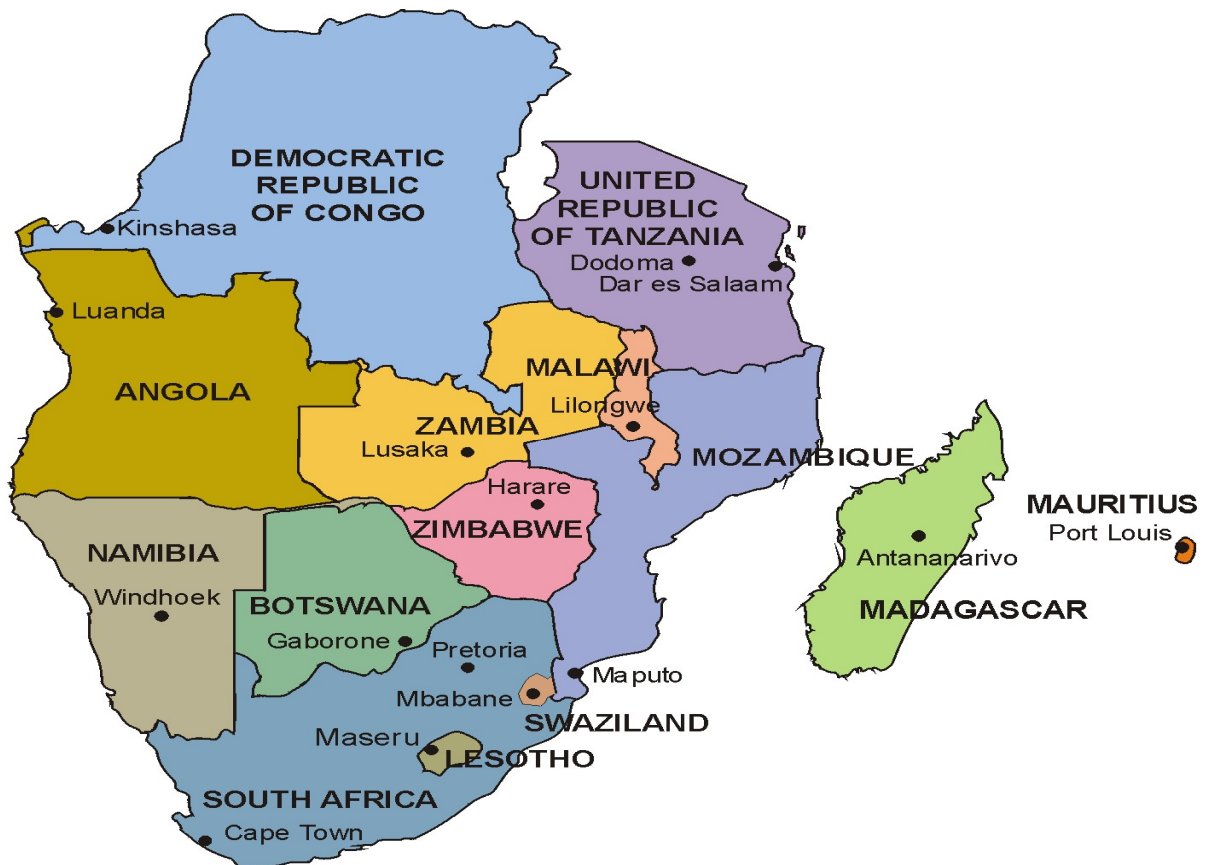




Tracking Progress by SADC Member States in Signing and Ratifying Anti-Corruption Instruments/Treaties

PROGRESS ON SIGNING AND RATIFYING THE SADC PROTOCOL AGAINST CORRUPTION (SPAC), AU CONVENTION ON PREVENTING AND COMBATING CORRUPTION (AUCPC) AND THE UN CONVENTION AGAINST CORRUPTION (UNCAC)



