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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Kenya

1. Introduction: Overview of the legal and institutional framework of Kenya in the context of implementation of the United Nations Convention against Corruption

Kenya signed and ratified the Convention, and deposited its instrument of ratification, on 9 December 2003.

Generally accepted rules of international law and treaties or conventions in force form part of Kenya's domestic law (article 2(5) and (6) of the Constitution). Accordingly, the United Nations Convention against Corruption could, in theory, be applied directly, except in respect of the criminalization provisions, which need domestic legislation to set out offences, penalties and related provisions.

Kenya is a member of the Commonwealth and follows the common law legal system. The Constitution of Kenya, 2010 is the supreme law (article 2); other sources of law are Acts of Parliament, African customary law, general principles of international law, and treaties or conventions ratified by Kenya. Under the Constitution, judicial decisions have the same legal weight as laws.

Under article 132(1)(c)(iii) of the Constitution, the President is required, once every year, to "submit a report for debate to the National Assembly on the progress made in fulfilling of the international obligations of the Republic", including this Convention. Further, article 132(5) states, "The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries".

Key institutions in the fight against corruption include: the Ethics and Anti-Corruption Commission (EACC), Office of the Attorney General and Department of Justice (OAG and DOJ), Office of the Director of Public Prosecutions (ODPP), Asset Recovery Agency (ARA), Financial Reporting Centre (FRC), National Police Service (NPS), Directorate of Criminal Investigations (DCI), Witness Protection Agency (WIPA) and the Public Service Commission (PSC).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

A general observation is that different laws implementing the United Nations Convention against Corruption use different terminology in defining the categories of public officials to which they apply, which could hamper the application of the laws to all relevant categories of public officials in respect of Convention offences.

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Section 39 of the Anti-Corruption and Economic Crimes Act, 2003 (ACECA) addresses bribery involving agents; it covers offering, giving, or agreeing to offer or give, as well as receiving, soliciting, or agreeing to receive or solicit, bribes. Beyond the limitation to arrangements between agents and principals, the offence does not expressly cover bribery in relation to third party beneficiaries, or indirect bribery of public officials.

Kenya has not criminalized the bribery of foreign public officials and officials of public international organizations (active or passive).

Certain forms of trading in influence may be covered under the broad concept of corruption of officials and abuse of power (sections 39 and 46, ACECA). However, section 46 omits certain dimensions of trading in influence, including intermediary agents.

Kenya has not adopted a comprehensive offence of bribery in the private sector.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized, principally in sections 3 and 4 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAML), section 47 ACECA, and the Penal Code (Cap. 63) (PC). Participatory acts, including complicity, agreement, association and attempts, are covered (sections 47A ACECA, 20, 388, 389 and 393 PC). POCAML adopts an all-crimes approach to predicate offences, including foreign predicate offences that satisfy the dual criminality principle (section 2); self-laundering is not precluded (section 3). There are no statistics on money-laundering convictions because the legislation was recently adopted.

Concealment is criminalized (sections 322 PC, 47 ACECA and 3 POCAML).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Provisions relevant to embezzlement include: section 45 ACECA, sections 101, 268 and 280 PC, and sections 127 and 275 PC. Theft (sections 268, 275, 280 PC) is limited to theft of tangible items.

The abuse of power offence has similar characteristics to article 19 of the Convention against Corruption. Relevant provisions are section 46 ACECA and sections 101, 128, 130, 268 and 280 PC.

Kenya has not criminalized illicit enrichment, although several provisions pursue the same goal, including Codes of Conduct and Ethics under the Public Officer Ethics Act, 2003 (POEA), Ethics and Anti-Corruption Commission Act, 2011 (EACC Act) and Leadership and Integrity Act, 2012 (LIA). These do not always include related sanctions but violations thereof may involve a recommendation to prosecute. POEA further provides for asset declarations by officials every two years.

PC offences relevant to private sector embezzlement include misappropriation in general, misappropriation by clerks or agents, directors or managers of companies, and principals, together with fraudulent use of trust assets and accounting fraud (sections 275, 281-283, 327-331).

