



UNODC

United Nations Office on Drugs and Crime

Country Review Report of The Republic of Kenya

Review by Democratic Republic of the Congo and New Zealand
of the implementation by Kenya of articles 5-14 and 51-59 of the
United Nations Convention against Corruption for the review
cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Republic of Kenya (Kenya) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Kenya, and other supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from the Democratic Republic of the Congo and New Zealand, by means of telephone conferences and e-mail exchanges and involving from the Democratic Republic of the Congo: Mr. Fidèle Mawete Fakana (Coordinator of the Technical Unit for Combating Impunity of the Minister of Justice); from New Zealand: Mr. Andrew Goddard (Senior Policy Advisor, Ministry of Justice) and Ms. Hannah Cobb (Policy Advisor, Ministry of Justice); and from the Secretariat: Ms. Lindy Muzila and Mr. Badr El Banna.
6. A country visit, agreed to by Kenya, was conducted in Nairobi from 26 to 28 June 2018.

III. Executive summary

7. 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 with the Secretary-General of the United Nations on 9 December 2003.

The implementation by Kenya of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the related executive summary was published on 24 September 2015 (CAC/COSP/IRG/I/4/1/Add.22).

The Convention is directly applicable in Kenya (Constitution, arts. 2(5) and (6)).

The national legal framework for preventing and combating corruption comprises provisions from several laws, notably the Anti-Corruption and Economic Crimes Act (ACECA), the Ethics and Anti-Corruption Commission Act (EACC Act), the Public Officer Ethics Act (POEA), the Bribery Act, the Leadership and Integrity Act (LIA), the Public Procurement and Asset Disposal Act (PPADA), the Public Service Commission Act (PSCA), the Public Finance Management Act (PFMA), the Penal Code, and the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA). The Constitution of Kenya, Chapter Six, however forms the basis of all the integrity requirements.

Kenya has a number of bodies and agencies concerned with preventing and combating corruption, including 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 through the Directorate of Criminal Investigations and the Public Service Commission (PSC).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Kenya has developed and finalized the National Ethics and Anti-Corruption Policy in 2018 that is aimed at mainstreaming ethics and integrity in the management of public affairs as well as synergize all efforts made towards fighting corruption. Other strategies are contained in the Political Pillar of Kenya Vision 2030 which provides the broad anti-corruption policy framework; and the multi-sectoral Kenya Integrity Plan (KIP) (2015-2019), which operates under the umbrella of the Kenya Leadership and Integrity Forum (KLIF).

The OAG and DOJ is tasked with the overall mandate of coordinating anti-corruption policies and strategies. The implementation is monitored through surveys and studies conducted by the KLIF and the EACC, but the system seems to be hampered by a lack of resources.

Kenya actively engages in regional and international cooperation and participates regularly in relevant conferences, meetings and fora, including the working groups under the Convention. Kenya is also member to several anti-corruption networks including the East African Association of Anti-Corruption Authorities (EAAACA), Asset Recovery Inter-Agency Network for Southern Africa (ARINSA), Asset Recovery Inter-Agency Network for Eastern Africa (ARINEA), and International Association of Anti-Corruption Authorities (IAACA).

Article 79 of the Constitution mandated Parliament to establish an independent anti-corruption commission for purposes of ensuring compliance with, and enforcement of ethics and integrity requirements. The EACC Act was thus enacted, establishing the EACC. EACC replaced the Kenya Anti-Corruption Commission (KACC) the Constitution has the status and powers of a Commission under Chapter Fifteen for purposes of ensuring compliance with and enforcement of the provisions of Chapter Six.

A Chairperson, four Commissioners and the Secretary head the EACC. Although the EACC receives adequate annual budgetary allocation from the Government to cater for its operations, it has not been fully facilitated to enable it hire staff to the approved level. The current staff complement is about 30% of the approved level. EACC has also in previous years experienced high turn-over amongst its senior officials

As part of its preventive measures, the EACC is empowered to monitor the practices and procedures of State and public bodies to detect corrupt practices (S. 11(1)(i) EACC Act). However, the failure to adopt its recommendations is not sanctioned.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment, hiring, promotion, and retirement of public officials at the national level is guided by the Constitution (arts. 10 and 232 and Chapter six) and regulated by the Public Service Act of 2015 and the PSCA of 2017 (Ss. 79-84). Other applicable laws include the POEA of 2003 and the LIA of 2012. The County Government Act of 2012 governs the same matters at county level.

Pursuant to article 232 of the Constitution, fair competition and merit as the basis of appointments and promotions. The Public Service Act and the PSC Act set rules and procedures for the selection and assessment of candidates.

Vacancies are published online through the PSC website and in at least one daily newspaper of nationwide coverage, the radio and other modes of communication (PSCA, S. 37).

The Constitution establishes the Salaries and Remuneration Commission (SRC) which includes representatives from different service commissions, the trade unions and the employers.

Development of human resources in the public service including training of public officers and promotion of an ethical environment for public service is a key function of the PSC.

Regular rotation of staff takes place in different institutions including in the judiciary, the EACC, Kenya Revenue Authority (KRA) and the National Police Service.

The Constitution (Chapter Six) and the Elections Act of 2011 set forth eligibility requirements, including moral and ethical requirements, for those seeking to be elected to public office. Such requirements also include declaring any personal interest that may conflict with public duties (Constitution, S. 73).

While the Election Campaign Financing Act has been passed in 2013, it does not come into force until 2022 and there are no transitional rules in place to regulate electoral campaign financing in any elections prior to that date. The Act gives the Independent Electoral Boundaries Commission (IEBC) responsibility for the regulation and administration of campaign financing and requires the IEBC to set spending limits, verify sources of contributions, which can be from foreign sources but not directly from a foreign government, to a candidate and a political party and to provide a framework for the reporting of campaign expenses.

The Election Offences Act of 2016 criminalizes the use of public resources to campaign. Kenya also enacted the Political Parties Act of 2011 which establishes the Political Parties Fund and regulates political parties funding, accounting and auditing. The main source of the political parties Fund is the National Government. Other sources include: membership subscription fee, contributions and donations.

The Constitution (arts. 73, 75 and 80), the LIA (S. 16) and the POEA (S. 12) regulate conflicts of interest. Personal interest includes the interest of a spouse, child, business associate or agent or any other matter in which the officer has a direct or indirect pecuniary or non-pecuniary interest. The EACC holds primary responsibility for overseeing management of conflicts of interest. Conflicts are disclosed to the principal (or other appropriate body) or any other person or entity and to the EACC. The EACC can institute proceedings in cases of non-compliance and can also issue advisories to principals or any other persons or entity on managing conflicts of interest.

Kenya has taken multiple initiatives to promote integrity and ethics in the public service including through education and training provided to all public officers by different institutions (i.e. EACC, KSG, Centre for Parliamentary Studies). Kenya has established the National Integrity Academy which was launched on 17th October 2018. Its curricula focus on leadership, ethics, anti-corruption and integrity.

Kenya has also established the “Public Service Excellence Award” award with integrity as one of the selection criteria.

The LIA establishes a General Leadership and Integrity Code for State officers and mandates all public entities to develop and implement specific leadership and integrity codes. Similarly, the POEA establishes a General Code of Conduct and Ethics for all public officers and mandates all Commissions to establish a specific Code for their public officers. All specific codes should be gazetted.

A State officers or a public officer violating the provisions of the code may be penalised in accordance with the provisions of Part V of the LIA and Part VI of the POEA.

The EACC vets and approves the specific codes for State officers and oversees their implementation.

A State officer or a public officer may only accept a gift given to him in his official capacity if the gift is a non-monetary gift and does not exceed a prescribed value, such a gift should be deemed to be a gift to the public officer’s organisation or to the State (Constitution, art. 76; LIA, S. 14; POEA, S. 11).

Kenya has put in place various channels through which members of the public, including public officials, can report wrong-doing to EACC including an anonymous online reporting platform (BKMS), telephones and emails. EACC also receives reports through a web based Integrated Public Complaints Referral Mechanism (IPCRM).

The independence of the judiciary is established in the Constitution (art. 160). The organization of courts, recruitment and dismissal of judges are governed by the Constitution (arts. 167 and 168) and the Judicial Service Act, the Magistrates’ Act, LIA, POEA and the Public Service Act. Kenya has put in place the Judicial Code of Conduct and Ethics which regulates amongst other things the giving of gifts to judges outside employment.

The public prosecutor enjoys functional independence (Constitution, art. 157). The organization and functioning of the ODPP is regulated in the ODPP Act which establishes the Advisory Board whose functions are to advise the ODPP on recruitment and appointment of members of staff, promotions discipline, and any other matters that may be referred to the Board by the DPP (S. 16). ODPP Officers are subject to the Code of Conduct for Public Prosecutors, they are also guided by a National Prosecution Policy.

Public procurement and management of public finances (art. 9)

Public procurement is regulated by PPADA which replaced the Public Procurement and Disposal Act of 2005. The Act came into force in January 2016 and applies to all State organs and public entities (S. 4). PPADA sets out a comprehensive public procurement regime and provides that open tendering should be the preferred procurement method (S. 91).

Tenders with a value exceeding a prescribed threshold should be advertised.

On 13 June 2018, a presidential executive order was issued requiring all government entities and public owned institutions to publish full details of tenders and awards. Further, starting 2019, all public procurements are undertaken through the electronic platform of the Integrated Financial Management Information System (IFMIS) managed by the National Treasury and Planning.

PPADA establishes the Public Procurement Regulatory Authority (PPRA) as the authority responsible for ensuring compliance with the public procurement laws and regulations. However, the PPRA is lacking necessary resources to undertake its functions. The Act also establishes the Public Procurement Administrative Review Board. PPADA provides for the debarment of persons and entities having violated the procurement process. It provides for offences, classifies areas of

conflict of interest, fraudulent and corrupt practices and collusion (Ss. 40-43) and provides for mechanisms for sanction and resolution. The debarment extends to the directors of the company but not to the shareholders. Decisions on debarment should be taken by the Public Procurement Regulatory Board which was appointed in September 2018. It has 7 members and 2 are yet to be appointed.

The management of public finances is mainly regulated by the Constitution (art. 201) and by the PFMA. Public participation guidelines guide the participation of the public in the budgeting processes at both national and county level.

The Constitution (art. 229) and the Public Audit Act (S. 4) provide for the establishment of the Office of the Auditor General to audit all public entities' accounts.

