



**UNODC INTERNATIONAL EXPERTS MEETING ON MANAGEMENT
AND DISPOSAL OF RECOVERED AND RETURNED STOLEN
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*Use of Settlements and their Implications on the Recovery and Return of
Stolen Assets*

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Outline



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Introduction

- ▶ In Kenya the use of settlement is recognized as our Constitution sets out alternative dispute resolution mechanism as one of the principles to be applied in the exercise of judicial authority. The use of Alternative Dispute Resolution is not limited but subject to the non contravention of the Bill of rights and the Constitution.
- ▶ Articles 10, 201 of the Constitution and the Public Finance Management Act 2012, set out our national values and principles to be applied in management of public finance. We have domestic legislations which allow the use of ADR in the resolutions of disputes

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- ▶ Since 2015 Kenya has adopted a multi-agency approach comprising of law enforcement agencies in investigations and prosecution of corruption and economic crimes, with more focus on financial investigations for money laundering to enhance recovery of proceeds of crime.
- ▶ The Proceeds of crime and Anti-money laundering Act (POCAMLTA) provides for recovery of proceeds of crime through the use of Kenya's Civil Procedure Rules.

National Legislations authorizing settlements

- ▶ Constitution Article 159(2)(c)
- ▶ Anti-Corruption and Economic Crimes Act Section 56B
- ▶ Civil Procedure Act Cap 21 Section 59C and the Civil Procedure Rules
- ▶ Proceeds of crime and Anti-money Laundering Act and Criminal Procedure Code

Kenya's experience on Settlements

(a) Misc Appl. No.1111 of 2003 KACC -Vs-Kamlesh Pattni,Uhuru Highway Development Ltd & Others

- ▶ The suit was filed in 2003 for the recovery of the Grand Regency Hotel from the Respondents arising out of the Goldenberg corruption scam. After a delay of five years in the High Court, the Commission entered into negotiations with the respondents and recorded a consent transferring the property (Hotel) worth Kshs 2.4 billion or US\$22.2 million, to the Central bank of Kenya. This was made possible through the amendments to ACECA which added a new section 56B authorizing out of court settlements.



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(b) EACC -vs- Comen Ltd

- ▶ EACC recovered 18 titles of public property worth around Kshs 2 billion or US\$19million which had been irregularly allocated to private persons.

(c) Misc Application No.4 of 2017 Assets Recovery Agency -vs- Quorandum Ltd & Others

The ARA is established under POCAMLA as one of the principal institutions to combat money laundering. Its mandate is to recover all proceeds of crime. The law authorises the Agency to file civil proceedings to recover proceeds when there is a criminal investigation or prosecution. The Agency has filed several cases seeking orders of forfeiture to recover funds fraudulently obtained which were used to acquire several assets. It is currently negotiating with one of the Respondent beneficiary of the funds stolen from Youth Enterprise Development Fund on a repayment scheme for the recovery of Kshs 8.8 million.

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(d) Jersey -vs- Windward trading Limited

- ▶ This case involved corruption and money laundering by a former chief executive officer of a government corporation (Kenya Lighting and Power Company) one Samuel Gichuru and a former Kenyan minister of Energy Chrysanthus Okemo. The two officials received bribes for awarding engineering and energy contracts which were paid through Windward trading Limited a company belonging to Mr Gichuru. The bribes were paid into accounts held at Jersey's HSBC Bank Plc and Royal Bank of Scotland International.
- ▶ The Isle of Jersey conducted investigations and froze funds amounting to £ 3million held in Bank accounts in Jersey. It sought legal assistance from 12 different countries.

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- ▶ The Jersey government and Kenya have in principal agreed to an Assets Sharing Agreement of approximately £3.6millin ,where Jersey has graciously agreed to be paid only a portion of its expenses for the case. The proceeds will not be released to Kenya ,but will released to Crown Agency to be expended toward public good project agreed upon by Kenya .The Kenya Government has identified a project ,the construction of low cost building schools in targeted vulnerable communities in arid ad semi arid areas.

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(e) Smith and Ouzman case

- ▶ This was a case involving bribery of English nationals in the procurement of contracts for supply of ballot papers. The UK through National Crime Agency conducted investigations resulting in two Englishmen being tried and convicted under the English Bribery Act and confiscation orders made. The Company was also found guilty and fined £2.2 million. The UK Government has agreed to share part of the confiscated funds with Kenya amounting to Kshs. 49million which have been used to buy 7 ambulances to be distributed to vulnerable areas through the ministry of Health(

Conclusion

- ▶ Under Kenyan law the repatriated public funds have to be captured in the national budget by the National Treasury and public procurement laws have to be applied. There are challenges encountered in negotiating civil settlement involving grand corruption as the Kenyan public do not support settlement they prefer prosecution and conviction based forfeiture.
- ▶ Using settlements as a mode of recovery of proceeds of crime is important and has potential fast tracking repatriation and resolution of recovery proceedings.

Thank You