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ORGANISATIONAL FACT SHEET

1. Introduction

The Anti-Corruption Trust of Southern Africa (ACT-SA) is a regional, non-governmental and non-political organisation that was set up in 2004 to campaign against corruption and to promote good governance in both the private and public sectors. ACT-SA's interventions are plugged into four areas:

- **Advocacy for anti-corruption policy and law reform:** - The goal is to support national governments and other stakeholders to ensure the formulation, implementation, adherence and effective coordination of anti-corruption laws and policies.
- **Social prevention and community empowerment:** - The goal is to mobilise and empower communities to desist from corrupt practices and to effectively monitor the integrity of service providers.
- **Institutional capacity building:** - The goal is to enhance the capacities of specialised anti-corruption agencies, civil society, political parties and the private sector to effectively prevent and combat corruption.
- **Research and development:** - The goal is to conduct research, codify knowledge and disseminate good practices on preventing and combating corruption and good governance

2. Legal status

ACT-Southern Africa is a non-profit and independent trust registered in South Africa (Registration No. 045-923-NPO) and Zimbabwe (Registration No. MA147/2004).

3. Vision

Accountable, transparent and legitimate public and private sector institutions operating alongside a well-informed, empowered and actively engaged citizenry in poverty eradication and development.

4. Mission

To contribute towards good governance and the ending of corruption in Southern Africa through institutional capacity building, situational prevention of corruption, social prevention and public empowerment; anti-corruption policy and law reform and research and development.

5. Contact Details

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SUMMARY

This report tracks progress by SADC Member States towards the signing and ratifying of regional, continental and international anti-corruption instruments or treaties. However, it does not give an account of the domestication progress by each of the SADC Member States. This will be part of a future project by ACT-SA which seeks to give hands-on technical support to SADC Member States to strengthen their anti-corruption laws, policies and anti-corruption institutional arrangements.

The need to domesticate anti-corruption treaties at the earliest possible moment cannot be overemphasized. This is urgent considering the deleterious effects of corruption on national and regional development.

ACT-SA has been tracking the signing and ratification progress delimited to the SADC Protocol against Corruption (SPAC), the AU Convention on preventing and combating Corruption (AUCPCC), and the UN Convention against Corruption (UNCAC) since 2007. The slow progress over the years has been devastatingly worrying.

This is the fourth assessment of this nature commissioned by ACT-SA with the sole purpose of monitoring and reporting on the progress made by SADC Member States.

The following progress has been noted:

- The Government of the Republic of Angola finally ratified the AU Convention on preventing and combating Corruption (AUCPCC) on the 20th of December 2017;¹
- The Government of Botswana also ratified the AU Convention on preventing and combating Corruption (AUCPCC) on the 14th of May 2014.

The United Nations Convention against Corruption (UNCAC) has been ratified by all the 15 SADC Member States with the last ratifier being the Kingdom of Swaziland which ratified it on 24 September 2012²

Whilst the ratification of the UNCAC is at 100%, the ratification of the AUCPCC is still lagging. DRC, Mauritius and Swaziland have not yet ratified it. These are the only three SADC Member States that have not yet ratified this key continental anti-corruption instrument. Again, it is not clear on whether Madagascar has ratified SADC Protocol against Corruption or not. Exchanges between ACT-SA and the Mauritian Government have shown that the government ratified it in 2007 yet the information on the ratification thereof, is not publicly available. This issue should be clarified by the SADC Secretariat as well as the respective government. However, ratification by Seychelles remains outstanding.

The Table below summaries the status of signature and ratification of these three key anti-corruption instruments by SADC Member States:

¹African Union (2018) LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ACCEDED TO THE AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

[online] Available at

[http://www.aumaticorruption.org/uploads/STATUS_LIST_OF_AFRICAN_UNION_CONVENTION_ON_PREVENTING_AND_COMBATING_CORRUPTION_\(1\).pdf](http://www.aumaticorruption.org/uploads/STATUS_LIST_OF_AFRICAN_UNION_CONVENTION_ON_PREVENTING_AND_COMBATING_CORRUPTION_(1).pdf) [Accessed on 31 May 2018]