The Constitution (art. 228) and the Controller of Budget Act establishes the Controller of Budget which oversees the implementation of the national and county governments' budgets. The Controller submits to each House of Parliament a quarterly report on the implementation of the budgets of the national and county governments (S. 9 of the Act).

Kenya has established an automated system (IFIMS) that enhances efficiency in planning, budgeting, procurement, expenditure management and reporting. The system is operational both at the national and county governments and facilitates the traceability of expenses.

Kenya has established the Public-Sector Accounting Standards Board whose function is to set generally accepted accounting standards and to prescribe the minimum standards for proper maintenance of books of accounts for all levels of Government. The Penal Code (PC) provides for penalties of up to 7 years imprisonment for forgery (S. 351), altering of documents (S. 357), and falsification of register (S. 361).

Public reporting; participation of society (arts. 10 and 13)

The Constitution enshrines the principle of access to information held by the government and prescribes relevant procedures (arts. 35 and 118). The Access to Information Act of 2016 (AIA) designates the chief executive officer of each public entity as the Access to Information Officer (S. 7) and prescribes bases for refusal of requests which may be considered broad or vague in nature (S. 6(1)). These prescribed bases for refusal are subject to exceptions where the public interest outweighs the harm to protected interests (S. 6(4)). Requests that are denied or not satisfactorily attended to can be appealed to the Commission on Administrative Justice, and then to the High Court (Ss. 20-23).

Kenya has made progress in simplifying access to information (AIA, S. 5(1) (e)) by creating internet portals such as the e-government, e-citizen, e-procurement, i-tax. The EACC, the Auditors and other institutions publish their periodic performance reports on their respective websites.

The Constitution enshrines the principle of participation by society (arts. 10, 174(c), 184(c) and 196(1)(b)). Various laws have been passed or amended to promote participation of society, to enhance transparency and to promote the contributions of the public to the decision-making process (PFMA, Ss. 137 and 207; County Governments Act, Ss. 91, 94-96 and 100-101; Urban Areas Act, Ss. 21 and 22; PPADA, Ss. 68(3), 126(5), 138 and 179). Civil society is also included in the development of anti-corruption policies.

Some government agencies have set up online reporting mechanisms. These include the IPCRM and the EACC online anonymous public reporting or monitoring system. The EACC has further been engaging Integrity Assurance Officers within ministries, departments and agencies within Government to help in reporting incidences of corruption. In addition, most public bodies have websites and hotlines through which citizens can lodge complaints as well as offices in different administrative regions in Kenya to promote citizen reporting. Some civil society organizations have

concluded memoranda of understanding with governmental entities, such as the police, for civic engagements in the context of corruption preventive measures and awareness raising.

Private sector (art. 12)

Several laws provide a framework for prevention, detection and punishment of corruption in the private sector including the Bribery Act which requires public or private entities to put in place appropriate procedures for the prevention of bribery and corruption (S. 9). The relevant implementing regulations are under development.

The Act also requires the Cabinet Secretary in consultation with the EACC to publish guidance to assist both the public and private sector in preparing for procedures for prevention against bribery (S.12) and mandates the reporting of suspicion or knowledge of bribery in public or private entities (Ss. 14 and 15). These are currently under development and are at an advanced stage of stakeholder consultation.

The AIA requires that private entities given licenses and those performing public duties comply with obligations to proactively disclose information and to provide information to the public on request (Ss. 2, 4 and 16).

Several laws prescribe general provisions and requirements for establishing and operating commercial legal entities. Private associations have also taken steps to subscribe to a Code of Ethics for Businesses in Kenya as a form of self-regulation.

Section 28 of the Leadership and Integrity Act restricts former State officers (which mainly include high ranking public officers and members of the Judiciary, art. 260 of the Constitution) from being engaged by or act for person or entity in a matter in which the officer was originally engaged in as a state officer for at least 2 years after leaving the State office.

The Companies Act in Part XXVII provides for auditing of financial statements of companies. Private and public companies are also required to keep company records available for inspection (S. 1008), as well as to take precautions against falsification of records (S. 1009). In addition, through a 2017 amendment of the Companies Act, an elaborate definition of beneficial ownership was introduced, together with a requirement for companies to keep a register of beneficial owners and the copy be lodged with the Registrar (Ss. 2 and 93). The PPADA provides for instances where a person/consortium may be ineligible to bid due to conflict of interest (S. 55(2)).

The Income Tax Act does not explicitly disallow the tax deductibility of expenses that constitute bribes (S. 16 on Deductions not allowed).

Measures to prevent money-laundering (art. 14)

The Kenyan AML legal regime consists principally of the POCAMLA and its implementing Regulations (2013), the Central Bank of Kenya (CBK) Act, as well as rules, circulars and guidelines issued by CBK, including the CBK Prudential Guidelines of 2013. POCAMLA designates a list of institutions as AML supervisory bodies. For the Designated non-financial businesses and professions (DNFBPs) which do not have a regulator or self-regulatory organization (SRO), the AML supervisory body is the Financial Reporting Centre (FRC).

All financial institutions and DNFBPs must have in place internal AML systems which cover Customer Due Diligence (CDD) requirements including "Know Your Customer" (KYC) standards and identification of beneficial owners, ongoing monitoring of transactions, record keeping, enhanced due diligence in higher risk situations and reporting of suspicious transactions (see art. 52).

Lawyers, notaries and other independent legal professions are not covered by the POCAMLA as reporting institutions.

AML supervisory and regulatory authorities and law enforcement cooperate and exchange information, both domestically and internationally.

POCAMLA also establishes the Asset Recovery Agency (S. 53).

POCAMLA establishes a cross-border declaration system of cash, monetary and bearer negotiable instruments upon entry into or departure from the country if the value is equivalent or exceeds ten thousand USD or its equivalent.

POCAMLA Regulation 27 covers the electronic transfers requirements in line with the Convention.

2.2. Successes and good practices

- Participation of civil society in the development of anti-corruption policies (art. 5);
- Investing in many anti-corruption programmes, assessments and awareness-raising activities including regular legislative reviews, leading to the comprehensive review in 2015 entailing significant legislative reform (art. 5);
- Establishment and operationalization of a cooperation, coordination and collaboration framework between law enforcement, prevention and prosecution authorities (The Multi-Agency Team (MAT) framework) (art. 5);
- Promoting integrity and ethics in the public service through education and taking steps toward the establishment of a dedicated National Anti-Corruption Academy (art. 8);
- Establishment of an Integrated Financial Management Information System (IFMIS) to enhance efficiency in planning, budgeting, procurement, expenditure management and reporting (art. 9);
- Private entities given licenses and those performing public duties are required to comply with obligations to proactively disclose information that they hold and to provide information to the public on request (art. 12);
- Participation of civil society in the development of anti-corruption policies and standing agreements/MOUs for engagement with civil society (art. 13).

2.3. Challenges in implementation

It is recommended that Kenya:

- Continue efforts to strengthen monitoring and evaluation of the anti-corruption policies, including by committing more resources to further monitor the effective implementation of these policies (art. 5);
- Establishes sanctions or consequences for non-compliance by public bodies, with recommendations issued by EACC (art. 6(1));
- Provide EACC with adequate financial and human resources and take measures to ensure its operational independence including by looking into reasons for turn-over of senior officials (art. 6(2));
- Consider establishing transitional rules to regulate electoral campaign financing in any elections prior to the enforcement date of the Election Campaign Financing Act in 2022. IEBC should also put in place the necessary implementing framework in preparation of the enforcement of the Act (art. 7(3));
- Further enhance the effectiveness of the procurement system including by committing the necessary resources to PPRA (art. 9);

- Consider enhancing efforts to monitor whether public and private entities have met requirements to put in place appropriate procedures for the prevention of corruption (art. 12(1));
- Continue efforts to encourage the observance of codes of ethics in the private sector (art. 12(2)(b));
- Explicitly prohibit the tax deductibility of expenses that constitute bribes (art. 12(4));
- Designate lawyers, notaries and other independent legal professions as reporting institutions under POCAMLA (art. 14(1)(a));
- Enhance the enforcement of the cross-border declaration system of cash, monetary and bearer negotiable instruments (art. 14(2)).

2.4. Technical assistance needs

- Training on monitoring and evaluation of public procurement systems, procurement investigations, risk-based audit of procurement and contract management activities, prevention and detection of fraud, corruption in public procurement, preparation of procurement audit/ investigation reports (art. 9);
- Capacity development for investigators and prosecutors (art. 11);
- Capacity development for the private sector (art. 12);
- Implementation of the law on bribery (Bribery Act) particularly on the area of development of guidelines to assist public and private entities to establish procedures for prevention of bribery (art. 12);
- Implementation of access to information laws (art. 13);
- Assistance to create a case management database and facilitation of international cooperation (art. 14).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The asset recovery legal framework consists mainly of POCAMLA, ACECA, EACC ACT, PC, the Criminal Procedure Code (CPC), LIA and the Mutual Legal Assistance Act (MLA Act). These allow for criminal, civil and non-conviction-based forfeiture (POCAMLA, S. 90).

Several institutions play a role in the asset recovery process. These include the police, EACC, FRC, ARA and ODPP. In doing so, they follow the generic provisions of other laws (ACECA, Ss. 23, 26 to 30 and 55; CPC, S. 118; and Evidence Act, S. 180), rather than the streamlined and simplified provisions of POCAMLA which are applied by the ARA under Parts VII to XII. In practice, the police or EACC conduct investigations and trace assets, and EACC or the State prosecutors request measures for their freezing, seizing and confiscation before the courts. ARA has instituted cases for asset recovery, however, most are still pending in court. There is no single national institution specialised in the management of assets, including those stemming from corruption. Those assets are currently managed by the different institutions such as ODPP, EACC and ARA.

Kenyan legislation provides for the spontaneous transmission of information (MLA Act, S. 48). In practice information is spontaneously exchanged through Interpol and the Asset Recovery Inter-Agency Networks of Eastern and Southern Africa, although statistics are not available.

Although Kenya can provide MLA in the absence of a treaty (MLA Act, S. 3), in practice an agreement is required. Kenya has concluded two bilateral treaties and one MOU on MLA. The FRC has concluded 11 MOUs with its counterparts.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Financial institutions are subject to the AML requirements, in accordance with the POCAMLA (Ss. 44-48) and its Regulations, which cover CDD requirements including KYC standards and identification of beneficial owners, ongoing monitoring of transactions, periodic and continuous updating of data, record keeping, and reporting of suspicious transactions. The requirements also include assessing AML risks and taking appropriate measures to manage those risks, applying enhanced due diligence on high risk customers, accounts and transactions, including accounts of domestic and foreign politically exposed persons (PEPs), their family members and close associates.

