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¹ The designations employed, the presentation of material and the views expressed in the present paper are those of the Government of Kenya and do not necessarily reflect the views of the Secretariat of the United Nations

Introduction

Kenya in recognition of the importance of efficient and effective criminal Justice system and crime prevention for its social economic development agenda has embarked on various legislative and policy reforms since the 12th UN Congress to adhere to the UN norms on Crime Prevention and Criminal Justice Measures. Our notable achievements include the promulgation of the Constitution of Kenya, 2010 which recognizes:-

- That treaties and agreements ratified by Kenya form part of the Laws of Kenya;
- Bill of Rights especially the right of Fair Hearing;
- Rights of Victims of Offences(including victims of transnational organized crimes); and
- The need of independent revolutionized institutions such as the National Police Service, Prosecutorial Authority and the Judiciary.

For the efficient functioning of the institutions, we have developed legislative frameworks and strategies for monitoring and performance of the administration of justice overseen by bodies such as the National Council on the Administration of Justices, Judicial Service Commission, National Police Service and Independent Police Oversight Authority.

The Constitution 2010 set the tone for reform in Kenya as it provided constitutional principles and values which are to be implemented in Kenya so as to enhance democracy and security. The Republic recognizes the damage caused by crime and inefficient criminal justice system to society and sustainable

development. The Republic attaches great importance to the development of national, regional and crime prevention justice strategies and has embarked on a reform programme of all law enforcement agencies and the judiciary with a view to enhance the promotion of the rule of law and improving security.

Kenya would like to share some of its reform experiences and challenges in crime prevention and strategies in criminal administration of justice as follows: -

Police Services

The Kenya Police service (as was previously known) has undergone tremendous changes since the 12th UN Congress Conference of Crime Prevention and Criminal Justice, 2010. The service now known as The National Police Service, has established:-

- the National Police Service Commission responsible for hiring, promotion and discipline; and,
- The Independent Police Oversight Authority responsible for investigating complaints against members of the National Police Service.

In line with the Constitution, the National Police Service has embarked on a vetting process of all members of the service which exercise is ongoing.

The Service has further embarked on the process of the establishing specialized units to address transnational and emerging crimes such as trafficking in drugs and trafficking in persons, money laundering, economic crimes, terrorism, wildlife and forest crime, sexual and gender based violence, international crimes, international cooperation (Nairobi- Interpol), cybercrime among many others.

Some of the challenges which face NPS in effective implementation include:-

- Inadequate human resources, the current ratio of security personnel to population is below the UN recommended ratio of 1:450. The Government is in the process of recruiting ten thousand (10,000) police officers this year.
- Inadequate provision of modern tools, equipment and technology.
- Lack of awareness of community role in crime prevention
- Inadequate infrastructure and operational environment.

To address and mitigate these challenges, the Police Service requires continuous training in specialized areas of crime, provision of equipment and international standard guideline to effectively deal with emergent crimes. Kenya has developed strategies and programmes for de-radicalization under the National Counter Terrorism Centre which will be rolled out in July 2015.

Ethics and Anti-Corruption Services

Corruption has continued to be a challenge to the country and its effects on our national development agenda thereby affecting the most vulnerable in society. Corruption also undermines democratic institutions, slows economic development and contributes to governmental instability. The Constitution of Kenya under Article 10 recognizes integrity, transparency and accountability as some of the national values and principles of governance. Chapter Six sets out the guiding principles of leadership and integrity which include personal honesty, competence, impartiality, and accountability among others. The Ethics and Anti-Corruption Commission is now constitutionally entrenched under Article 79, and is mandated to combat and prevent corruption and mainstream integrity and ethics in the country. Upon its establishment, the EACC undertook a vetting of all staff inherited from its predecessor.

The Commission has embarked on reopening of investigations into pending high level corruption and economic crime cases which has resulted in prosecution of suspects. Further, the Commission is engaged in investigating senior state officers and public officials alleged to have engaged in corruption. Notably Cabinet Secretaries under investigations have stepped aside.

