transparency. In 2025, the President of Botswana, Duma Boko, addressed the media, announcing the commencement of a forensic audit of state affairs to uphold the principles of accountability and transparency.⁵⁰

Article 5 of the AUCPCC further encourages states to protect whistle-blowers and witnesses in corruption cases. In 2016, Botswana enacted the Whistleblowing Act 9 of 2016. Whilst the Act does not establish a specialised unit or institution, section 8 sets out institutions authorised to receive and investigate whistleblowing reports, including the Ombudsman, the Financial

47 This lack of information makes it difficult to determine the progress and outcomes of investigations by the DCEC since its establishment.

48 The Investigations Division primarily investigates allegations of corruption and economic crimes that have been reported to the DCEC. The Legal Service Division provides legal advice and support to the DCEC. The Anti-Money Laundering Unit investigates allegations of money laundering and terrorist financing. The Public Education Division is centred on educating the public on corruption-related matters and to solicit public support and participation in the fight against corruption. The Corruption Prevention Division identifies corruption opportunities in government, and the Corporate Services Division provides support services to the DCEC.

49 Tlhankane "BCP to Report Gaolathe to DCEC, FIA" <https://www.mmegi.bw/news/bcp-to-report-gaolathe-to-dcec-fia/news> (accessed 17-06-2025).

50 Mosinyi "Forensic Audit Commences" *Botswana Daily News* (20 Mar 2025) <https://dailynews.gov.bw/news-detail/85336> (accessed 18-06-2025).

Intelligence Agency, and the Botswana Police Service.

4.2 DRC

Excluding the Constitution, which prohibits corruption and embezzlement,⁵¹ the Anti-Corruption Law of 2004 is the primary instrument for combating corruption and related offences. In addition to this instrument, the Penal Code criminalises certain acts of corruption.⁵² The DRC also enacted the *Loi Portant Lutte Contre Le Blanchiment Des Capitaux et le Financement du Terrorisme*, also known as the Anti-Money Laundering Act of 2004 (AMLA), to criminalise money laundering. Under this decree, the National Financial Intelligence Unit was established to investigate, analyse and share information on suspected money laundering and terrorist financing.⁵³

Besides legal frameworks, the DRC also has anti-corruption institutions. In 2020, the Agency for the Prevention and Combating of Corruption was established by a Presidential decree. Regrettably, there is limited information available on the agency's functions and operations.⁵⁴ Aside from this, the Observatory for the Surveillance of Corruption and Professional Ethics (OSCEP) is an agency of the state, with no investigative or enforcement powers, that oversees and monitors the Ministry of Public Function. Some of its functions include promoting good governance, promoting awareness of the scourge of corruption, and combating corruption.⁵⁵

The Congolese National Police and the Public Prosecutor may investigate and prosecute individuals who perpetrate acts of corruption. Regrettably, widespread corruption in the police and judiciary hampers accountability and undermines administrative governance and the rule of law.⁵⁶

Another institution is the *Commission de l'Éthique et de la Lutte contre la Corruption*, established in 2003. In the years following its establishment, it is argued that the commission lacks resources, faces logistical problems, suffers from weak leadership, lacks independence, and lacks sufficient expertise.⁵⁷ As in Botswana, there is no access to information or to the official websites of established anti-corruption investigative bodies to determine the extent or progress of investigations (if any).

The absence of institutional governance hampers the adequate performance of institutions. This is often demonstrated by a lack of accountability, transparency, and ethical leadership. Consequently, when anti-corruption institutions are weak, they become susceptible to corruption.⁵⁸ This sentiment is echoed in the 2022 UNCAC Coalition Report, which reports that despite the legislative and institutional frameworks in the DRC, the country continues to lose at least 15 billion dollars per year to corruption, mismanagement of public funds, and fraud. Primarily, this is due to a lack of legal safeguards to ensure that anti-corruption institutions

51 Article 165.

52 Code Penal Congolais (2004) Arts 147–150; Lee-Jones “Democratic Republic of Congo: Overview of Corruption and Anti-corruption” 2020 *Transparency International* <https://www.u4.no/publications/democratic-republic-of-congo-overview-of-corruption-and-anti-corruption/fullversion#anti-corruption-framework> (accessed 14-10-2024).