The FRC issued and circulated a “Guidance to Reporting Institutions on Suspicious Transaction and Activity Reporting” in May 2017. The CBK, the Insurance Regulatory Authority (IRA), the Capital Market Authority (CMA) have in turn issued relevant Guidelines. The guides include the procedures to classify the customers based on risks in addition to examples of red flags and high-risk customers.

The licensing procedures for banks prevent the establishment of shell banks. Moreover, POCAMLA Regulation 25 prohibits financial institutions from entering or continuing a correspondent relationship with a shell bank or with a bank that provides correspondent services to a shell bank.

POEA has established a financial disclosure system (Ss. 26-34) which requires public officers to submit financial disclosures periodically (every two years) and at the beginning and end of their service. The disclosure should cover the income, assets and liabilities of the public officer, his spouse or spouses and his dependent children under the age of 18 years. Domestic and foreign competent authorities can access to asset declaration information, but the public official should be informed and given the opportunity to object within 14 days.

POEA also provides penalties for non-declaration or false declaration, including fines and imprisonment (S. 32).

POEA establishes twelve Responsible Commissions for purposes of overseeing and enforcing the requirements of the Act over various cadres of public service, including the administration of financial declarations. The PSC is the residual commission for all the other entities for whom no responsible commission is prescribed (S. 3).

The manual nature of the system means there is little or no ability to verify the accuracy of information submitted in the declarations.

The Constitution (art. 76) and LIA prohibit State officers from opening, operating or controlling a foreign bank account without the approval of EACC.

The FRC (the Kenyan FIU) was established under section 21 of POCAMLA and started its operations in 2012. It receives and analyses suspicious transaction reports and transmits the results of its analysis to the appropriate law enforcement authorities. FRC has applied for the EGMONT Group membership.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Foreign States are expressly entitled to initiate civil action to request compensation or establish ownership in line with the Convention (Civil Procedure Act, S. 57; MLA Act, S. 26; ACECA, S. 51).

POCAMLMA provides for the enforcement of a foreign restraint order or confiscation order related to money-laundering, whether based upon criminal or *in rem* or other non-conviction-based proceedings (S. 120(1)). The MLA Act (S. 24) also requires Kenya to “take such measures” to “permit a requesting State to give effect to an order of confiscation issued by its competent court or authority”, to “allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases”, to “permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State” and to “preserve the availability of property in Kenya that is subject to confiscation proceedings”.

Measures regarding the identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime that are available in domestic proceedings can also be taken on the basis of a foreign request (MLA Act, Ss. 6(2) and 8; POCAMLMA, S. 119).

POCAMLMA allows Kenyan courts to confiscate property of foreign origin located inside Kenya through a local court decision on a money laundering offence (S. 61 read in conjunction with Ss. 2 and 3).

POCAMLMA (S. 119) and the MLA Act (S. 18) allow competent authorities in Kenya to freeze or seize property upon a foreign request.

To preserve property that is subject to confiscation proceedings that have been or are likely to be instituted in another country, the Attorney-General may apply to the court to issue an order of restraint of the said property (POCAMLMA, S. 120(4)).

The competent authority may seek additional information from a requesting State if it considers necessary. In addition, cooperation may be refused if a requesting State does not provide sufficient and timely evidence or if the property is of an insignificant value (MLA Act, Ss. 8 and 25). However, nothing in the law requires Kenyan authorities, before lifting any provisional measure, to give the requesting State an opportunity to present its reasons in favour of continuing the measure.

Kenya provides for the protection of *bona fide* third parties (POCAMLMA, Ss. 93 and 94; MLA Act, S. 23(3)).

Return and disposal of assets (art. 57)

Kenya provides for the disposal of confiscated assets, including by return to requesting States, to prior legitimate owners or by compensating the victims (MLA Act, S. 26). It does not however provide for the unconditional return of assets stemming from embezzlement of public funds. Reasonable expenses incurred may be deducted (MLA Act, S. 26(3)).

There have not yet been any requests for the return of assets from Kenya. Kenya has also concluded agreements on the final disposal of confiscated assets. However, limited information, including statistics of overall recoveries was provided.

3.2. Challenges in implementation

It is recommended that Kenya:

- Clarify institutional roles of the ARA, EACC and other institutions in the asset recovery process relating to corruption, given the overlapping mandates, and continue efforts to establish an agency specialised in the management of assets, including those stemming from corruption (art. 51);
- Review the financial disclosure systems in line with international good practices; for example, the adoption of an electronic filing system could simplify verifications (art. 52(5));
- Review its legislation to permit its competent authorities to share financial disclosure information for investigation purposes without informing the official in question (art. 52(5));
- Review the MLA Act, including the provisions related to the enforcement of foreign freezing, seizure and confiscation orders, to adapt it to its domestic context (art. 54(1)(a) and (c) and art. 54(2)(a));
- Ensure that, before lifting any provisional measure and whenever possible, the requesting State is given an opportunity to present its reasons for continuing the measure (art. 55(8));
- Continue efforts to strengthen international cooperation for the return of assets, as well as to improve record keeping, case information, and statistics on asset recovery and spontaneous assistance (arts. 56 and 57);
- Take measures to ensure the unconditional return of assets stemming from embezzlement of public funds or laundering of embezzled public funds (art. 57(3)(a));
- Consider concluding further agreements or arrangements to enhance the effectiveness of international cooperation for asset recovery (art. 59).

3.3. Technical assistance needs

- Capacity development in asset tracing and recovery (art. 51);
- Digitisation of records (court records, asset disclosures, etc.) (art. 51);
- Development of policies and procedures for management of confiscated and recovered assets (art. 51);
- Development of legal, policy and governance instruments to underpin the collaboration, coordination and cooperation mechanisms among law enforcement, investigative and prosecution authorities (art. 51);
- Development of software based real time record keeping systems and procedures (art. 51);
- Development and use of software on info graphics to present cases in court, especially those emanating from complex financial investigations (art. 51);
- Development and implementation of financial disclosure system that allows, inter-alia, software-based declarations and targeted verifications (art. 52).

IV. Implementation of the Convention

A. Ratification of the Convention

Kenya signed and ratified the Convention on 9th December 2003 in Merida, Mexico through the then Minister for Justice and Constitutional Affairs on behalf of the Government of Kenya. Kenya deposited its instrument of ratification with the Secretary General of the United Nations on the same date it signed the Convention. The signing and ratification of the Convention was approved by Cabinet in line with the provisions of the former Constitution of Kenya. It required the Executive arm of Government to enter into treaties or international agreements with other countries or international organizations without reference to any other arm of Government. However, under the current Constitution 2010, the Treaty Making and Ratification Act, 2012, the approval of the National Assembly is required as a condition precedent to the ratification of a treaty by Government.

The State submitted a notification to the United Nations Secretary General under Articles 44(6)(a) and 46(14) of the Convention as follows:

In terms of Article 44(6)(a) of the Convention, the Republic of Kenya declares that it does not consider the Convention as a legal basis for cooperation on extradition with other State parties since Kenya's municipal law (especially the Extradition (Contiguous) and Foreign Countries Act, Cap 76 and the Extradition (Commonwealth Countries) Act, Cap 77 requires the existence of a bilateral treaty between Kenya and another State as a condition precedent to extradition proceedings.

The Republic of Kenya declares that pursuant to Article 46 (13), the Central Authority responsible and authorized to receive requests for mutual legal assistance and either to execute or transmit them to the competent authorities for execution shall be:

The Attorney General

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Pursuant to Art 46 (14) of the Convention, the language acceptable to the Republic of Kenya for purposes of Mutual Legal Assistance requests is English.

The ratification of UNCAC was in line with the Government's anti-corruption initiatives which comprises inter alia; preventing and combating rampant corruption in the country, cooperating with other countries and stakeholders in the global fight against corruption and benchmarking with other countries on the best practices for fighting corruption and promoting ethics and integrity in the Public Service and the society generally.

Article 2(6) of the Constitution of Kenya, 2010, provides that “Any treaty or convention ratified by Kenya shall form part of Kenya Laws under this Constitution.” In theory, the provisions on UNCAC apply directly but since some provisions relate to criminalization, there is need for domestication to set out the offences, the penalties and other related provisions. Under the previous constitutional dispensation, once treaties were ratified, there was need to domesticate.

The Treaty making and Ratification Act, 2012 was passed to ensure that treaties ratified by Kenya have the requisite force of law. It sets out the procedure for negotiating treaties, their ratification. A proposal to ratify a treaty is initiated by the Executive, approved by the Cabinet, approved by the

National Assembly and then the Cabinet Secretary for Foreign Affairs facilitates the deposit of the instruments of ratification. The Act provides the public participation in the treaty making process and dissemination of information on the implementation of treaty obligations.

Article 132 (1) (c) (iii) of the Constitution requires the President to submit an annual report for debate to the National Assembly on the progress made in fulfilling the State's international obligations. Article 132 (5) on the other hand requires the President to ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries.

B. Legal system of Kenya

Legal Framework

Kenya was a British Protectorate and later colony from 1 July 1895 to 12 December 1963 when the Country attained its independence. On 12 December 1964, Mzee Jomo Kenyatta became the first President of the Republic. This date is celebrated as Kenya's Independence Day-Jamhuri day.

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) (The Constitution of Kenya, 2010 was promulgated on 27th August 2010 following a Referendum); other sources of law are Acts of Parliament, African customary law, general principles of international law, and treaties or conventions ratified by Kenya. Article (2) of the Constitution compliments the provisions of Section 3 of the Judicature Act (Cap 8, Laws of Kenya). Under the Constitution, judicial decisions have the same legal weight as laws.

Notably, Chapter Six of the Constitution of Kenya is dedicated to Leadership and Integrity. Article 10 of the Constitution provides for National Values Good Governance which are binding on all State officers, public institutions and all persons. Art 10 (2) (c) identifies “good governance, integrity, transparency and accountability” as national values and principles of governance.

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 (WPA), Judiciary, National Anti-Corruption Campaign Steering Committee (NACCSC) and the Public Service Commission (PSC).

