Cooperation on asset recovery: FRACCK

Government of Jersey
Government of the Republic of Kenya

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Introduction: Objectives

• Build on and contribute to literature and experience of asset recovery
• Reflect on lessons learned from FRACCK process
• Inform development of best practices for asset recovery
Kenya and asset recovery

• Key institutions
  • Asset Recovery Agency (ARA)
  • AG’s office and Department of Justice
  • The Police
  • Ethics and Anti-Corruption Commission (EACC)
  • Financial Reporting Center (FRC)
  • Office of the Director of Public Prosecutions

• The Practice
  • ARA has the mandate to recover all assets
  • EACC (civil recoveries) together with the ODPP (criminal recoveries) follow the generic provisions of other laws

• Legal Framework
  • Proceeds of Crime and Anti-Money Laundering Act (POCAMLA)
  • Anti-Corruption and Economic Crimes Act (ACECA)
  • Ethics and Anti-Corruption Commission Act (EACCA)
  • Penal Code (PC)
  • the Criminal Procedure Code (CPC)
  • Leadership and Integrity Act (LIA)
  • the Mutual Legal Assistance Act (MLA Act)
Jersey and asset recovery

- **Legal framework**
  - Proceeds of Crime Law 1999
  - Corruption Law 2006
  - Money Laundering Order 2008
  - Civil Asset Recovery (International Cooperation) Law 2007
  - Proceeds of Crime (Enforcement of Confiscations Orders) Regulations 2008

- **Key institutions:**
  - Jersey Financial Crime Strategy Group
  - Joint Financial Crime Unit
  - Civil Asset Recovery Fund
  - Criminal Offences Confiscation Fund

- **Membership of international and regional groups:**
  - UNCAC extended to Jersey in 2009
  - Camden Asset Recovery Interagency Network (CARIN)
  - EGMONT
  - Core donor of the International Centre for Asset Recovery (ICAR)
The case: Timeline

- **May 2002** – SAR filed by trust company to Jersey Police
- **August 2003** – Notice issued under Investigation of Fraud (Jersey) Law 1990
- **2007** – Jersey Attorney General initiates domestic investigation of Gichuru and Okemo for money laundering offences leading to request for extradition
- **2007–2015** – Legal proceedings ongoing, but subject to significant delay. As a result, the Jersey AG subsequently instructs his team to charge Windward Trading (corporate entity) with several counts of money laundering
- **February 2016** – Windward Trading pleads guilty to four counts of money laundering. Jersey Royal Court subsequently confiscates assets totalling £3.6m
- **March 2017** – Preliminary Asset Sharing Agreement signed
- **December 2018** – Jersey adds signature to the FRACCK, and concludes bilateral MOU on Financial Cooperation with Kenya
The FRACCK: Principles and commitment

• The FRACCK is a multilateral initiative led by the Government of Kenya with UK, Swiss and Jersey Partners.

• It builds on existing anti-corruption norms such as UNCAC and the Global Forum by committing the partners to the following principles:
  • Recovered state assets deriving from corruption should be returned by the Partners (less costs) to Kenya wherever possible following a final judgement
  • Returns should be made in a transparent and accountable manner
  • Returned assets should be used to pursue clearly identified development objectives
  • Partners will mutually agree on the development projects to receive funding
  • Return assets should be subject to an appropriate and ongoing monitoring and evaluation plan
The FRACCK: Process

1. Identify potential assets to be recovered
2. Identify potential implementing organisations
3. Decide unanimously on priorities for the use of funds
4. Monitor progress in returning assets
5. Reporting on progress and outcomes of chosen project
6. Learn lessons for future returns