53 Lee-Jones 2020 *Transparency International*.

54 *Ibid.*

55 International Monetary Fund 2021 *IMF Country Report No. 21/95* 62.

56 Saxon “The International Criminal Court and the Prevention of Crimes”, in Welsh and Sharma (eds) *The Responsibility to Prevent: Overcoming the Challenges of Atrocity Prevention* (2015) 147.

57 Chêne “Overview of Corruption and Anti-corruption in the Democratic Republic of Congo (DRC)” 2020 *CMI U4 Anti-Corruption Resource Centre* 6.

58 See Monga *Financial Machiavellianism*.

operate effectively and independently.⁵⁹

In addition to legal safeguards to ensure the independence and effective operation of anti-corruption institutions, robust auditing and monitoring measures must be in place. In accordance with Article 5(4) of the AUCPCC, the DRC has various auditing and monitoring institutions to promote accountability and transparency. This includes the Supreme Audit Institution, mandated to audit public finances, and the Financial Intelligence Unit to investigate financial intelligence or information.⁶⁰ Having said that, there is no asset declaration framework aside from Article 99 of the Constitution of the DRC. The absence of a dedicated framework may render the constitutional provision ineffective, as there is no oversight body to either verify the declared assets or enforce penalties for non-compliance.

Generally, one strategy a state may employ to detect corruption is protecting witnesses. This measure is set out in Article 5(2) of the AUCPCC. As of 2025, the DRC does not have a witness protection framework or a whistle-blower legislative framework. The absence of these frameworks may contribute towards the reluctance to report corruption-related cases for fear of victimisation.

In light of the obligations set out in Article 5 of the AUCPCC, states are urged to develop comprehensive legal frameworks and establish independent and robust anti-corruption institutions. Moreover, given the above on domestication of treaties, it is insufficient for states to merely incorporate the treaty obligation into their domestic legal systems. It is therefore imperative for states to ensure effective implementation by operationalising the relevant frameworks and institutions. Thus, the effective implementation of Article 5 of the AUCPCC relies on the principles of good governance.

4.3 Good Governance Theory

Good governance may be understood as a process to measure how public institutions conduct public affairs and manage public resources.⁶¹ It is grounded on accountability and efficiency of the government and its institutions. In other words, good governance, also referred to as good government, involves limited government.⁶² Thus, a government that is accountable and adheres to the rule of law.⁶³ Addink offers a different perspective on the concept, referring to it as both a citizen right and a norm for the government.⁶⁴ This may reflect Lane's four key principles that facilitate the relations between civil society and the operation of the limited government. The principles are:

- **Legality:** implies government functions through law, guaranteeing rights to citizens.
- *Lex superior:* encompasses the constitution as the supreme law
- *Trias politica:* entails the separation of powers
- **Accountability:** requires the government to be held accountable for its actions or non-

59 See Centre de Recherche sur l'Anti-Corruption "Civil Society Report on the Implementation of Chapter II (Prevention) and Chapter V (Asset Recovery) of the United Nations Convention against Corruption in the Democratic Republic of the Congo" 2022.

60 International Monetary Fund "Democratic Republic of the Congo: Technical Assistance Report – Governance and Anti-Corruption Assessment" 2021 5.

61 Ghosh *et al* *The Constitution of India at a Glance* (2024) 122.

62 Lane "A Theory of Good Governance or Good Government" 2018 *ASSRJ* 384.

63 *Ibid.*

64 Addink *Good Governance: Concept and Context* (2019) 3.

actions

- Representation: involves representative institutions enabling people to have a say in government.⁶⁵