Being a country that adopts the common law legal system, Kenya has an adversarial legal system whereby two sides; the prosecution is pitted against the defense and the judicial officer sits as an impartial arbiter who will decide the case based on facts presented and the law. Chapter 10 of the Constitution establishes the Judiciary with Superior Courts and Subordinate Courts. The Superior Courts are (art. 162): The Supreme Court; The Court of Appeal; The High Court and Other Courts with the status of a High Court (The Employment and labour Relations Court and the Environment and Land Courts). The Subordinate Courts are (art. 169): The Magistrates Courts; The Kadhis Courts; The Courts Martial and other courts or Tribunals provided by the Constitution. Section 4 of the Judicature Act confers the High Court of Kenya with Admiralty jurisdiction. It exercises admiralty jurisdiction in all matters arising on high seas or in territorial waters or upon any lake or

other navigable inland waters in Kenya.

All Laws of Kenya are available in soft copy and may be downloaded for free from the National Council for Law Reporting (Kenya Law Reports) website <http://www.kenyalaw.org>.

Hard copies are available at a fee from the Government Press Shop, Nairobi.

Under the current Constitution of Kenya, general rules of international law and treaties or conventions ratified by Kenya form part of Kenyan Law. This is in accordance with the Constitution, Article 2 (5 and 6) and the Treaty Making and Ratification Act, which commenced on 14th December 2012.

Institutional Framework

Kenya has a number of institutions involved in the fight against corruption. The principal State agency responsible for enforcement is the Ethics and Anti-Corruption Commission. It is an independent commission established by the Constitution (art. 79) and has 5 commissioners up from the previous 3. The EACC Act 2011 sets out in detail the composition, functions, mandate and operations of EACC. Section 11 of the Act provides for further functions of the Commission in addition to the Article 252 and Chapter 6 of the Constitution.

There are other bodies and law enforcement agencies which play a complimentary role in the fight against corruption in terms of policy, administrative, adjudication and enforcement work against corrupt or unethical conduct. They include:

1. The Presidency
2. The Office of the Director of Public Prosecutions
3. The Judiciary
4. The Office of the Auditor General
5. The Asset Recovery Agency
6. The Financial Reporting Centre
7. The National Police Service
8. The Directorate of Criminal Investigations
9. The National Intelligence Service
10. The National Treasury
11. The Public Service Commission
12. The Office of the Controller of Budget
13. The Commission on Administrative Justice
14. The National Anti-Corruption Campaign Steering Committee
15. The Witness Protection Agency
16. The Efficiency Monitoring Unit
17. The Kenya Leadership and Integrity Forum
18. The Kenya Revenue Authority

19. The Public Procurement Regulatory Authority
20. The Independent Electoral and Boundaries Commission
21. The Ministry of Devolution and Planning (e-government)
22. The Multi-Agency Team that is a collaboration of various agencies coming together to combat corruption.

NB: Each Ministry, Department and Agency within Government is required to have mechanisms to reduce and mitigate corruption (the MDAs are required to have Anti-Corruption Policies).

Kenya is also part of the East Africa Association of Anti-Corruption Authorities and through the Inspector General of the National Police Service, to the East Africa Police Chiefs Cooperation Organization. Kenya is also a member of the Eastern and Southern Africa Anti-Money Laundering Group. Kenya is a member of African Parliamentarians Network against Corruption, which aims at coordinating, involving and strengthening the capacity of African Parliamentarians to fight corruption and promote good governance.

Kenya is a member of Asset Recovery Inter-Agency Network for Easter Africa whose mandate is to exchange information on individuals, companies and assets at the international level with the intention of facilitating the pursuit and recovery of proceeds of unlawful activities and to deprive criminals off their illicit profits.

Political system

Kenya is a Constitutional Democracy. Article 4 of the Constitution of Kenya 2010 declares Kenya a sovereign Republic and states that the Nation is founded on the National Values and Principles of governance set out in article 10 that binds all State organs, State officers, Public officers and all persons whenever they apply or interpret the Constitution, enact or interpret any law or make or implement public policy decisions. It is noteworthy that article 10(2)(c) of the Constitution identifies good governance, integrity, transparency and accountability as some of the values and principles of good governance.

The structure of governance in Kenya is organized at two levels: National and County Governments. The National Government has clear separation of powers between the Executive, Legislature and Judiciary. The President and Cabinet Secretaries are not members of Parliament. The Parliament also plays a critical role in vetting and approving some State Officers who are appointed by the President.

At the County Government level, the Governor and County Executive are not members of the County Assembly thus allows the Parliament and County Assemblies to exercise oversight as well as develop and pass legislation.

Kenya has 47 counties each with a county Government whose head is the Governor. The Constitution, article 6 (2), states that “the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultations and cooperation.” In terms of the distribution of functions between the National Government and the County Governments Part 1 of the Fourth Schedule to the Constitution provides that matters to do with foreign affairs, foreign policy, international trade and criminal law, among others, belong to the National Government. Consequently, issues to do with UNCAC implementation and review belong to the National Government.

The President of Kenya is the Head of State and Government and also the Commander in Chief of the Kenya Defence Forces. He is elected for 5 years and is eligible for re-election for a single term of 5 years. The Constitution requires the President to ensure that various international obligations

are met by the State (through the actions of the relevant Cabinet Secretaries and other government agencies) and he should also submit a report for debate to the National Assembly on the progress made in fulfilling those obligations.

In a separate communication addressed and e-mailed to the secretariat (uncac.cop@unodc.org), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish). Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.

Laws

1. The Constitution of Kenya
2. The Anti-Corruption and Economic Crimes Act
3. The Ethics and Anti-Corruption Commission Act
4. The Public Officer Ethics Act
5. The Bribery Act
6. The Leadership and Integrity Act
7. The Public Finance Management Act
8. The Criminal Procedure Code
9. The Proceeds of Crime and Anti-Money Laundering Act
10. The Commission on Administrative Justice Act
11. The Extradition (Commonwealth Countries) Act
12. The Extradition (Contiguous and Foreign Countries) Act
13. The Foreign Judgments Act
14. The County Governments Act
15. The Public Procurement and Asset Disposal Act
16. The Treaty Making and Ratification of Treaties Act
17. The Mutual Legal Assistance Act
18. The National Police Service Act
19. The Office of the Attorney General Act
20. The Penal Code
21. The Civil Procedure
22. The National Police Service Commission Act
23. The Public Service Commission Act

24. The Witness Protection Act
25. The Companies (Amendment) Act 2017
26. Wildlife Conservation and Management Act
27. Narcotics Drugs and Psychotropic Substances (Control) Act

Draft Bills

1. The False Claims Bill
2. The Whistle-blower Protection Bill
3. The Anti-Corruption Laws (Amendments) Bill

Regulations

1. The Anti-Corruption and Economic (Amnesty and Restitution) Regulations, 2011 (Legal Notice No. 44 of 2011)
2. The Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations (Legal Notice No 179 of 2011)
3. Proceeds of Crime and Anti-Money Laundering Regulations 2013
4. The Central Bank of Kenya Prudential Guidelines on Proceeds of Crime and Anti-Money Laundering (CBK PG08)
5. Leadership and Integrity Regulations L.N 13/2015

Policies and Other Measures

Kenya has a number of policies that guide the fight against corruption. Some of policies have a national application while others are sectoral or institutional. However, Kenya is in the process of formulating a National Ethics and Anti-Corruption Policy which is specifically geared towards mainstreaming the promotion of ethics and integrity and the fight against corruption in the country: The policies and measures include:

1. Kenya Vision 2030 (<http://www.vision2030.go.ke>)
2. Kenya Integrity Plan (2015-2019) <http://www.eacc.go.ke/whatsnew.asp?id=671>
3. Ethics and Integrity in the Public Service (Executive Order No. 6 of 6th March, 2015 (Nairobi: Office of the President, 2015) (<http://www.embuni.ac.ke/images/Docs/executiveorder.pdf>.)
4. Mwongozo: Code of Governance for State Corporations (Nairobi: Public Service Commission & State Corporations Advisory Council, 2015)
6. The Office of the Attorney General and Department of Justice, Strategic Plan, 2013-2017 (www.statelaw.go.ke)
7. Ethics and Anti-Corruption Commission, Strategic Plan 2013-2018 (<http://www.eacc.go.ke/docs/EAAC-strategic-plan-2013-2018.pdf>)
8. Kenya Revenue Authority Anti-Corruption Policy (www.kra.go.ke)

9. Kenya Law Reform Commission Anti-Corruption Policy
10. National Anti-Corruption Campaign Steering Committee Strategic Plan (2016-2021)
11. Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (Nairobi: Office of the Attorney General and Department of Justice, 2015) (www.statelaw.go.ke) and also in the Kenya country profile page in the UN Office on Drugs and Crime (UNODC) website: www.unodc.org.
12. ODPP Corruption and Economic Crimes Guidelines

Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.

The following hyperlinks provide useful sources of information on the assessment of Kenya's anti-corruption initiatives carried out by internal or external assessors:

<https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=KEN>

http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2015_09_28_Kenya_Final_Country_Report.pdf

https://www.unodc.org/documents/treaties/UNCAC/CountryOtherReports/Kenya_Report_of_the_Task_Force_on_Review_of_the_Framework_for_Fighting_Corruption_2015.pdf

<http://www.statelaw.go.ke/wp-content/uploads/2016/08/Republic-of-Kenya-Report-of-the-Task-Force-on-the-Review-of-the-Legal-Policy-and-Institutional-Framework-for-Fighting-Corruption-in-Kenya-2015.pdf>

<http://www.statelaw.go.ke/wp-content/uploads/2016/12/Kenya-UNCAC-Review-Report-Final-28.09.2015.pdf>

<http://www.statelaw.go.ke/wp-content/uploads/2016/12/Kenya-UNCAC-Review-Report-Executive-Summary-Final-24.09.2015.pdf>

Besides the aforementioned sources, Kenya following initiatives towards assessing the corruption initiatives:

1. Kenya: UN Convention against Corruption (UNCAC) Gap Analysis Report and Implementation Action Plan in 2009

Kenya carried out a Gap Analysis Assessment to assess the extent of compliance with UNCAC and measures that needed to be put in place for full implementation with the Convention. This was done from November 2007 to October 2009. This resulted in a publication-"**Kenya: UN Convention against Corruption (UNCAC) Gap Analysis Report and Implementation Action Plan in 2009**"

The Report was eventually launched during the International Anti-Corruption day celebrations at Tononoka Grounds, Mombasa on 9 December 2010. The Gap analysis study informed various changes to the legal, policy and institutional framework for fighting corruption. The exercises culminated in various amendments to the Anti-Corruption and Economic Crimes Act, The Public Officer Ethics Act and also considered during development of the Mutual Legal Assistance Act, the Proceeds of Crime and Money Laundering and the Leadership and Integrity Act. Further the development of the 2nd Medium Term Plan for Kenya Vision 2030 and the draft National Ethics and Anti-Corruption Policy took into consideration the findings of the UNCAC Gap analysis.