² UNODC (2018) Signature and Ratification Status. [online] Available at

<https://www.unodc.org/unodc/en/corruption/ratification-status.html>. [Accessed on 31 May 2018]

Table 1: Status of Signature and Ratification of Anti-Corruption Instruments by SADC Member States

	SADC Protocol against Corruption	AU Convention on Preventing and Combating Corruption	UN Convention against Corruption
Signature	14 out of 15 SADC Member States signed (93%)	12 out of 15 SADC Member States signed (80%)	13 out of 15 SADC Member States signed (87%)
Ratification	14 out of 15 SADC Member States ratified (93%) ³	12 out of 15 SADC Member States ratified (80%)	15 out of 15 SADC Member States ratified (100%)

Furthermore, it would be a remiss if this assessment fails to name and single-out the countries still lagging. Table 2 below shows that Madagascar is the only SADC Member State that has not signed the SADC Protocol against Corruption. If it is going to be confirmed by SADC Secretariat that Madagascar ratified the same in 2007, the only Member State that remains is Seychelles.

Table 2: SADC Member States Lagging Behind

Anti-Corruption Instruments	SADC Member States that have <u>not signed</u>	SADC Member States that have <u>not ratified</u>
1) SADC Protocol against Corruption	○ Madagascar	○ Seychelles
2) AU Convention on Preventing and Combating Corruption	○ Botswana ○ Malawi ○ Seychelles	○ Democratic Republic of Congo ○ Mauritius ○ Swaziland
3) UN Convention against Corruption	○ Botswana ○ Democratic Republic of Congo	-

Table 2 shows that the AUCPCC has registered the lowest in terms of both being signed and ratified by SADC Member States.

In keeping with the above, the following recommendations are made:

- The SADC Secretariat should clarify on whether or not Madagascar ratified the SADC Protocol against Corruption in 2007;
- The government of Seychelles is urged to ratify the SADC Protocol against Corruption;
- The governments of DRC, Mauritius and Swaziland are strongly encouraged to ratify the AU Convention on Preventing and Combating Corruption;
- Civil Society Organisations (CSOs) in Southern Africa are more specifically those in DRC, Mauritius, Seychelles and Swaziland should lobby their governments to ratify all the instruments which are outstanding.

³ Pending confirmation from SADC Secretariat that Madagascar had indeed ratified in 2007 as claimed

(1). BACKGROUND INFORMATION

In 2007, 2012 and 2017, the Anti-Corruption Trust of Southern Africa (ACT-Southern Africa) commissioned studies aimed at ascertaining the status of signature⁴ and ratification⁵ of the SADC Protocol against Corruption (SPAC), AU Convention on preventing and combating Corruption (AUCPCC), and the UN Convention against Corruption (UNCAC) by SADC member states.

The 2007 study produced a report⁶ which was followed by several advocacy activities. Since then there has been a lot of progress as shown below:

- a) The DRC and Mozambique ratified the SPAC on 19 May 2008 and 28 December 2007 respectively;
- b) Malawi and Seychelles ratified AUCPCC on 26 November 2007 and 1 June 2008 respectively;
- c) Botswana, DRC, Malawi, Mozambique, and Zambia ratified the UNCAC on 27 June 2011, 23 September 2010, 4 December 2007, 9 April 2008, and 7 December 2007 respectively

The 2012 assessment made several recommendations informed by the following findings:

- a) Swaziland had remained as the only SADC member state that had not ratified the UNCAC;
- b) Madagascar had neither signed nor ratified the SPAC whilst Seychelles signed but had not ratified the same; and
- c) Angola, Botswana, DRC, Mauritius and Swaziland had not ratified the AUCPCC, whilst Botswana had neither signed nor ratified the same.