Obstruction of justice (art. 25)

Interference with or influencing witnesses in judicial proceedings or obstructing or preventing the course of justice or the execution of legal processes is criminalized (sections 121 (f) and (g) and 117 (b) PC).

Interference with justice or law enforcement officials is criminalized in ACECA (section 66), PC (sections 117, 253 and 121), POCAML (section 15), the Witness Protection Act, 2006 as amended (WPA) (section 30C), POEA (section 40), LIA (section 46), and the National Police Service Act, 2011 (section 58).

Liability of legal persons (art. 26)

Section 23 PC, section 2, POCAMLA and common law principles establish the criminal liability of legal persons, which have been held criminally liable for corruption. The term “person” in the laws of Kenya is interpreted to include legal persons (section 3, General Provisions and Interpretations Act, Cap. 2). The civil (sections 55 and 56 ACECA) and specified administrative (section 36A POCAMLA) liability of legal persons is also established without prejudice to the criminal liability of natural persons.

Legal persons are subject to more severe penalties than natural persons (section 16 POCAMLA) and may be debarred from participating in public procurement (sections 40 and 115, Public Procurement and Disposal Act, 2005 (PPDA)). Case law illustrates the application of these provisions.

Participation and attempt (art. 27)

Participation and attempt are criminalized (sections 20 and 389 PC, and 24 POEA). Attempt, conspiracy and incitement are also criminalized under ACECA. The preparation of an offence is not specifically covered.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Penalties under ACECA (section 48) consider the seriousness of offences by imposing significant prison terms and fines, which may be cumulative. Nonetheless, there are problems regarding the proportionality, consistency and adequacy of sentencing; a Judicial Task Force on Sentencing has been created to address the issue.

There is no immunity for public officials. Only the President of the Republic and any person acting in that capacity is immune from criminal prosecutions, except for offences recognized under Kenya’s treaties that prohibit such immunity (article 143 Constitution).

The DPP must, in exercising his functions, consider the public interest and the administration of justice (article 157(11) Constitution). Article 157(8) reduces the discretionary powers of the DPP to interrupt criminal procedures in cases authorized by court.

Article 49, paragraph (1)(h) of the Constitution and sections 123, 356 and 357 of the Criminal Procedure Code (CPC) relate to the right of an accused person to be released on bail while awaiting charge or trial. The main judicial consideration is whether the accused is likely to turn up for trial or appeal, having regard to the gravity of the offence.

Early release of detained or convicted persons may be obtained by presidential pardon, following a recommendation of the Advisory Committee on the Power of Mercy established under article 133(2) of the Constitution, considering, inter alia, the nature and seriousness of the alleged crimes (section 22, Power of Mercy Act, 2011).

Disciplinary procedures provide for the dismissal or removal from office of public officers (article 75 Constitution). Section 62 ACECA makes provision for

suspension when a public officer is charged with corruption. Summary dismissal is provided for (section 44(4) Employment Act, 2007), but reassignment is not addressed. Disciplinary action may be taken in parallel to criminal proceedings (*Republic vs. Attorney General and 4 Others Ex parte Evans Arthur Mukolwe* (2013) eKLR). POEA and LIA establish a legal framework for disciplining public officers for breach of integrity.

Persons convicted of corruption or economic crime are disqualified from holding public office for 10 years after the conviction (section 64(1) ACECA and article 75(3) Constitution). This includes disqualification from holding office in State-owned enterprises (section 2 ACECA).

Administrative measures by the Probation Department assist released prisoners to reintegrate back to society. However, capacity challenges were reported.

Under section 5 ACECA, a Special Magistrate can pardon persons who fully and accurately disclose the commission of offences and persons involved. Section 25A ACECA further permits EACC, in consultation with the Attorney General, to offer a commitment not to investigate persons who fully and accurately disclose the essential elements of an offence. Likewise, EACC can refrain from instituting criminal procedures, provided such commitment is recorded by the court (section 56B). Cooperation of an indicted person with law enforcement authorities may be taken into consideration during sentencing. Cooperating persons qualify for the same protection as witnesses in criminal proceedings.