Aside from Lane's principles on relations between limited government and civil society, there are key principles of good governance: accountability, transparency, public participation, openness, and adherence to the rule of law.⁶⁶ Simply put, from the public institution's perspective, good governance covers how the government conduct public affairs and manages public funds or resources. In other words, as a theoretical framework, good governance encompasses the decision-making process and the implementation of those decisions.⁶⁷ Generally, modern states observe a degree of centralisation of power to achieve effective governance. However, the extent of centralisation varies, and at times, power is limited by mechanisms such as the separation of powers.⁶⁸ This is supported by the understanding that good governance, the rule of law, and democracy are pivotal concepts in a modern state, as they shape the state's structures and institutions and how the state relates to and engages with citizens.⁶⁹ Good governance can also be linked to economic growth. From this perspective, good governance is often understood as effective management within an organisation for creating and implementing policies, particularly economic policies designed to promote growth and stability.⁷⁰ However, at times, states adopt but fail to implement good governance policies, consequently leading to scepticism about whether the policies are sufficient for economic or developmental outcomes. This is observed by Adejumo-Ayibiowu, who asserts that the implementation of good governance in the African context neither facilitates nor is associated with remarkable growth, development, or poverty reduction.⁷¹ Therefore, African states must ensure that the good governance model is not merely superficial, but rather reflects local political economies to achieve meaningful socio-economic transformation.

5 FACTORS THAT CONTRIBUTE TO THE DIVERGENT ANTI-CORRUPTION OUTCOMES IN BOTSWANA AND DRC

There are generally two dimensions that may categorise governance as either good or bad: state capacity and the autonomy of the bureaucracy.⁷² These dimensions contribute to the various factors that lead to similar legal frameworks operating with different outcomes, as in the cases of Botswana and the DRC. These factors may include the correlation between a state's economic development and the effectiveness of state institutions.⁷³ Another factor to consider is that when a government develops policies for economic growth, their implementation depends on the quality of political institutions, which play a significant role in shaping economic development. In other words, political stability is crucial for economic growth, as it can affect gross domestic product (GDP) per capita and the overall productivity of the state. Consequently, strong political

65 Lane 2018 *ASSRJ* 384–385.

66 Jeffrey *et al* "Good Governance: The Conceptual and Contextual Perspectives" 2019 *Acta Universitatis Danubius* 117–118.

67 *Ibid.*

68 See Magabe and Odeku "Separation of Powers, Checks and Balances and Judicial Exercise of Self-restraint: An Analysis of Case Law" 2021 *Obiter* 547–560.

69 Addink *Good Governance* 3.

70 Jeffrey *et al* 2019 *Acta Universitatis Danubius* 117–118.

71 Adejumo-Ayibiowu "A Theoretical Basis for Good Governance" 2015 *J Dev Stud* 7.

72 Jeffrey *et al* 2019 *Acta Universitatis Danubius* 118.

73 Muhoza and Majune "Political Instability and Firm Performance in the Democratic Republic of Congo" 2022 *AERC Research Paper* 1.

institutions that implement such policies are critical for economic development.⁷⁴ Besides this, another consideration may relate to access to justice. According to the Mo Ibrahim Foundation, an African organisation that provides data and analysis on continental challenges, Botswana is one of the countries where citizens enjoy secure and effective access to justice, compared to the DRC.⁷⁵ In other words, when citizens are unable to access justice, they may be unable to report acts of corruption, and trust in state institutions may be lost.

Several factors may account for Botswana and the DRC being at the extreme ends of the fight against corruption. This discussion will focus on political will and the fragility of a state. Concerning political will, there is generally no watertight definition of the concept. Nonetheless, it may be understood as the extent of decision-makers' commitment to a policy solution for a particular problem.⁷⁶ Simply put, political will is demonstrated when a collective of decision-makers rally around the idea that a problem requires a solution.⁷⁷

Generally, there is an understanding that political will is an individual-level commitment among the decision-makers. In other words, it involves individuals at the top or senior individuals in an institution or organisation. Nevertheless, for political will to be evident, a dialogue among the decision-makers is required to develop a shared understanding of the policy problem and the need to establish a solution.⁷⁸ Political will can be measured by the outcomes of the solution generated to address the identified problem.⁷⁹ In other words, the commitment of decision-makers to addressing a problem can be measured by analysing the outcomes of policies related to the issue. Consequently, when social change is needed and it goes unmet, there are often sentiments of a lack of political will among decision-makers in developing and implementing policies that will yield the required societal change.⁸⁰

Botswana is considered to demonstrate political will in the fight against corruption. This is evident in various instances, including the political leadership's emphasis on the fight against corruption. Since attaining independence, the first president, Seretse Khama, took a stance against corruption.⁸¹ This position has been echoed by his successors, including the third president, Festus Mogae, and the fifth, Mokgawetsi Masisi.⁸² Aside from political leadership, anti-corruption institutions in Botswana operate independently.⁸³ Similarly, a strong, independent judiciary is key to the fight against corruption, the protection of constitutional rights, and holding perpetrators liable. Having said that, Botswana's judiciary is generally considered independent.⁸⁴ A judiciary plagued by high rates of judicial officials receiving bribes hampers

74 *Ibid.*

75 Mo Ibrahim Foundation "Public Service in Africa" 2018 *Ibrahim Forum Report* 17.

76 Mujkić "An Introduction to Political Will" in Abazović and Mujkić (eds) *Political Will: A Short Introduction Case Study – Bosnia and Herzegovina* (2015) 14.