Some of the challenges experienced in employing these initiatives and strategies include:-

- Inadequate capacity to continually and consistently monitor activities in all identified risk areas.
- Inadequate resources and skills, especially where complex cases of corruption are encountered.
- Lack of an Integrated National Policy that harmonizes the activities of various agencies.
- Inadequate awareness by the public of its critical role in fighting corruption.

Measures to address the challenges include provision of resources and training to enhance capacity and skills. The country is in the process of formulating a national policy which seeks to, among other things, establish institutional linkages and harmonize anti-corruption strategies and efforts. Some of the Anti-corruption strategies include establishing constituencies' citizens' anti-corruption committees

Prosecution Services

The Constitution of Kenya, 2010 established an Independent Prosecutorial Authority. The office of the Director of Public Prosecutions is entrusted with the State powers of Prosecutions. Criminal prosecutions are undertaken with due

regard to the public interest, the interest of the administration of justice and recognizing the inalienable right of fair hearing. The Office of the Director of Public Prosecutions Act, 2013 and policy documents namely the National Prosecution Policy and the Code of Conduct have been developed. The ODPP Act incorporates instances where prosecutors will be called upon to undertake prosecutor guided investigation as well as undertake international cooperation matters as a competent authority.

The ODPP has set up specialized divisions to address all crimes including transnational and emerging crimes (trafficking in persons, children and victim protection, counter-terrorism, wildlife crimes, international cooperation, international crimes, sexual and gender based violence, piracy and maritime crimes, trafficking in drugs, cybercrime, anti-corruption and anti-money laundering). The office has also embarked on developing guidelines and standard operating procedures on ensuring effective investigations and prosecutions for all divisions. Divisions such as sexual and gender based violence, piracy and maritime division, terrorism, wildlife, FGM and international crimes are at an advanced stage.

The ODPP has however continued to experience challenges in terms of professional capacity, equipment's and skills to effectively deal with transnational and new emergent crimes. In addition, there is the need to develop standard operating procedures to appreciate the parameters of prosecution guided investigations. The ODPP requires appropriate tools to ensure efficiency and effectiveness in conducting specialized prosecutions. It is envisaged that a modern prosecutor must be skilled to effectively conduct prosecutions in the modern world. Further specialized trainings in conducting prosecution of transnational crimes and emerging crimes.

Prison and Probation Services

Prisons services have been enhanced to comply with the Bill of rights under the Constitution 2010 and the universal standard minimum rules for treatment of prisoners. Our Constitution in Article 51 provides for rights of persons detained, held in custody or imprisoned. Some of these rights include freedom from torture, cruel, inhuman and degrading treatment or punishment.

Probation and after care service has been instrumental in facilitating the courts with background of persons accused with transnational organized crimes where a pre-trial, pre-bail and pre-sentence report assists courts to determine the bail terms and attendant risks and mode of sentence to impose on persons accused of piracy, terrorism extremist/radical behavior.

Crime Research Services

Kenya has established the National Crime Research Centre (NCRC) whose mandate is to carry out research into the causes of crime and its prevention and to disseminate research findings and recommendations to Government agencies concerned with administration of criminal justice. In addition, NCRC is the custodian of crime related data. The Centre has launched and published some of the research undertaken such as on gender violence and organized crime. The Centre has faced several challenges including capacity and resource constraints.

The Judiciary

The Constitution restructured our Judiciary and established a new Judicial Service Commission for hiring of Judicial Officers with new domestic laws. A new Chief

Justice and Justices were recruited transparently and competitively and recruitment of Judicial Officers to increase capacity was undertaken.