Protection of witnesses and reporting persons (arts. 32 and 33)

WPA provides for the protection of witnesses in criminal and other proceedings. WIPA was established to administer the witness protection programme and determine applicable protection measures, including physical and armed protection, relocation, change of identity, advisory services and other measures necessary to ensure the safety of witnesses. WIPA may also request the courts to implement measures during proceedings, including closed sessions, redacting identifying information, using video link, pseudonyms or measures to suppress the identity of witnesses. Protections are also available to experts, their relatives and other persons close to them. Nonetheless, there are significant reported challenges of witness protection and retaliation.

Victims are covered to the same extent as witnesses (section 3 WPA). The Victim Protection Act, 2014, which provides for the protection of victims of crime and abuse of power, commenced operation on 3 October, 2014. The Act is administered by WIPA. The views and concerns of victims are considered under the administrative procedures of WIPA. There are also provisions in the CPC concerning victim impact statements (sections 137I, 329C and 329D) and consultation with victims (137D).

There are no comprehensive measures to protect whistle-blowers.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

POCAMLA provides for forfeiture of property of corresponding value under conviction and non-conviction-based mechanisms. Under section 61, the court may make confiscation orders upon the application of the Attorney General, the Director

of ARA or *suo motu* against a defendant for payment to government of any appropriate amount. This includes proceeds of crime and instrumentalities used or destined for use in offences (section 2 POCAMLA), as well as transformed, converted or intermingled property, income and benefits derived therefrom.

The court, on application by EACC, may issue freezing orders on proceeds of corruption and money-laundering (section 55 ACECA). Parts IV and VI ACECA deal with investigations, including asset tracing, while Part VII deals with recovery and forfeiture. Other investigative measures are provided for (sections 23 and 26 to 30 ACECA, 118 CPC and 180 Evidence Act, sections 68 and 71 POCAMLA).

ACECA provides for the appointment of receivers and managers of frozen or confiscated property. Section 56C provides that recovered property be surrendered to the Principal Secretary, Treasury and monies recovered be paid into the Consolidated Fund. Section 112 POCAMLA sets out functions of ARA in the administration of the consolidated fund. Section 72 POCAMLA further provides for the appointment of a manager of property subject to a restraint order.

EACC can make applications before court for warrants to search bank accounts (section 23(4) ACECA). Section 17 POCAMLA provides that its secrecy provisions override provisions in any other law. Nonetheless, procedures to obtain access to bank and financial records for investigative purposes could be streamlined.

Section 55 ACECA addresses the forfeiture of unexplained assets. Sections 61 and 65 provide for confiscation of assets where the suspect has failed to prove their lawful origin.

Banking secrecy cannot be invoked against judicial authorities in ongoing proceedings. Section 28 ACECA allows for banking files to be obtained during investigations through a court order.

Statute of limitations; criminal record (arts. 29 and 41)

The limitations period does not apply to criminal proceedings or civil proceedings for the recovery of assets. However, inordinate delay in commencing prosecution proceedings may constitute a travesty of justice (*Republic vs. Attorney General & 3 Others, ex-parte Kamlesh Mansuklal Damji Pattni* (JR), Miscellaneous Application No. 305 of 2012). The courts look at the circumstances on a case-by-case basis.

Courts may consider prior foreign convictions (section 142 (3) CPC).

Jurisdiction (art. 42)

The jurisdictional reach of Kenya's laws covers offences committed within Kenya, but not all offences on board Kenyan ships or airplanes. Jurisdiction applies to offences committed by nationals outside Kenya that would violate ACECA if committed in Kenya (section 67), but not to offences against nationals. Kenyan law does not provide for jurisdiction where extradition is refused and the offender is present in Kenya, except in the case of nationals where the grounds for extradition are not met.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Kenya does not have adequate provisions addressing different consequences of corruption. However, it provides for disqualification from procurement of persons involved in corrupt practices and for voiding of contracts by procuring entities (sections 40-41, PPDA).