After the publication of the 2012 report, several advocacy activities were carried out. These included the following:

- a) On 23 August 2012, a letter was sent to H.E. Dr Barnabas Sibusiso Dlamini pleading that Swaziland ratifies the AUCPCC and the UNCAC.⁷
- b) On 23 August 2012, the Botswana Government received a letter from the ACT-SA informing it that it had neither signed nor ratified the AU Convention on preventing and combating Corruption (AUCPCC).⁸ A response from the government showed that the letter was received and sent to the President's private office.⁹ Later on the 3rd of September 2012, the Government confirmed receipt of the letter.¹⁰
- c) On 28 August 2012, the SADC Secretariat through Dr. Tomaz Augusto Salomão was asked to motivate SADC member states to take the subject of corruption very seriously by ratifying anti-corruption instruments and domesticating them and where possible give technical support on the domestication thereof. Furthermore, it was urged to set up and empower institutional

⁴ Signature to a convention is subject to ratification, acceptance or approval. This means that the signature does not establish the consent to be bound but is an important means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. In other words, signature to a treaty qualifies the signatory state to proceed to ratification, acceptance or approval. It is significant since it also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. (Arts.10 and 18, Vienna Convention on the Law of Treaties 1969)

⁵ On the other side, ratification is an international act whereby a state indicates its consent to be bound to a treaty. Ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. [Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]

⁶Chinhamo, O and Shumba, G (2007). Report on the Status of Signature and Ratification of Anti-Corruption Treaties by the Southern African Development Community (SADC) Member States. [online]. Available at http://archive.kubatana.net/docs/demgg/act-sa_sadc_signature_of_treaties_070730.pdf [Accessed on 31 May 2018]

⁷ Anti-Corruption Trust of Southern Africa. (actsouthernafrica@gmail.com) (23 August 2012) Urgent letter to H.E. Dr Barnabas Sibusiso Dlamini- Swaziland- Signature and Ratification of Anti-Corruption Treaties. E-mail to: Mabuza, S. (mabuzasindi@gov.sz).

⁸ Anti-Corruption Trust of Southern Africa. (actsouthernafrica@gmail.com) (23 August 2012) Letter to H.E. President Lieutenant General Seretse Khama Ian Khama;. E-mail to: Ramsay, J; (jramsay@gov.bw).

⁹ Ramsay, J. (jramsay@gov.bw) (23 August 2012) Letter to H.E. President Lieutenant General Seretse Khama Ian Khama;. E-mail to: Anti-Corruption Trust of Southern Africa; (actsouthernafrica@gmail.com).

¹⁰ Dinale, L. (lesegodinale@gmail.com) (3 September 2012) Letter to H.E. President Lieutenant General Seretse Khama Ian Khama;. E-mail to: Anti-Corruption Trust of Southern Africa; (actsouthernafrica@gmail.com).

arrangements for the implementation of Article 11 of the SPAC which provides for the establishment of a Committee¹¹

- d) On the 28th of August 2012, the Government of Mauritius was notified that it had signed the AU Convention on preventing and combating Corruption but had not ratified it.¹²
- e) The Governments of DRC and Angola were also urged to sign and ratify anti-corruption treaties.
- f) The report was widely circulated globally and through www.kubatana.net.

During that time there were several challenges in some countries. In Madagascar, Andre Rajoelina was the President of the transitional High authority and did not have the power/right to commit the country to any international treaties.¹³ The same was the case in other SADC Member States where there were conflicts.¹⁴

The 2017 assessment revealed that Madagascar and Seychelles had not ratified the SADC Protocol against Corruption. However, on the 6th of May 2017, ACT-SA wrote to the SADC Focal Persons for both Seychelles¹⁵ and Madagascar¹⁶ seeking feedback on their plans on the same subject. However, on the 8th of May 2017, the Government of Madagascar confirmed that the Government had ratified the protocol.¹⁷

¹¹ Anti-Corruption Trust of Southern Africa. (actsouthernafrica@gmail.com) (28 August 2012) Letter to Dr Tomaz Augusto Salomão- Status of Signature and Ratification of Anti-Corruption Treaties by SADC Member States. E-mail to: Salomão, T. (Penehupifolm@rocketmail.com and LMartin@sadc.int).