Further reforms include an improved Judicial Training Institute for Judicial Officers which offers training on current emerging topics and issues affecting administration of justice including terrorism, human trafficking, poaching, trafficking of wildlife trophies and forest products, cybercrime and corruption which undermine security and economic development. Plans for setting up the International Crimes Division to handle transnational organized crimes are at advanced stage.

Performance management has been introduced in the Judiciary including open days and peer reviews programmes.

International Cooperation, including at the regional level, to combat transnational organized crime

Kenya recognizes the importance of international co-operation in combating transnational and organized crime and is signatory to several multi-lateral and bi-lateral treaties including UNCAC, UNTOC and United Nations Convention on the suppression of terrorism. Kenya has further promulgated the Anti- Terrorism regulations 2013 which counters terrorism financing. These treaties have assisted Kenya in investigations and prosecuting suspects in terrorism and corruption cases.

In furtherance of regional and international judicial cooperation, Kenya is a member of the East Africa Community (EAC) and signatory to the East Africa Community Peace and Security Protocol 2013. The protocol outlines co-operation

in ensuring peace and security for the region and in combating crime. It sets out objectives for fostering regional peace and security, including combating terrorism and piracy, prevention of genocide, disaster management and crisis response and the management of refugees. Others include the control on proliferation of small arms and light weapons, combating trans-border crimes, combating cattle rustling among others_ aimed at ensuring peace and security in the region and combating crime.

A Joint Investigation Centre has been established with its headquarters in Nairobi whose main objective is to facilitate expeditious intelligence and information sharing in respect of investigations relating to terrorism and other trans-national crimes.

The National Police Service actively utilizes Interpol tools e.g. the I-24/7 for purposes of international cooperation especially in the fight against transnational crimes including wildlife trafficking. . It is a member of the East African Police Chiefs Cooperation Organization (EAPCCO) whose main objective is cooperation in law enforcement in the region.

As a member of East Africa Police Chiefs Cooperation Organization (EAPCCO), the National Police Service has participated and is involved in strengthening the coordination at the regional level in curbing cross border and transnational crime.

Kenya participates in the regional and international initiatives for the reduction and control of the proliferation of Small Arms and Light Weapons (SALW). The Nairobi Protocol for Control and Reduction of SALW in the Great Lakes Region and the Horn of Africa provides a great opportunity to initiate this process. The

Protocol provides for: establishment of Best Practice Guidelines on stockpile management; harmonization of legislation at regional level, public awareness and advocacy campaign on the dangers of SALW, and the destruction of illicit SALW. The establishment of Inter Agency Anti-Poaching elite unit under Kenya Wildlife Service and the Border Patrol Unit is a positive step towards addressing the poaching menace.

To deal with the challenge of money laundering, the Kenyan government has established mechanisms for cooperation between its agencies and foreign national agencies for purposes of exchange of information and investigation into suspected money laundering activities. In addition, Kenya is among the founding members of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and currently chairs the law enforcement subgroup for the region.

At the regional and international level, Kenya has established partnerships geared at benchmarking on best practices and improving crime investigation and prosecutions specifically by joining the Regional Anti-Piracy Prosecutions Intelligence Co-ordination Centre (RAPPICC), the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO) and Regional Centre on Small and Light Weapons.

In addition, National Central Bureau Nairobi which is under the Director of Criminal Investigations has forged strong working linkages with INTERPOL Agencies across the Globe especially in terms of enhanced information sharing.

A common challenge faced in seeking formal international cooperation include-

- Language barrier in respect of member States that are non-English speakers therefore the need for interpretation is imperative;

- Certain member States demand a bilateral treaty to provide International Cooperation;
- Other member States simply do not extradite their nationals a principle possibly enshrined in their Constitution or national legislation and would rather prosecute.