2. Progress Report on the Implementation of the African Union Convention on Preventing and Combating Corruption

Kenya is a State party to the AUCPCC, having signed the Convention in July 2003 and ratified the same in February 2007. In 2011, Kenya carried out its review of AUCPCC implementation and produced a report which was eventually forwarded to the AU Commission in 2012. Most of the UNCAC provisions especially with regards to criminalization and international cooperation are reflected in AUCPCC.

3. Mutual Evaluation by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)

Kenya is a member of the ESAAMLG and its Mutual Evaluation Report was considered and approved by the Council of Ministers on 8 September 2011. The Report contains important information relating to Kenya's efforts towards anti-money laundering and the fight against corruption and economic crime in the Country.

Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.

The process of preparing the responses was coordinated by the Office of the Attorney General and Department of Justice on behalf of the Government of the Republic of Kenya. The Attorney General provided overall guidance on the exercise while the Focal Point and the Alternate Focal Point provided technical guidance and logistical support on the review process. Technical responses to the UNCAC self-assessment checklist were provided by a multi-sectoral National Steering Committee on UNCAC Review appointed by the Attorney General, vide Gazette Notice No. 7771 of 18th August 2017, for purposes of preparing responses to the checklist. The Committee was chaired by the Secretary, Justice and Constitutional Affairs and drew membership from public, private and civil society organisations that have a major stake or interest in the fight against corruption in Kenya. Some of the member institutions of the Steering Committee were:

- Ethics and Anti-Corruption Commission
- The Office of the Director of Public Prosecutions
- Judiciary
- The Financial Reporting Centre
- The Assets Recovery Agency
- The Office of the Attorney General and Department of Justice
- Mutual Legal Assistance - Central Authority
- National Anti-Corruption Campaign Steering Committee
- The National Treasury
- The National Police Service-Directorate of Criminal Investigations
- The Kenya School of Government
- The Commission on Administrative Justice-Ombudsman
- Kenya Revenue Authority
- The Kenya Prisons Service
- Transparency International

- The Kenya Association of Manufacturers
- Kenya Law Reform Commission
- National Council for Law Reporting
- Public Service Commission

The Terms of reference for the National Steering Committee stipulates that the members shall:

- a) Undertake the necessary technical preparatory work for Kenya's review on the implementation of its obligations under UNCAC;
- b) Coordinate the completion of the comprehensive self-assessment checklist under Chapter II (Preventive Measures), and V (Asset Recovery) of UNCAC;
- c) Discuss with concerned parties and stakeholders and plan a schedule of meetings:
 - a. between the UNCAC Review Experts from the reviewing States and Kenyan
 - b. authorities for purposes of preparing the UNCAC country review report on Kenya;
- d) Make recommendations for new legislation or review of existing legislation and regulations to address some legislative gaps;
- e) Undertake technical needs assessment, identify potential providers of technical assistance for consideration by the Government and provide guidance on the provision of technical assistance to the relevant or appropriate stakeholders;
- f) Coordinate activities to ensure timely submission of UNCAC comprehensive self-assessment checklist and the supporting documentation (including but not limited to: laws; reports; policies or administrative instruments; case statistics, etc.) to the UNCAC Secretariat by 1st October 2017;
- g) Facilitate the provision of support and training to Ministries, Departments, Agencies and other stakeholders on the requirements of UNCAC for purposes of ensuring efficiency and effectiveness in compliance and implementation;
- h) Advise the Government on measures necessary to comply with Kenya's obligations under UNCAC, and shall in this regard, work with the relevant ministries, Government departments, public bodies, civil society and other stakeholders to coordinate the collection, collation, documentation and updating of information relevant to Government in order for the concerned body or person to meet and implement their obligations in accordance with the Constitution of Kenya, and UNCAC, and,
- i) Facilitate the publication of comprehensive self-assessment checklist on the implementation of UNCAC for public comments and debate before such reports are submitted to the Attorney General for eventual submission to the UNCAC Secretariat (the United Nations Office on Drugs and Crime, Vienna, Austria).
- j) Upon receipt, from the UNODC, of the UNCAC Implementation Country Review Report on Kenya, prepare an analysis of the Report, identifying, inter alia, the extent to which Kenya has implemented its obligations under UNCAC, the challenges faced, technical assistance needs, and recommendations for remedial action, and,
- k) Prepare an Action Plan for the implementation of the UNCAC Implementation Country Review Report.

Consultative workshops were held to gather as much information as possible and the Self - Assessment Checklist completed.

Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.

A. **The Multi Agency Team** approach to fighting corruption was established to facilitate cooperation, coordination and collaboration among the agencies charged with fighting corruption, engage other relevant agencies in order to enhance the effectiveness of the war on corruption, identify resource needs for each agency and lobby for the same, development of effective communication strategies for awareness creation on the gains and achievements made in the fight against corruption. The core members that established the MAT framework are:

1. Ethics and Anti-Corruption Commission
2. Office of the Director of Public Prosecutions
3. Directorate of Criminal Investigations
4. Financial Reporting Centre
5. National Intelligence Service
6. Asset Recovery Agency
7. Office of the President
8. The Office of the Attorney General and Department of Justice

MAT has also continuously co-opted other agencies on a need basis. Some of these co-opted members include: Central Bank of Kenya; National Land Commission; Anti-Counterfeit Agency, Kenya Wildlife Services; National Transport Safety Authority;

The Attorney General is the Chairperson of the MAT. The MAT focusses on Asset Recovery; Corruption; Economic Crimes; Other organized crimes; Disruption of cartels and syndicates.

B. **Kenya Leadership and Integrity Forum** which brings together 15 sectors drawn from Government, Private Sectors, Faith Based Organizations and Civil Society Organizations who come together to implement unified and coherent front for preventing and combating corruption. The Forum has an action plan that provides an operational framework for the implementation, monitoring and evaluation of anti-corruption initiatives in various sectors.

C. **National Council on Administration of Justice** is established under Section 34 of the Judicial Service Act as a high-level policy making, implementation and oversight coordinating mechanism whose mandate is to ensure a coordinated efficient, effective and consultative approach in the administration of justice and reform of the justice system.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

Kenya has substantially complied with all requirements of the Chapters under review except for Article 55 (8) of the UNCAC where an amendment to the Mutual Legal Assistance Act Section 11 is needed to incorporate a provision to the effect that before lifting any provisional measure, taken pursuant to the Art 55 (8) that Kenya shall give the requesting State party opportunity to present its reasons in favour of continuing the measure; within a period of 1 year.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has a number of policies that guide the fight against corruption. Some of policies have a national application while others are sectoral or institutional. However, Kenya is in the process of formulating a National Ethics and Anti-Corruption Policy (NEAP) which is specifically geared towards mainstreaming the promotion of ethics and integrity and the fight against corruption in the country. The formulation of the Policy also coincided with the review of the legal, policy and institutional framework for combating corruption in Kenya following the establishment of the Task Force appointed by Hon. the Attorney General on review of the legal policy and institutional anti-corruption framework in the country. The draft NEAP is in the process of dissemination to the public, pending adoption by stakeholders (See EACC 2015-2016 Annual report available at www.eacc.go.ke). The policy instruments that are currently guiding the fight against corruption include: country providing a high quality of life to all its citizens by 2030 in a clean and secure environment. The Vision comprises of three key pillars: Economic; Social; and Political. The Economic Pillar aims to achieve an average economic growth rate of 10 per cent per annum and sustaining the same until 2030. The Social Pillar seeks to engender just, cohesive and equitable social development in a clean and secure environment, while the Political Pillar aims to realise an issue-based, people-centred, result-oriented and accountable democratic system. Thus, the Political Pillar of Kenya Vision 2030 provides the broad policy framework that Kenya is pursuing towards combating corruption and promoting good governance in the country. Vision 2030 has relevant periodic monitoring mechanisms on its implementation. The implementation of Vision 2030 is overseen by the Kenya Vision 2030 Delivery Secretariat, whose Chief Executive is appointed by and reports to the President.

The Kenya Vision 2030 is available at 2030 www.vision2030.go.ke.

The Kenya Integrity Plan (KIP) (2015-2019):

KIP is a multi-sectoral integrity plan adopted in August 2015, to guide the fight against corruption and promotion of ethics and integrity in 15 sectors of the Kenyan society cut across the two levels of Government - national and county and operates under the umbrella of the Kenya Leadership and Integrity Forum (KLIF). The Attorney General is the Chairperson of KLIF while its secretariat is provided by the Ethics and Anti-Corruption Commission (EACC).

KIP is a successor to the National Anti-Corruption Plan (NACP) adopted in 2006. KIP sector members are drawn from the Executive; Legislature; Judiciary; Law Enforcement bodies; EACC; watchdog agencies; trade unions; professional organisations; civil society; religious organisations; private sector.

KIP is available at www.eacc.go.ke

Kenya Vision 2030

The Kenya Vision 2030 is the national long-term development blue-print that aims to transform Kenya into a newly industrialised, middle-income education sector; constitutional commissions, among others. KLIF holds annual integrity peer-review meetings to assess the implementation of various anti-corruption targets drawn from KIP. The recommendations arising from KLIF meetings have persuasive authority and usually informs various legal, policy and institutional reforms in the fight against corruption.

Ethics and Integrity in the Public Service (Executive Order No. 6 of 2015)

The Ethics and Integrity in the Public Service Policy was issued by H.E. the President through Executive Order No. 6 of 6th March 2015, directing all public entities to take urgent, effective and efficient measures to stop and prevent corruption in the Public Service. The implementation of the policy is overseen by the Presidency. (Available at www.president.go.ke)

Mwongozo: Code of Governance for State Corporations (2015)

The Mwongozo: Code of Governance for State Corporations was developed by the Public Service Commission and the State Corporations Advisory Council and issued in 2015. Its main objective is to address issues of poor corporate governance in the public sector. It is mainly implemented through the instrument of Performance Contracting, overseen by the Presidency.