¹² Anti-Corruption Trust of Southern Africa. (actsouthernafrica@gmail.com) (28 August 2012) Letter to Dr Tomaz Augusto Salomão- Status of Signature and Ratification of Anti-Corruption Treaties by SADC Member States. E-mail to: Salomão, T. (Penehupifolm@rocketmail.com and LMartin@sadc.int).

¹³ Anti-Corruption Trust of Southern Africa. (actsouthernafrica@gmail.com) (28 August 2012) Mauritius recommended to ratify the AU Convention on Preventing and Combating Corruption. E-mail to: RAMGOOLAM, N. (pmo@mail.gov.mu).

¹⁴ *ibid*

¹⁵ Anti-Corruption Trust of Southern Africa. (actsouthernafrica@gmail.com) (5 May 2017) Letter to Mr Maurice Loustau-Lalanne. Status on the Ratification of the SADC Protocol against Corruption. E-mail to: Lalane, M. L. (mloustaulalanne@mfa.gov.sc and copied to kracombo@mfa.gov.sc, nconstant@mfa.gov.sc, cmederic@seychelleshc.co.za).

¹⁶ Anti-Corruption Trust of Southern Africa. (actsouthernafrica@gmail.com) (5 May 2017) Letter to Ms. Vololomiora Lalanirina Rabarijaona. Status on the Ratification of the SADC Protocol against Corruption. E-mail to: Rabarijaona, V.L. (miorarabarijaona@yahoo.fr and copied dcrmae@gmail.com, nirina.angie2013@gmail.com, ambamad.pta@infodoor.co.za).

¹⁷ Lablache, F. (F.Lablache@mfa.gov.s) (8 May 2017) Letter to Anti-Corruption Trust of Southern Africa; E-mail to: (actsouthernafrica@gmail.com).

(2). RATIFICATION AND SIGNING PROGRESS

The following findings were made on the status+ of signature and ratification of the SPAC, AUCPCC and the UNCAC by SADC member states:

2.1 Signature and Ratification of the SADC Protocol against Corruption (SPAC)

The Protocol is one of the flagship instruments of the SADC for preventing and combating corruption in the region. The SPAC was signed by 14 SADC Heads of State and Government in Malawi on 14 August 2001. Table 3 below gives the detailed status of all the 15 SADC Member States.

Table 3: Signature and ratification of the SADC Protocol against corruption

Country	Heads of State and Government ¹⁸	Date of signing	Date of Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)
1. Angola	H.E. Joao Lourenço	14 August 2001	17 July 2005
2. Botswana	H.E. Mr. Mokgweetsi Eric Keabetswe Masisi	14 August 2001	14 August 2001
3. DRC	H.E. President Joseph Kabila Kabange	14 August 2001	19 May 2008
4. Lesotho	His Royal Highness King Letsie III	14 August 2001	29 July 2003
5. Madagascar	H. E. RAJAONARIMAMPINANINA Hery Martial	No	In an e-mail to ACT-SA dated 23 May 2017, the SADC National Contact Point under the Directorate of Regional Integration in the Ministry of Foreign affairs in Anosy, Antananarivo Madagascar claimed that they ratified it in 2007
6. Malawi	His Excellency Prof. Arthur Peter Mutharika	14 August 2001	2 September 2002
7. Mauritius	Ameenah Gurib-Fakim, GCSK, CSK, PhD	14 August 2001	4 January 2002
8. Mozambique	H.E. Filipe Nyusi	14 August 2001	28 December 2007
9. Namibia	H.E. Dr. Hage Geingob	14 August 2001	23 June 2005
10. Seychelles	H.E. Danny Faure	14 August 2001	No
11. South Africa	H.E. Cyril Ramaphosa	14 August 2001	15 May 2003
12. Swaziland	His Majesty, King Mswati III	14 August 2001	1 August 2006
13. Swaziland / Eswatini	H.E. Dr. John Pombe Joseph Magufuli	14 August 2001	20 August 2003
14. Zambia	H.E. Edgar Lungu	14 August 2001	8 July 2003