Compensation for damages caused by corruption may be obtained (sections 51-54 ACECA).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Pursuant to the Constitution (article 79), Parliament enacted the EACC Act. Section 3 (1) establishes EACC, with the status, powers and independence of a commission under Chapter 15 (section 28 EACC Act).

Article 157 (1) of the Constitution establishes ODPP. Moreover, NPS have a mandate to investigate all crimes except offences under ACECA. ACECA crimes are investigated by investigators appointed by the Secretary/Chief Executive of EACC.

Sections 21-43 POCAMLA establish the FRC, funded by the National Treasury. Sections 52-55 establish ARA. Other specialized bodies include the Auditor-General, Public Procurement Oversight Authority and the Banking Fraud Investigation Unit.

Anti-corruption courts are established as an administrative division in the judiciary presided over by Special Magistrates (section 3, ACECA). Appeals therefrom go to the High Court.

Certain measures could strengthen the operations and mandates of the specialized authorities. A National Council on the Administration of Justice (NCAJ), established under the Judicial Service Act, 2011, has been created to reduce backlogs in courts and address delays in the adjudication of cases.

Cooperation between national law enforcement authorities takes place through administrative channels like the Kenya Leadership and Integrity Forum and inter-agency agreements. Investigative and prosecuting institutions cooperate through joint trainings, staff secondments and exchange of expertise.

FRC refers suspicious transaction reports (STRs) warranting further investigation to NPS, which transmits them to relevant authorities. FRC, as a new institution, faces challenges, including limited capacity, expertise and the development of operational guidelines.

EACC encourages the reporting of corruption, including anonymously.

2.2. Successes and good practices

- Kenya continues to strengthen its legal and institutional framework on witness protection, including through the witness protection programme.
- The regional presence of EACC, its Constitutional anchor and operational mechanisms, including the Integrated Public Complaints Referral Mechanism (e-IPCRM), can be considered a good practice.

2.3. Challenges in implementation

To further strengthen existing anti-corruption measures it is recommended that Kenya:

- Continue to strengthen data-collection systems for reporting on investigations, prosecutions and adjudications of corruption offences across institutions.
- Consider harmonizing the definitions of public officials in line with article 2 of the Convention against Corruption.
- Adopt measures more fully in line with article 15 of the Convention, namely extending the bribery offence beyond arrangements involving agents and principals, expressly cover third party beneficiaries, and acts of indirect bribery.
- Criminalize the active bribery of foreign public officials and officials of public international organizations, and consider criminalizing solicitation and acceptance of bribes by such officials (article 16).
- Expand the theft offence to cover property, public or private funds, securities or other things of value entrusted to public officials by virtue of their position (articles 17, 22).
- Consider adopting a specific illicit enrichment offence (article 20).
- Consider extending the private sector bribery offence beyond principal-agent relationships, and focus on enforcement and awareness-raising (article 21).
- Monitor the application of the new money-laundering provisions to ensure effective enforcement and develop comprehensive statistics on investigations, prosecutions and convictions (article 23).
- Monitor the application of the prescription period, notwithstanding the absence of a limitations period for criminal and asset recovery matters, to ensure the timely prosecution of offences (article 29).
- The Judicial Task Force on Sentencing should address the proportionality, consistency and adequacy of sentencing, including by developing appropriate policy and considering the adoption of sentencing guidelines and international good practices (article 30, para. 1).
- Enhance measures promoting the reintegration of convicted persons into society, including through enforcement of existing regulations, and adopt record-keeping procedures for monitoring and reporting (article 30, para. 10).
- Maintain statistics relating to freezing, seizing and confiscation of and instrumentalities of crime (article 31, para. 1).
- Streamline procedures to obtain access to bank and financial records for investigative purposes to allow for warrants to be obtained expeditiously and effectively. Consider authorizing EACC to access financial records administratively (article 31, para. 7).
- Continue to strengthen the protection of witnesses and whistle-blowers and protect those investigating, prosecuting and adjudicating corruption cases (articles 32 and 33). The reviewers welcome the swift implementation of the

2014 law on the protection of victims and its adequate enforcement (article 32).