Mwongozo is available at www.scac.go.ke

The Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (Office of the Attorney General and Department of Justice, 2015).

The Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya was prepared by a Task Force chaired by the Attorney General of the Republic of Kenya. The Task Force sought to review the legal, policy and institutional framework for fighting corruption in Kenya, and submitted its Report to H.E. the President on 20th November

2015, recommending various policy, legal and institutional reforms necessary for the eradication of corruption in Kenya

Some of the recommendations of the Task Force have led to the reform of various laws and institutions and even development of new laws (such as the Whistle-blower Protection Bill, 2017; the False Claims Bill, 2017, and the Anti-Corruption Laws (Amendment) Bill, 2017. Among the laws that were amended include the EACC Act, ACECA, POCAMPLA 2003, Companies Act and Witness Protection Act. New legislation like the Bribery Act was also enacted. In addition, the Report is a major source of the policy interventions recommended in the draft National Ethics and Anti-Corruption Policy.

The report is available at www.statelaw.go.ke and also in the Kenya country profile page on UNODC website.

The Office of the Attorney General and Department of Justice, Strategic Plan, 2013-2017

In the organisation of the Government of the Republic of Kenya, the Office of the Attorney General and Department of Justice (OAG&DOJ) has the policy oversight over anti-corruption strategies, integrity and ethics. In line with that mandate, and under its Strategic Plan 2013-2017, OAG&DOJ has set out to carry out various activities geared towards developing and sustaining an effective legal, policy and institutional framework for fighting corruption in Kenya. For more information, see: OAG&DOJ Strategic Plan 2013-2017 (Chapter Five, para. 5.4.7) www.statelaw.go.ke.

Ethics and Anti-Corruption Commission Strategic Plan 2013-2018

Granted that the Ethics and Anti-Corruption Commission is the lead law enforcement agency dedicated to the fight against corruption, its Strategic Plan 2013-2018 contains useful guidance on the strategies the Commission will be employing in the fight against corruption, either by itself or in collaboration with other stakeholders. The EACC Strategic Plan 2013 - 2018 is available at www.eacc.go.ke.

Institutional anti-corruption policies

The following institutions have developed institutional anti-corruption policies as well as other more specific policies geared towards ensuring a culture of integrity in the organisation;

(a) Kenya Revenue Authority

Kenya Revenue Authority (KRA) is a statutory State agency dedicated to the assessment and collection of revenue. Thus, KRA has;

- The Kenya Revenue Authority Anti-Corruption Policy
- Conflict of Interest Policy
- Kenya Revenue Authority Gifts Policy
- Kenya Revenue Authority Whistle-blower Policy.

More information on the KRA policies may be obtained from its website: www.kra.go.ke.

(b) Public Procurement Regulatory Authority

The PPRA is charged with ensuring that all procurement entities observe the provisions of the law among other responsibilities. Thus, PPRA has;

- Public Procurement Code of Ethics for Procuring Entities
- Corruption prevention guidelines in public procurement
- The Long-Term Policy Framework for Public Procurement in Kenya

Available at www.ppoa.go.ke.

(c) Kenya Law Reform Commission

The KLRC is mandated to continuously review all laws and recommend the necessary reforms. KLRC has formulated a policy instrument on anti-corruption known as the Kenya Law Reform Commission Anti-Corruption Policy

(c) Institutions of Higher Learning

Institutions of Higher Learning have put in place Policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Some of the policies put in place by institutions of higher learning include:

- The Code of Conduct and Ethics for Public Universities
- Kibabii University College, Corruption Prevention Policy
- Jomo Kenyatta University of Science and Technology Code of Conduct and Ethics
- Chuka University Code of Conduct and Ethics Policy, 2013
- University of Nairobi Customer Service Delivery Charter 2015
- University of Nairobi Internal Audit Department Internal Auditors Code of Conduct and Ethics

Framework for the Implementation of Values and Principles in Articles 10 and 232 of the Constitution in the Public Service, 2015

This is the policy document for the implementation of the National Values and Principles of Governance under article 10 of the Constitution and article 232 on the values and principles of public service. The key objective for developing the implementation framework on the values and principles is to unpack and unpackage the values and principles for ease of understanding and implementation in the public service. It also provides for the Strategies for the Promotion of Values and Principles and Mainstreaming Values and Principles in Public Service. It is available at www.publicservice.go.ke.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Kenya has put in place measures for implementation of policies. Examples of such measures are:

(a) Enactment of laws and regulations for prevention of corruption. Relevant provisions of the laws include:

- Section 11 and 13 of the Ethics and Anti-Corruption Commission Act, 2011

Section 11 provides:

Additional functions of the Commission

(1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall-(a) in relation to State officers-

(i) develop and promote standards and best practices in integrity and anti-corruption;

(ii) develop a code of ethics;

(b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anticorruption;

(c) receive complaints on the breach of the code of ethics by public officers;

(d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution;

(e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;

(f) oversee the enforcement of codes of ethics prescribed for public officers;

(g) advise, on its own initiative, any person on any matter within its functions;

(h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), as to confidentiality;

(i) subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and

(j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

(2) Deleted by Act No. 18 of 2014, Sch.

(3) The Commission may cooperate and collaborate with other State organs and agencies and any foreign government or international or regional organisation in the prevention and investigation for corruption.

(4) The Commission shall have all powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, this Act or any other written law.

(5) The Commission may request and obtain professional assistance or advice from such persons or organizations as it considers appropriate.

Section 13 provides:

(1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution, this Act, and any other written law.

(2) Without prejudice to the generality of subsection (1), the Commission shall have the power to:

- (a) educate and create awareness on any matter within the Commission's mandate;*
- (b) undertake preventive measures against unethical and corrupt practices;*
- (c) conduct investigations on its own initiative or on a complaint made by any person;*
- (d) conduct mediation, conciliation and negotiation; and*
- (e) hire such experts as may be necessary for the performance of any of its functions.*

- Leadership and Integrity Act, 2012

An Act of Parliament to give effect to and establish procedures and mechanisms for the effective administration of Chapter Six of the Constitution and for connected purposes. The Act in Section 7 provides that a State officer shall respect and abide by the Constitution and the law. Section 16 of the Act requires a State officer, or a public officer to use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties. Further section 40 provides that upon appointment or election, a State officer shall sign and commit to the specific Leadership and Integrity Code issued by the relevant public entity at the time of taking the oath of office or within seven days of assuming a State office.

- Public Officer Ethics Act, 2003

An Act of Parliament to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers and to provide for connected purposes.

Section 9 requires a Public officer to carry out his duties in a way that maintains public confidence in the integrity of his office. Section 11 prohibits a public officer from using his office to improperly enrich himself.

- Public Service (Values and Principles) Act, 2015

An Act of Parliament to give effect to the provisions of Article 232 of the Constitution regarding the values and principles of public service and for connected purposes.

- Executive orders and administrative circulars eg. Ethics and Integrity in the Public Service Executive Order No. 6 of March 2015.

(b) Development of the National Anti-Corruption Strategy such the Kenya Integrity Plan (KIP) (2015-2019) and institutional strategic plans such as the one of the Ethics and Anti-Corruption Commission (2013-2018). Institutions publish periodic reports on the progress of implementation (Refer to the following websites:

www.eacc.go.ke

www.naccsc.go.ke

www.statelawoffice.go.ke

www.publicservice.go.ke

www.ppoa.go.ke

www.klrc.go.ke

(c) Establishment of the Kenya Leadership and Integrity Forum which supports the implementation of the National Integrity Plan. The Forum is made up of stakeholders comprising, the Executive, legislature, Judiciary, county government, constitutional commissions and independent offices, the private sector, civil society, media, faith-based sector, labour unions, professional umbrella bodies among others.

(d) Undertaking specific programmes including, public education training and awareness, institutional system reviews such as risk assessments and advisories against corruption, mainstreaming anti-corruption, ethics and integrity content in the formal education system in the country, integrity vetting of public officers e.g. Police, judiciary and EACC, automation of services in government (e-citizen portal: www.ecitizen.go.ke) such as;

- Tax administration
- Procurement
- Financial management
- Immigration services
- Civil registration
- Health records management
- Issuance of police clearance certificate
- Digitalization of court services and records
- Automation of business registration services

(e) Evaluation reports of the effectiveness of measures taken to prevent and detect corruption which include the following;

- Annual ethics and anti-corruption surveys published by Ethics and Anti-Corruption Commission (EACC)
- Monitoring and evaluation reports on implementation of the National Anti-Corruption Plan published by the Kenya Leadership and Integrity Forum (KLIF)
- Report on impact assessment of the corruption eradication measures in the public service under the performance contracting framework (2007-2014) by the EACC.
- Draft Report on the study of compliance with the declaration of incomes, assets and liabilities provisions of the Leadership and Integrity Act and Public Officers Ethics Act (2011-2015)

Co-ordination of Policies and strategies

- The State Law Office and the Department of Justice is tasked with the overall mandate of coordinating policies and strategies in the fight against Corruption.
- Sec 22 of the Executive Order No 1 of 2018 provides that the State Law Office and Department of Justice is in charge of corruption strategies, integrity and ethics.

How the Kenya Leadership and Integrity Forum works

- The Kenya Leadership and Integrity Forum consists of 15 sectors. Each sector is required to develop and implement anti-corruption plans/ policies and report to KLIF the overall body. The Hon Attorney General is the chairperson of KLIF.
- The working of the Kenya Leadership and Integrity Forum shall be enhanced by coming into force of the Anti-Corruption Policy.

Who does the NEACP affect

- The Policy affects all Kenyans, institutions fighting corruption and key stakeholders.

NEACP Time Frames

-The Policy will be operationalized on a 5-year timetable. The Policy provides that:

“ 6.1.5 Policy Statements and Interventions

The Government shall strengthen the mechanism for monitoring and evaluation of the policy. Specifically, the Government shall;

1.
2. Implement the National Anti-Corruption Policy through a five-year strategic plan that should be aligned with MTP timetable and further broken down into annual budgets and forward plans under the MTEF framework.”

Pending Bills

- Whistle-blower Protection Bill, 2017 and Anti- Corruption Amendments Bill, 2019 have been submitted to cabinet for approval.
- The False Claims Bill is in the drafting stage.