¹⁸ SADC (2017). Member States. [online] Available at <http://www.sadc.int/member-states/> [Accessed on 9 May 2017]

15. Zimbabwe	H.E. Emmerson Dambudzo Mnangagwa	14 August 2001	8 October 2004
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2.2 Signature and Ratification of the AU Convention on Preventing and Combating Corruption (AUCPCC)

The AUCPCC, which entered into force on 5 August 2006, was adopted by the 2nd Ordinary Session of the Assembly of the African Union (AU) in Maputo, Mozambique on 11 July 2003. According to the African Union (2010:2) as at the 6th of August 2010, the AUCPCC had been signed by 45-member states and ratified by 31 members only.

As at 17 February 2018, the African Union Advisory Board on Corruption advised that thirty-nine (39) Member States had ratified and therefore, are State Parties to the Convention. These included: Algeria, **Angola**, Benin, **Botswana**, Burkina Faso, Burundi, Chad, Comoros, Congo, Côte d'Ivoire, Ethiopia, Gabon, Gambia, Ghana, Guinea Bissau, Guinea Conakry, Kenya, Libya, **Lesotho**, Liberia, **Madagascar**, Mali, **Malawi**, **Mozambique**, **Namibia**, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, Senegal, **Seychelles**, Sierra Leone, **South Africa**, **Tanzania**, Togo, Uganda, **Zambia and Zimbabwe**.¹⁹ The following are not State Parties to the AUCPCC:

- a) Democratic Republic of Congo;
- b) Mauritius; and
- c) Swaziland

Table 4 below gives information on the signature and ratification status.

Table 4: Signature and ratification of the AU Convention on Preventing and Combating Corruption by SADC member states

Country	Heads of State and Government ²⁰	Date of signing	Date of Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)
1. Angola	H.E. Joao Lourenço	22 January 2007	20/12/2017 ²¹
2. Botswana	H.E. Mr. Mokgweetsi Eric Keabetswe Masisi	No	14/05/2014 ²²
3. DRC	H.E. President Joseph Kabila Kabange	5 December 2003	No
4. Lesotho	His Royal Highness King Letsie III	27 February 2004	26 October 2004
5. Madagascar	H. E. RAJAONARIMAMPINANINA Hery Martial	28 February 2004	6 October 2004

¹⁹ African Union Advisory Board on Corruption (2018). Status of Ratification of the Convention on Corruption. [online] Available at <http://www.auinticorruption.org/auac/about/status-of-ratification-of-the-convention-on-corruption> [Accessed on 31 May 2018]

²⁰ SADC (2017). Member States. [online] Available at <http://www.sadc.int/member-states/> [Accessed on 9 May 2017]

²¹ African Union (2018) LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ACCEDED TO THE AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION [online] Available at

[http://www.auinticorruption.org/uploads/STATUS_LIST_OF_AFRICAN_UNION_CONVENTION_ON_PREVENTING_AND_COMBATING_CORRUPTION_\(1\).pdf](http://www.auinticorruption.org/uploads/STATUS_LIST_OF_AFRICAN_UNION_CONVENTION_ON_PREVENTING_AND_COMBATING_CORRUPTION_(1).pdf) [Accessed on 31 May 2018]

²² African Union (2018) LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ACCEDED TO THE AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION [online] Available at

[http://www.auinticorruption.org/uploads/STATUS_LIST_OF_AFRICAN_UNION_CONVENTION_ON_PREVENTING_AND_COMBATING_CORRUPTION_\(1\).pdf](http://www.auinticorruption.org/uploads/STATUS_LIST_OF_AFRICAN_UNION_CONVENTION_ON_PREVENTING_AND_COMBATING_CORRUPTION_(1).pdf) [Accessed on 31 May 2018]