77 Raile *et al.* "Analysis and Action: The Political Will and Public Will Approach" 2021 *AR* 239.

78 Grimes *et al.* "Building Political Will to Combat Corruption: Key Steps to Mobilise Local Actors" 2021 *ICLD Policy Brief* 1.

79 *Ibid.*

80 Raile *et al.* 2021 *AR* 239.

81 Terracol "How to Reduce Levels of Corruption at Country Level: Lessons Learned" 2015 *CMI U4 Anti-Corruption Resource Centre* 3.

82 See African Development Bank Group "Botswana's Former President Says Civil Society is Voice of Individual Citizens" (2 Mar 2010) <https://www.afdb.org/en/news-and-events/botswanas-former-president-says-civil-society-is-voice-of-individual-citizens-6374> (accessed 20-06-2025); Gabathuse "President Masisi and Corruption Fight" *Mmegi*online (18 Sep 2020) <https://www.mmegi.bw/news/president-masisi-and-corruption-fight/news> (accessed 20-06-2025).

83 Rotberg *The Corruption Cure: How Citizens and Leaders Can Combat Graft* (2019) 132.

84 See Dinokopila "The Role of the Judiciary in Enhancing Constitutional Democracy in Botswana" 2017 *Univ Botsw LJ* 3–26.

the fight against corruption. In other words, an independent judiciary is free from external influences or control.

Conflict and state fragility may be considered factors contributing to the extent of anti-corruption efforts in Botswana and the DRC. As of 2025, the DRC continues to experience political, economic, and military-related incidents in the form of civil wars. Numerous reports have highlighted that the prevalence of conflict in the DRC is rooted in the weak or absent authority of the state.⁸⁵ DRC has a crisis in leadership and governance. This can be traced to the colonial administration, the fight for independence, and the differing sentiments among the Congolese population and politicians. On the one hand, some called for the unification and centralisation of the state and for complete independence from the former colonial master; others sought to maintain ties and administrative dependence.⁸⁶ Aside from leadership and governance, ethnic tensions also contribute to the ongoing conflict. DRC has over 200 ethnic groups;⁸⁷ consequently, the politicisation and manipulation of ethnic identity by those in power in the allocation of economic and political benefits, including the control of DRC's natural resources, is a significant contributing factor in the ongoing conflict and the perpetuation of corruption.⁸⁸

Besides the instability of the state, the administration of justice may also be a contributing factor hampering the DRC's fight against corruption. According to the 2025 Freedom House report, DRC scored dismally on the independence of the judiciary.⁸⁹ This may be attributed to a lack of resources, resulting in a shortage of judicial officers and insufficient infrastructure. Moreover, the existing judicial officials are underpaid, making them susceptible to corruption, particularly bribery.⁹⁰ Aside from this, there are sentiments that the appointment of judicial officers is politically motivated, thus raising serious concerns of political interference in the judiciary.⁹¹

6 FINDINGS

The above discussion has outlined that the domestication and implementation of Article 5 of the AUCPCC requires the enactment of anti-corruption legislative frameworks and the establishment of independent institutions. Furthermore, to ensure effective implementation, states must rely on sound governance principles to prevent domestication without meaningful implementation.

85 See Global Centre For The Responsibility To Protect Report on Democratic Republic of Congo <https://www.globalr2p.org/countries/democratic-republic-of-the-congo/> (accessed 17-06-2025).

86 Nibishaka *Understanding the DR Congo Conflicts and Security Dilemma* (2025) 23–25.

87 See Falola and Jean-Jacques (ed) *Africa: An Encyclopedia of Culture and Society* (2015) 285.

88 Denisova and Kostelyanets “The Democratic Republic of the Congo: Political Instability and the Rwandan Factor” 2023 *Vestnik RUDN Intl Relat* 45; See Nibishaka *Understanding the DR Congo* 36.