(b) Observations on the implementation of the article

Kenya is in compliance with this article. Kenya has put in place several anti-corruption strategies at various levels of government and relating to specific entities. There are also systems in place to monitor the implementation of these strategies, including through surveys and studies conducted by the Kenya Leadership and Integrity Forum and the Ethics and Anti-Corruption Commission.

During the country visit, the reviewers heard further information relevant to the assessment. In terms of coordination, Kenya Vision 2030 sets the overall direction for transparency and accountability, with other policies cascading out of that.

Policies have been revised to take into account of the latest developments from, for example, the report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, and the UNCAC first cycle review.

The reviewers also heard that there are systems in place to assess and report on progress made in implementing the policies. For example, the EACC must make an annual report to Parliament, and specific risk assessments also take place at the organisational and county levels.

However, the reviewers also heard that there are significant challenges in resourcing the monitoring work. The monitoring work carried out also appeared to focus primarily on scenarios where problems had already arisen, rather than being routine and proactive. If anti-corruption policies are

to be effective, these concerns will need to be addressed.

Kenya has developed and finalized the National Ethics and Anti-Corruption Policy in 2018 that is aimed at mainstreaming ethics and integrity in the management of public affairs as well as synergize all efforts made towards fighting corruption. Other strategies are contained in the Political Pillar of Kenya Vision 2030 which provides the broad anti-corruption policy framework in the country. Vision 2030 has a Delivery Secretariat responsible for its implementation in addition to periodic monitoring mechanisms; The Kenya Integrity Plan (KIP) (2015-2019). KIP is a multi-sectoral integrity plan adopted in August 2015, to guide the fight against corruption and promotion of ethics and integrity in 15 sectors of the Kenyan society cut across the two levels of Government, national and county, and operates under the umbrella of the Kenya Leadership and Integrity Forum (KLIF). The Attorney General is the Chairperson of KLIF while its secretariat is provided by the EACC; The Report on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption which was prepared by a Task Force chaired by the Attorney General. Some of the recommendations of the Task Force have led to the reform of various laws and institutions and then development of new laws.

There also appear to be systems in place to monitor the implementation of these strategies, including through surveys and studies conducted by the KLIF and the EACC. However, the monitoring work seems to be hampered by the lack of necessary resources.

The Office of the Attorney General and Department of Justice (OAG&DOJ) is tasked with the overall mandate of coordinating policies and strategies in the fight against corruption, at both the national and the county levels.

It is recommended that Kenya continue efforts to strengthen monitoring and evaluation of the anti-corruption policies, including by committing more resources to further monitor the effective implementation of these policies.

(c) Successes and good practices

- Participation of civil society in the development of anti-corruption policies.

The reviewers heard that civil society has participated in the development of anti-corruption policies. For example, Transparency International Kenya are regular partners in the development of policies, and on legislation (e.g. False Claims Bill). The reviewers also heard that the National NGO Council, media, Professional Societies of East Africa, and the faith sector are also involved. The private sector has also assisted with developing integrity programmes.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following are practices that have been applied in the prevention of corruption;

(a) Training, education and outreach programmes

- Public outreach and awareness campaigns across the country implemented by EACC, NACCSC and other stakeholders.

- Training of public officials under the public service integrity programme. Key training programmes include, the integrity assurance officers programme, corruption prevention committee programmes and general sensitization of public officers. Other government institutions also have their training programs such as the training institutions under JTI, KRA, Central Bank among others.

- Mainstreaming of ethics and values into all the training programmes for the public service in County and National governments; development and roll out of curricula and manuals on ethics and integrity for public officers by the Kenya School of Government.

Adoption of e-learning strategies by the Kenya School of Government for wider reach and coverage of ethics and integrity training (www.elearning.ksg.ac.ke). Setting up institutional structures and systems (such as corruption prevention committees, corruption reporting channels, conflict resolution and redress mechanisms, maintaining operating gift and conflict of interest registers etc.) for mainstreaming preventative measures against corruption.

- Development of curriculum support materials and mainstreaming anti-corruption, ethics and integrity content in the formal education curriculum.

(b) Integrity monitoring

- Corruption Reporting Channels

- Internal Redress mechanisms for Staff Malpractices and Unethical behaviour (Codes of Conduct)

- Integrity Testing Programme, Integrity Vetting, Gift policy /conflict of interest policy

(c) Anti-Corruption Indicator under PC for MDAs Most government agencies in the criminal justice sector have performance management committees to ensure quality and effective service delivery.

(d) Diagnostic Studies and Risk Assessments

- Systems Reviews and Corruption Risk Assessments and Mitigation Plans. An example is the Case Study of immigration Department that automated passport application and renewal; and visa application processes

- Corruption Prevention Guidelines - Public Procurement and ICT. These guidelines identify some malpractices and make recommendations to enhance integrity.

- The EACC conducted Corruption Risk Assessments (CRAs) at the Council of Governors and 13 County Governments (Executive and Assemblies) with the aim of identifying and profiling Corruption Risks in public institutions and advising on the strategies that should be implemented to mitigate the identified risks (see EACC Annual Report (2015-2016) (www.eacc.go.ke).

(e) Advisory Services

The purpose of the advisory services is to ensure mainstreaming of anti-corruption initiatives in public institutions. In the last financial year, the EACC provided 1,370 advisories to 265 public institutions under the Performance Contracting (PC) framework and also to 13 Counties not included in the Performance Contracting. This involved analyzing, acknowledging and providing feedback to Ministries, Departments and Agencies (MDAs) under the Corruption Eradication Indicator for Performance Contracting Period. Further, the Commission visited 13 public institutions to verify the level of implementation of the anti-corruption indicator in the Performance Contracting framework.

(f) Review of Existing Policy, Legal and Institutional Anti-Corruption Framework

- In 2015 Kenya carried out a comprehensive review of its legal, policy and institutional framework for fighting corruption. The Task force was chaired by the Hon. Attorney General. The report was presented to the President in November 2015 and recommendations were adopted for implementation. As part of the implementation of the report Kenya has come up with The Ethics and Anti-Corruption Commission (Amendment) Act, 2015, the Bribery Act 2016 and the following three Bills:

1. The Anti-Corruption Laws Amendment Bill, 2017
2. The Whistle-blower Protection Bill, 2017
3. The False Claims Bill, 2018

(g) Baseline and End Line Reports

- The EACC carried out a study on Corruption and Ethics in Devolved Services: County Public Officers Experiences, 2015.
- Evaluation of Corruption
- Monitoring and Evaluation of Corruption Prevention Plan Implementation

(h) Cross cutting practices

The following practices have been adopted in the public service to facilitate improved service delivery and promote ethics and integrity.

- E-Government(E-citizen, Websites, Automation - IFMIS, IPPD etc.)
- Huduma centres - these are centres where different government services are offered under one roof.
- Partnerships and Coalitions - KLIF, MOUs and Action Plans
- Social audit and accountability for public projects and programmes

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(a) EACC Annual Reports (various)

The EACC annual report for the year 2015-2016 indicates that as part of the preventive measures undertaken corruption risk assessment were conducted in 13 counties, 1370 corruption advisories under the PC were provided to public institutions, 99246 students and 1548 teachers were sensitized under the school anti-corruption programme, 910 integrity assurance officers and 140 members of corruption prevention committees were trained under the public service integrity programme, 1878 officials of county governments including members of county assembly were trained, 1818 members of the faith sector both Christian and Muslim were trained and over 10,000,000 Kenyans were reached through various media based public education programmes. See www.eacc.go.ke.

(b) Judiciary ombudsman program

In the FY 2015/2016, the OJO received 3586 complaints and successfully resolved 2347, representing a 65% resolution rate at the close of the FY. To create awareness, the OJO participated in 7 ASK Trade Fairs, 5 judiciary open days, 20 public clinics to interact with and educate members of the public on the presence and mandate of OJO. The OJO also conducted 46 spot checks for monitoring compliance at the court stations and trained and engaged with employees and members of the public on ensuring that integrity is mainstreamed in all the station activities.

(c) NACCSC Annual Reports

According to the Half-Year Reports prepared by NACCSC for H.E the President in the periods October 2015 - March 2016 and April -September 2016 (www.naccsc.go.ke), an estimated 500,000 Kenyans were reached weekly through the anti-corruption radio campaign with messages on what corruption is, manifestations, effects and actions that citizens should take to fight and prevent corruption; 37 social audits were held to create awareness on measures that the public (beneficiaries) should institute to fight and prevent corruption during implementation of public projects reaching 1,869 key beneficiaries; and 275 elected top Maendeleo Ya Wanawake Organization (MYWO) Leaders in 28 Counties were trained under the partnership MoU signed between NACCSC and MYWO to fight and prevent corruption in their organization and the counties they represent.

(d) Governance and Anti-Corruption Summit

(e) Integrity monitoring

Section 14 of the Leadership and Integrity Act, 2012 requires public entities which have State officers to establish a conflict of interest register and a gift register. The EACC oversees compliance with these requirements. In the year 2015-2016, the EACC received and analysed 7929 reports/complaints which was an increase of 40% from the previous year which recorded 5660 reports. (see EACC Annual Report 2015-2016 available at www.eacc.go.ke).

(f) Corruption Reporting Channels

The Integrated Public Complaints Mechanism (IPCRM) offers a platform for the public to report corruption matters through a public portal (www.sema.go.ke). This is an initiative launched by the following institutions to jointly receive complaints on corruption, discrimination and hate speech, administrative injustice, and human rights violations.

These institutions are:

1. The Ethics and Anti-Corruption Commission (EACC)
2. The Kenya National Commission on Human Rights (KNCHR)
3. The National Cohesion and Integration Commission (NCIC)
4. The Commission on Administrative Justice (CAJ)
5. Transparency International Kenya (TI-Kenya)
6. The National Anti-Corruption Campaign Steering Committee (NACCSC).

A complaint that can be dealt with by one of the above institutions may be lodged at any of the institutions listed above depending on the convenience of the person making the complaint. The complaint is then referred to the right institution through their internal mechanisms. Such persons receive feedback within 10 days of making the complaint.

The investigative mandate of the EACC is to receive complaints and allegations on corruption, economic crime and ethical breaches, investigate, conduct operations, trace illegally and/or unlawfully acquired, unexplained assets, disrupt corruption networks and recover public assets. In 2015-2016 the EACC received and analyzed a total of 7,929 reports/complaints, representing a 40 percent increase from the previous year which recorded 5,660. In the period under review there were 3,856 reports/complaints which were within the Commission's mandate, compared to 2,747 in 2014/2015. Consequently, a total of one hundred and sixty-seven (167) case files on corruption and economic crime were finalized and submitted to the Director of Public Prosecutions (DPP) for action while other cases are at different stages of completion. Out of these files, the Commission recommended 136 for prosecution, 4 for administrative action and 27 for closure. The Commission also forwarded 4 case files on ethical breaches to the DPP.