- Adopt procedures to clarify the mandate and functions of ARA to avoid overlap with other institutions. Coordination mechanisms, like inter-agency agreements or procedures, would be useful (article 36).
- Strengthen the capacity and operations of specialized institutions (article 36), including to address:
 - Challenges and technical assistance needs of the ODPP relating to capacity to prosecute corruption and economic crime; development of a case management system; law reform and development of prosecutorial policies; decentralization; and a facilitation and support programme for witnesses and victims of crime.
 - Challenges of limited police capacity in forensic investigation and detecting emerging crime.
 - Capacity-building in the judiciary, in particular further training of judges and magistrates in corruption cases.
- Continue devoting resources to capacity-building for law enforcement agencies investigating and prosecuting corruption offences. Consider inter-institutional arrangements and awareness-raising involving prosecutors, investigators and the judiciary (article 36).
- NCAJ should continue to address the backlog of cases in the courts and delays in the adjudication of corruption cases (article 36).
- Adopt guidelines to ensure adequate transparency and predictability of out-of-court settlements and plea bargains, and maintain statistics to track the grant of immunity at the administrative level and by the DPP (article 37).
- Continue devoting resources to strengthen the capacity, operations and data-collection efforts of FRC. Given the large number of pending STRs, Kenya should consider a more streamlined reporting procedure from FRC to law enforcement agencies (article 39).
- Strengthen education and awareness-raising of corruption (article 39).
- Adopt measures in line with article 42(1)(b) of the Convention, and consider expanding jurisdiction to acts committed by citizens outside Kenya that do not violate ACECA, and to cases where Kenya does not extradite alleged offenders present in Kenya. The reviewers welcome indications that Kenya will amend ACECA to establish jurisdiction over offences against citizens.
- Strengthen the collection and availability of statistical data on corruption-related investigations, prosecutions and adjudications.
- Kenya is encouraged to:
 - Adopt measures to more fully criminalize trading in influence. The reviewers welcome indications that Kenya wishes to modify ACECA accordingly (article 18).

- o Adopt measures to address the consequences of corruption, including remedial measures, outside of the procurement context (article 34).
- o Continue to enhance coordination among law enforcement institutions, noting the positive examples of inter-agency cooperation that exist (article 38).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Legislative drafting, legal advice, model legislation (articles 16, 20, 23, 36).
- Good practices/lessons learned (articles 16, 21, 32).
- Capacity-building/on-site assistance to national authorities (articles 20, 22, 23, 32, 36, 37, 38, 39).
- Other technical assistance (articles 22, 23, 36).
- In consultation with development and technical assistance partners, undertake a comprehensive technical assistance needs assessment, using as a baseline the results of the review of implementation of the Convention, to develop a country-led and prioritized technical assistance action plan.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is governed principally by the Extradition (Commonwealth Countries) Act, Cap. 77 and the Extradition (Contiguous and Foreign Countries) Act, Cap. 76. Kenya has concluded 25 bilateral extradition treaties and is also party to multilateral agreements and arrangements with Commonwealth and foreign and contiguous States under Cap. 76 and 77 respectively. Kenya is party to the Intergovernmental Authority on Development (IGAD) Convention on Extradition and a member of the London Scheme on Extradition.

Kenyan law requires the existence of a bilateral extradition treaty between Kenya and another State. Kenya does not consider the Convention as the legal basis for extradition.

Dual criminality is required for extradition, regardless of terminology used to designate offences. Extradition is therefore limited to the extent that not all offences under the Convention have been criminalized.

Kenya recognizes conditions on extradition and grounds for refusal. Cap. 77 sets out minimum conditions relating to punishment for offences to be extraditable (imprisonment for twelve months or greater under the law of the requesting country). No such period of imprisonment is established in Cap. 76. There is no legal restriction on extradition for fiscal matters.