89 Freedom House “Freedom in the World” (2025) <https://freedomhouse.org/country/democratic-republic-congo/freedom-world/2025> (accessed 17-06-2025).

90 International Monetary Fund “Technical Assistance Report” 2021 53.

91 *Ibid.*

Having said that, the table below summarises the findings.

Core elements	Botswana	DRC
Domestication of AUCPCC	Yes	Yes
Anti-corruption institutions	Yes	Yes
Whistle-blower protection	Yes	No
Public education/ awareness mechanisms	Yes, through the DCEC public education program	Yes, through Civil Society Organisation
Monitoring and audit mechanisms	In 2025, the commencement of the forensic audit on the affairs of Botswana. Botswana also has an asset declaratory framework.	Yes, for example, through the General Inspectorate of Finance and the National Financial Intelligence Unit.
Gaps between law and practice	Average	Severe
Witness protection framework	Yes, section 6 of the Compulsion of Witnesses Act	No
Overall alignment with Article 5 of the AUCPCC	Significantly	In part

Table 1: Comparative Analysis of Anti-corruption Legal Frameworks in Botswana and the DRC [Author’s Compilation]

The most significant component of the findings for Botswana concerns access to information about its primary anti-corruption institution, the DCEC. The lack of an official website and publicly available annual reports raises concerns about the institution’s transparency. Moreover, in line with the obligation to protect witnesses, Botswana should consider developing a witness protection framework to dismantle corruption syndicates in the country.

The DRC has anti-corruption legislative frameworks and institutions. However, the gaps between the law and practice are severe. This is primarily attributed to institutional weakness, the lack of transparency of institutions, political interference, and the lack of implementation of some frameworks. Aside from this, one may argue that the significant challenge DRC faces is the ongoing conflict and political instability or fragility. These events weaken the independence and state control, thus making it difficult for anti-corruption mechanisms to operate effectively. Furthermore, this minimises public efforts to report corruption, especially where there is no witness protection and whistle-blower scheme or framework.

Overall, both countries have domesticated Article 5 of the AUCPCC; however, the extent of implementation of anti-corruption measures varies significantly due to various factors. Botswana has demonstrated significant compliance with Article 5, whereas in the DRC, there is a wide gap between law and practice. The comparative analysis shows, for instance, how the impact of political will and good governance contributes towards fulfilling Article 5 obligations. Ultimately, domestication alone is insufficient to ensure meaningful implementation and effective anti-corruption outcomes.

7 CONCLUSION

The paper set out to examine the domestication and implementation of Article 5 of the AUCPCC, through a comparative analysis of Botswana and the DRC. Despite both states having ratified and domesticated the AUCPCC and having established legislative and institutional anti-corruption

measures, the comparative analysis revealed significant divergence in the effectiveness of these measures and how each state's obligations align with Article 5.

Botswana's anti-corruption legislative and institutional measures are arguably a demonstration of compliance with Article 5. Aside from functioning institutions, the limitations of these measures raise questions about transparency in their functioning and reporting. In contrast, the analysis demonstrates significant challenges DRC faces in implementing anti-corruption measures. The challenges are attributed, amongst other things, to political fragility and ongoing conflicts. Additionally, its institutions lack independence and a whistle-blower and witness protection framework. Consequently, the absence of good governance, political will, and state stability widens the gap between law and practice, underscoring the limitations the DRC faces in implementing and enforcing Article 5.

Grounded on the good governance theory, the paper has demonstrated that the domestication of Article 5 does not automatically translate to substantive implementation. For this reason, aside from states ensuring that their national anti-corruption legislative frameworks align with Article 5 of the AUCPCC, for states to ensure effective compliance and implementation of Article 5, their institutions and the state (as in the case of DRC) must be independent, impartial and free from interference; transparent and accountable to both the state and citizens. Ultimately, this comparative analysis underpins the broader conclusion that the domestication and implementation process must be grounded in good governance, and that it ought not be regarded as a legal formality but as a multifaceted and dynamic process that may be affected by a state's political, institutional, and socio-economic realities.