6. Malawi	His Excellency Prof. Arthur Peter Mutharika	No	26 November 2007
7. Mauritius	Ameenah Gurib-Fakim, GCSK, CSK, PhD	6 July 2004	No
8. Mozambique	H.E. Filipe Nyusi	15 December 2003	2 August 2006
9. Namibia	H.E. Dr. Hage Geingob	9 December 2003	5 August 2004
10. Seychelles	H.E. Danny Faure	No	1 June 2008
11. South Africa	H.E. Cyril Ramaphosa	16 March 2004	11 November 2005
12. Swaziland / Eswatini	His Majesty, King Mswati III	7 December 2004	No
13. Tanzania	H.E. Dr. John Pombe Joseph Magufuli	5 November 2003	22 February 2005
14. Zambia	H.E. Edgar Lungu	03 August 2005	30 March 2007
15. Zimbabwe	H.E. Emmerson Dambudzo Mnangagwa	18 November 2003	17 December 2006

2.3 Signature and Ratification of the UN Convention against Corruption (UNCAC)

According to the United Nations Office on Drug and Crime (2018), all the 15 SADC Member States ratified the UNCAC on the dates reflected in Table 5 below.²³ However, Botswana and DRC chose to ratify before signing.

Table 5: Signature and ratification of the UN Convention against Corruption

Country	Heads of State and Government ²⁴	Date of Signature	Date of Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)
1. Angola	H.E. Joao Lourenço	10 December 2003	29 August 2006
2. Botswana	H.E. Mr. Mokgweetsi Eric Keabetswe Masisi	No	27 June 2011a
3. DRC	H.E. President Joseph Kabila Kabange	No	23 September 2010 a
4. Lesotho	His Royal Highness King Letsie III	16 September 2005	16 September 2005
5. Madagascar	H. E. RAJAONARIMAMPINANINA Hery Martial	10 December 2003	22 September 2004
6. Malawi	His Excellency Prof. Arthur Peter Mutharika	21 September 2004	4 December 2007
7. Mauritius	Ameenah Gurib-Fakim, GCSK, CSK, PhD	9 December 2003	15 December 2004
8. Mozambique	H.E. Filipe Nyusi	25 May 2004	9 April 2008
9. Namibia	H.E. Dr. Hage Geingob	9 December 2003	3 August 2004
10. Seychelles	H.E. Danny Faure	27 February 2004	16 March 2006
11. South Africa	H.E. Cyril Ramaphosa	9 December 2003	22 November 2004
12. Swaziland / Eswatini	His Majesty, King Mswati III	15 September 2005	24 September 2012 ²⁵

²³ UNODC (2018) Signature and Ratification Status. [online] Available at <https://www.unodc.org/unodc/en/corruption/ratification-status.html>. [Accessed on 31 May 2018]

²⁴ SADC (2017). Member States. [online] Available at <http://www.sadc.int/member-states/> [Accessed on 9 May 2017]

²⁵ UNODC (2017). United Nations Convention against Corruption Signature and Ratification Status as of 12 December 2016. [online] Available at <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> [Accessed on 6 May 2017]

13. Tanzania	H.E. Dr. John Pombe Joseph Magufuli	9 December 2003	25 May 2005
14. Zambia	H.E. Edgar Lungu	11 December 2003	7 December 2007
15. Zimbabwe	H.E. Emmerson Dambudzo Mnangagwa	20 February 2004	8 March 2007

(3). CONCLUSION & RECOMMENDATIONS

As evidenced above, the progress made so far is encouraging. However, what is equally important is the domestication of these instruments which SADC Member States have signed and ratified. The prevalence of corruption in several SADC Member States remains worrying.

In keeping with the above, the following recommendations are made:

- The SADC Secretariat should clarify on whether or not Madagascar ratified the SADC Protocol against Corruption in 2007;
- The government of Seychelles is urged to ratify the SADC Protocol against Corruption;
- The governments of DRC, Mauritius and Swaziland are strongly encouraged to ratify the AU Convention on Preventing and Combating Corruption;
- Civil Society Organisations (CSOs) in Southern Africa are more specifically those in DRC, Mauritius, Seychelles and Swaziland should lobby their governments to ratify all the instruments which are outstanding.