Comprehensive and balanced approaches to prevent and adequately respond to new and emerging forms of transnational crime

Kenya's Anti- Money Laundering regime is largely contained in the Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA). The Financial Reporting Centre (FRC) (Kenya's Financial Intelligence Unit) is established by Section 21 of the Proceeds of Crime and Anti-Money Act 2009 (POCAMLA) with a mandate to receive, analyze, and disseminate Laundering suspicious transaction reports and other information. FRC started operations in April 2012. The FRC is an independent institution under the National Treasury fully funded by the National Treasury.

FRC started receiving STRs in October 2012. Over 239 Reporting Institutions have been registered to date. From October 2012 to date FRC has received 277 STRs. 36 fully analysed and disseminated to LEA. Four have been closed as they do not require further action.

The FRC has several challenges namely:

- I. Raising AML/CFT awareness amongst the public
- II. AML knowledge outside the financial sector
- III. Capacity building for reporting institutions
- IV. Developing Registry and Archiving Systems
- V. Crafting a strategic plan for the FRC as well as a national AML/CFT strategic plan

Kenya has also established the Asset Recovery Agency for tracing, freezing and recovery of proceeds of crime and money-laundering. The Agency is in the process of being fully operationalized as it is currently using staff from the office of the Attorney General. The Agency is integral institution in the fight against all kinds of

crime domestic and transnational. It is working closely with other law enforcement agencies in particular the EACC in mutual legal assistance and recovery of corruptly acquired assets in Switzerland with the assistance of the Swiss authorities.

The office of the Attorney General as the Central Authority for mutual legal assistance and judicial cooperation has been engaged in sensitization of law enforcement agencies on procedures for MLA under international treaties and domestic law.

To address the transnational crime of Piracy, it is worthwhile to note that since 2006, by virtue of MOU/Agreements with other countries, Kenya began prosecuting pirates arrested off the coast of Somalia. Although the agreements lapsed on 30th September 2009, Kenya continued to prosecute piracy cases as has so far prosecuted 18 cases, incarcerated 147 pirates and is now conducting the last request received involving 4 suspected pirates.

The use of cyber space as a platform and catalyst for sophisticated as well as organized crimes is of great concern. In light of the increase in commission of transnational organized crimes, there has been established at the Directorate of Criminal Investigations Headquarters a Cybercrime Prevention Unit, which is operational with objectives as to prevent and curb cyber, based financial crimes in Kenya. The Directorate of Criminal Investigations Headquarters Cyber Crime Unit is manned with several CCU officers including specialists from computer forensic background and officers from the Anti- Terrorist Police Unit. The Unit is equipped with technological forensic tools however, these resources are insufficiently supplied and as such, there is need to upgrade IT infrastructure. In addition, there is need to increase skilled personnel on ICT policies. The Directorate of Criminal

Investigations has established the criminal intelligence unit at its headquarters which coordinates with mobile service providers in tracking criminals and gathering intelligence. Further, a Draft Bill on cyber laws has been developed and is awaiting stakeholder engagement.

National approaches to public participation in strengthening crime prevention and criminal justice

Kenya has adopted community policing programmes in a bid to address issues of crime. The Government, through the National Police Service, is undertaking public awareness on public-police partnership as a strategy to fight crime. In 2013 the Government launched an initiative known as *Nyumba Kumi* aimed at encouraging citizens to be conscious of their environment and role in crime prevention, by reporting suspicious elements in their midst..

Kenya's efforts to fight crime have been hampered by challenges, which include the following-

1. Lack of sufficient capacity and infrastructure to collect analyze and share data on drug abuse, human trafficking and smuggling of illegal immigrants and small arms.
2. Long and porous borders in a volatile region.
3. The high influx of refugees into the country.

Kenya recommends the conclusion of regional protocols to enhance and simplify information-sharing for efficient and effective response in fighting crime. Kenya remains committed to implementing its international obligations in a bid to combat crime including transnational organized crime and our focus is based on the

strengthening of our criminal justice system in a bid to promote the rule of law. Kenya supports the Doha Declaration on Crime Prevention and Criminal Justice and we look forward to sharing experiences and learning from other States

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