



# 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