Nationality is not a ground for refusal to extradite. While there have been no extraditions of nationals linked to corruption, there is a pending case (Samuel Gichuru and Chris Okemo).

There were only three reported incoming extradition requests in corruption-related matters. Kenya has reportedly not refused extradition to date.

Measures in Cap. 76 and Cap. 77 and under the London Scheme simplify evidentiary requirements and streamline extradition procedures. Challenges include the reported use of Constitutional references as delaying tactics and backlog in the judiciary.

Kenya has adopted measures to ensure the fair treatment of persons in extradition proceedings. However, fair treatment objections have been raised in prior cases. The discriminatory purpose of a request is addressed in Cap. 77 with respect to race, religion, nationality or political opinions, but not gender; no such provision is included in Cap. 76.

Cap. 76 and Cap. 77 do not address a duty to consult before refusing extradition.

Kenya has developed a Transfer of Prisoners Bill 2014 and adopted one bilateral agreement with Rwanda. Kenya has reportedly received many requests for prisoner transfers not involving corruption, but none have been executed owing to the lack of a legal framework to facilitate transfers.

Although Kenya has received relevant requests, the transfer of criminal proceedings is not addressed in legislation.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is governed by the MLA Act, 2011 and POCAMLA for money-laundering and other proceeds of crime. An affirmative decision or designation is required to apply the MLA Act to requesting countries (section 9, MLA Act). Kenya applies the MLA Act also to requests from treaty countries.

Although a treaty is not required for MLA (section 3, MLA Act), in practice Kenya insists on a treaty being in place. A full list of treaties could not be provided. MLA can be granted on a case-by-case basis on principles of reciprocity and comity, subject to the Constitution and laws of Kenya. Kenya also subscribes to the Commonwealth (Harare) Scheme. Kenya has applied the Convention as a basis for MLA in an investigation involving corruption (Bailiwick of Jersey).

Dual criminality is strictly required for MLA (sections 40 and 11, MLA Act) and Kenyan authorities consider the underlying conduct rather than the terminology of offences. The provision of non-coercive assistance in the absence of dual criminality is not addressed. MLA is limited to the extent that not all offences established under the Convention have been criminalized.

Requests are executed in accordance with domestic law and, where possible, procedures specified in the request (sections 46 and 9(c), MLA Act).

Kenya allows for taking evidence or testimony using video technology (section 22 MLA Act). A limitation on the use of information obtained through MLA (sections 41, MLA Act; 116, POCAMLA) is adhered to.

The Office of the Attorney General (OAG) is the Central Authority for MLA (section 5, MLA Act). OAG transmits and receives all requests via the Ministry of Foreign Affairs and International Trade and executes or arranges for their execution. In urgent circumstances, Kenya accepts requests through the International Criminal

Police Organization (INTERPOL) rather than diplomatic channels and by telephone, if confirmed forthwith in writing.

Section 8(4) MLA Act provides that assistance shall be granted as expeditiously as practicable. Kenya usually requires an average of six weeks to respond, depending on the complexity of the matter.

Regulations on MLA are being developed by OAG and DOJ in consultation with ODPP.

Kenya reports receiving nine incoming MLA requests in the last 3 years related to UNCAC offences. None have been refused to date.

Kenya recognizes grounds for refusal (section 11, MLA Act). There is no legal restriction on MLA for fiscal matters (section 43, MLA Act).

Section 48 MLA Act provides a legal basis for spontaneous sharing of information.

The transfer of prisoners is possible subject to routine conditions (section 16, MLA Act); the transfer of persons who are not detained is not addressed.

Confidentiality of requests and their content is maintained, except for disclosure in the criminal matter specified in the request and where otherwise authorized by the other State (section 42, MLA Act).

MLA may be postponed if it would interfere with an ongoing investigation or prosecution (section 10, MLA Act). Section 8 (6) of the MLA Act requires the competent authority to promptly inform a requesting State of the reasons for refusing MLA. A duty to consult before refusing or postponing assistance is not addressed.

Kenya's legislation addresses the issue of costs in line with the United Nations Convention against Corruption (section 45, MLA Act).

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Kenyan authorities cooperate with their foreign counterparts through the Witness Summonses (Reciprocal Enforcement) Act (Cap. 78, currently only applicable in Uganda) and POCAMLA. MLA channels can be used for direct cooperation among law enforcement agencies. Kenya is a member of the East Africa Association of Anti-Corruption Authorities (EAAACA), the Eastern Africa Police Chiefs Cooperation Organisation (EAPCO), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and INTERPOL. EACC has concluded MOUs with its counterparts in the East African Community, and MOUs on police-to-police cooperation exist. Cooperation is sought and provided by the FRC, which has adopted one MOU (Seychelles, 2013) but is not party to the Egmont Group. ODPP is a member of the African Association of Prosecutors; International Association of Prosecutors; Commonwealth Regional Programme for DPPs; and Heads of Anti-Corruption and Money-Laundering Agencies. Kenya's multilateral treaties provide a mechanism for law enforcement cooperation. Kenya partly considers the Convention as the basis for such cooperation.

Kenya engages in the exchange of personnel and liaison officers with foreign law enforcement agencies through EACC, CID and KRA.

Joint investigations are possible in accordance with international arrangements, including EAACA, EAPCO and ESAAMLG. An example involving a tax evasion case was reported.

The reviewers welcome indications by Kenya on the need to adopt specific legislation on covert surveillance and other special investigative techniques.

3.3. Challenges in implementation

The following recommendations would further strengthen existing anti-corruption measures:

- Continue to devote adequate resources and attention to training/capacity-building for authorities responsible for international cooperation.
- Adopt measures to ensure that offences under the Convention are extraditable under Kenya's laws and treaties, considering that not all States are designated countries to which the extradition laws apply.
- Reviewers welcome indications that Kenya may review its position towards the application of the Convention in extradition proceedings.
- Continue to ensure that fair treatment guarantees are applied at all stages of extradition proceedings.
- Take measures to address delays in extradition proceedings.
- More closely align its laws with article 44(15) regarding the discriminatory purpose of requests.
- Adopt measures to provide for consultations before refusing extradition.
- The reviewers welcome the swift adoption of the Transfer of Prisoners Bill to provide greater legal certainty in corruption-related cases.
- The reviewers welcome the adoption of MLA Regulations to provide greater certainty in MLA cases and to address the recommendations of the present review.
- Consider taking steps towards a more flexible application or interpretation of the dual criminality requirement, to ensure that the widest measure of assistance be granted in respect of offences under the Convention, and ensure the provision of non-coercive assistance.
- Adopt measures to address a duty to consult before refusing or postponing assistance.
- Adopt measures to address the transfer of persons who are not detained for MLA.
- Adapt its information systems to compile relevant information on existing and future treaties on international cooperation.
- Since Kenya is not party to the Egmont Group, the reviewers welcome the conclusion of further memorandums of understanding by FRC.

- The reviewers welcome indications by Kenya on the need to adopt specific legislation providing for special investigative techniques, which could also clarify the admissibility of related evidence.
- The authorities are encouraged to maintain comprehensive statistics on the number of extradition and MLA requests received, the nature of such requests, and status of completion, including the number of requests rejected and reasons, as well as timeframes for responding to requests.
- Kenya is encouraged to maintain comprehensive statistics on law enforcement cooperation, including existing and future agreements.

3.4. Technical assistance needs identified to improve implementation of the Convention

- Legislative drafting, legal advice, model agreements/arrangements (articles 45, 47, 48, 50).
 - Good practices/lessons learned (articles 46, 47, 48, 50).
 - Development of an action plan for implementation (articles 46, 47, 48, 50).
 - Capacity-building assistance to national authorities (articles 46, 47, 48, 50).
 - On-site assistance by a relevant expert (articles 45, 46, 47, 48, 50).
 - Other technical assistance (article 48).
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