KRA has set up the following corruption reporting mechanism for members of the public to report corruption:

- Corruption reporting office on 26th Floor, Times Tower KRA headquarters
- Hotline Telephone No. +254 726 984668
- Email: corruption.reporting@kra.go.ke or cic@kra.go.ke
- Physical visit to report on Corruption
- KRA also has Informer Reward system whereby informers are encouraged to submit information that will enable the authority to collect revenue and pay the informer of 5% of the tax collection from the information but a maximum of Kshs. 2 million (USD 20,000).
- Internal Redress mechanisms for Staff Malpractices and Unethical behaviour (Codes of Conduct).
- Integrity Testing Programme, Integrity Vetting, Gift policy /conflict of interest policy

(g) Anti-Corruption Indicator under PC for MDAs Kenya has adopted a number of Anti-Corruption instruments and has been implementing them. Examples of these include:

- United Nations Convention Against Corruption (signed and ratified on 9th December 2003)

- African Union Convention on Preventing and Combating Corruption (signed in 2003 acceded to in 2007)
- The agreement establishing the Anti-corruption academy as an international organization (signed in September 2010) and is in the process of being ratified
- The London Anti-Corruption document (May 2016)
- African Peer Review Mechanism
- Open Government Partnership

Kenya is currently working with other partner States of the East African Community towards the adoption of an East African Community Protocol on Preventing and Combating Corruption.

(h) Diagnostic studies and Risk assessments

- Systems Reviews and Corruption Risk Assessments and Mitigation Plans.

Systems Reviews involved examination of systems with the aim of identifying corruption loopholes, weaknesses and inefficiencies and advising public institutions on measures to be implemented to mitigate against the occurrence of malpractices.

Reviews were conducted on Parliamentary Service Commission and the Ministry of Education's Free Primary Education Programme. Reports on the findings of these system reviews are set out in the EACC annual report 2015-2016 available at www.eacc.co.ke.

- Corruption Prevention Guidelines - Public Procurement and ICT

The Guidelines emphasize the need for procuring entities to institute an implement clear and transparent management systems, rules and procedures that enhance ethics, accountability and effective controls in the procurement process. The guidelines highlight procurement methods, the procurement process and various manifestations of corruption prevention strategies. The Guidelines also discuss how to institutionalize corruption prevention strategies.

(i) Assessment of existing Policy Legal and Institutional Frameworks

- Kenya carried out a comprehensive review of its legal, policy and institutional framework for fighting corruption. The Task force was chaired by the Hon. Attorney General. The report was presented to the President in November 2015 and recommendations were adopted for implementation (refer to the Report of the Task Force on the Review of the Legal Policy and Institutional Framework for Fighting Corruption in Kenya) As part of the implementation of the report Kenya has come up with The Ethics and Anti-Corruption Commission (Amendment) Act, 2015 and the following two Bills:

1. The Anti-Corruption Laws Amendment Bill, 2017
2. The Whistle-blower Protection Bill, 2017

(j) Baseline and end line reports

- The Ethics and Anti-Corruption Commission (EACC) conducted a Survey on Corruption and Ethics in Devolved Services 2015, between April and June 2015. The primary objective of the Survey was to map out corruption prone areas and unethical practices in the County public service delivery. This will in turn support a more targeted and systematic intervention to address these vices

in County public service delivery. The report showed that procurement financial management public service boards and public works are most prone to corruption in the counties. In particular bribery, theft of revenue procurement irregularities, nepotism, conflict of interest in awarding tenders, shoddy road and bridges construction and forgery of documents are the most prevalent form of corruption experienced in counties. The largest bribes were received in roads and public works followed by housing works services, recruitment of personnel and procurement services. (See Corruption and Ethics in Devolved Services: County Public Officers' Experiences, 2015 available at www.eacc.go.ke)

How performance management committees are deployed

A Performance Management System (PMS) is a systematic process for getting better results from an organization, teams and individuals by managing performance within an agreed framework of planned goals, objectives and standards. A set of tools, processes and actions that allows for maximization of the performance of employees and institutions.

PMS also provides employees with a clear understanding of job expectations; regular feedback about performance; advice and steps for improving performance; rewards for superior performance; and sanctions for deficient performance. The overall goal is to measure employee performance and ultimately the achievement of intended results for the organization. A Performance Management System puts into sharp focus the performance of an individual employee and the subsequent contribution to institutional performance in achieving intended results.

The Government of Kenya has been firmly committed to providing efficient and effective service delivery to the citizenry. To actualize this commitment, strong emphasis has been placed on productivity and performance improvement.

The Cabinet Secretary is answerable for the performance of staff in their Ministries. Staff Performance Management is based on measurable performance targets. Individual performance is linked to organizational performance/performance contract. The administration of staff performance management in each Ministry is undertaken through the Ministerial Performance Management Committee.

The Cabinet Secretary appoints the Ministerial Performance Management Committee in writing and approves the recommendations of the Committee whose membership is:

- (i) Principal Secretary – Chairperson
- (ii) Head of Administration (Not below the level of Director of Administration) – Alternate Chairperson
- (iii) Head of the Human Resource Management and Development - Secretary
- (iv) Heads of Technical Departments - Members
- (v) Head of Central Planning Unit.

The committee has a membership of nine (9) and the quorum shall be five (5) members and meets at least once in each quarter. The Committee may co-opt such members, in writing, as necessary from time to time with the approval of the Cabinet Secretary. The decisions of the Committee are made by consensus or majority vote of the members present. The functions of the Committee are as follows:

- (i) Undertake quarterly review of implementation of Strategic Plans and Performance Contracts;

(ii) Ensure linkage between Institutional Performance Contract and Performance Appraisal System;

(iii) Ensure that the overall assessment of employee performance is within the context of institutional performance as evaluated through staff Performance Appraisal System;

Ensure that the performance of all officers is evaluated and feedback on performance is relayed in writing at the end of the year;

(iv) Hold quarterly performance review meetings;

(v) Consider performance reports from various departments within the Ministry and make recommendations for improvement;

(vi) Review cases of appeals on appraisal ratings between supervisors and appraises;

(vii) Make recommendations to the Cabinet Secretary on the application of Rewards or Sanctions;

(viii) Develop and implement the internal monitoring and evaluation and reporting system; and

(ix) Ensure that the integrity and credibility of the overall process of rewards and sanction system is safeguarded and maintained always.

Members of the Performance Management Committee are expected to perform their duties with diligence, integrity, impartiality and confidentiality. If there is disagreement between the supervisor and an appraise on assessment of performance, the Committee moderates the scores based on verifiable performance indicators and make recommendation to the Cabinet Secretary.

Members of the Performance Management Committee do not discuss or make recommendations in respect of their own performance reports. The Principal Secretary completes the Performance Appraisal reports for them and makes appropriate recommendations to the Cabinet Secretary and they may also be eligible for the awards, provided that they excuse themselves from participating in any decision-making regarding any award for which they are being considered.

For National Government staff serving in the counties, the County Human Resource Advisory Committee (CHRAC) handles all performance management matters.

- There are corruption implementation committees in place (that is in- ministries and various Government departments) which meet regularly to assess/monitor the implementation of anti-corruption plans and the reports are submitted to EACC e.g. KRA submits reports quarterly.

How the automatic passport application/renewal system works

- The system is online. The fee payable is online. The applicant is able to monitor the process of registration and the system provides a notification when the application is processed.
- There being minimum human interaction, the system minimises the possibility of corruption.

The review of legal and policy framework

- The Kenya Law Reform is established to constantly review laws which include the Anti-Corruption laws and make recommendations to the State Law Department and other relevant agencies.

Any cases arising from reporting channels and integrity testing

- All anti- corruption cases arise from reporting channels and integrity testing.
- So far EACC has undertaken integrity tests targeting 367 public officers, 263 passed the test.
- EACC also carries institutional integrity tests such as they recently conducted an integrity test on Kenyatta National Hospital to check on the working of the systems. Such reports are to allow such institutions to take remedial measures.

How educational information is delivered and any measurement of success

- Educational information is delivered through
 - 1) Class Based Training for example Integrity Assurance Training Programme, training various stakeholders e.g. education managers courses.
 - 2) Media based training.
 - 3) Information Education and Communication (IEC) Materials that simplify ethical laws. They are in form of pamphlets, posters, flyers. Such information is available at the EACC website.
 - 4) Outreach clinics
 - 5) Shows, and International & County Trade fairs

- Measurement of Success

Effectiveness is tested through:

1. Surveys. The surveys look at the levels of awareness on corruption (almost 60% of Kenyans know about corruption, what it is, how it affects them and what can be done to fight it. This survey reports are online. The survey may be either Business Survey, Household Survey and the Public Officers Survey on ethical practices.
2. The number of corruption reports made to the commission
3. Attitude and Behavioural Change.

How Information is woven into the Curriculum

Kenya is currently reviewing its curriculum to incorporate anti-corruption and ethical information. This is being done in two ways:

1. Integration and Pathways: this is through subjects and anchored in one big aspect of curriculum called “Citizenship”.

Infusion – in subjects in various levels (from primary school to tertiary level) Curriculum is to be developed to be learner centred.

2. Development of Curriculum support materials available in the website.

(b) Observations on the implementation of the article

As noted above, the reviewers heard during the country visit that there were systems in place to promote ethical conduct, and also to monitor the implementation of these mechanisms. Due to resourcing issues, however, the monitoring mechanisms appear to often be deployed in response to

detected incidents of corruption, rather than as a means to proactively assess and improve systems.

It was unclear, particularly in relation to preventive systems in the private sector, how obligations to adopt preventive mechanisms are enforced, now or in the future. For example, the reviewers heard during the country visit that the requirement for private entities to put in place anti-corruption policies was not currently enforceable due to a lack of guidelines on how to develop a scaled, appropriate anti-corruption policy.

Kenya has made many efforts in the field of prevention, as well as the adoption and modification of laws. For example, Kenya established a Forum to support the implementation of the National Integrity Plan. The Forum comprises stakeholders from the public and the private sectors in addition to civil society, media, and faith-based sector. Moreover, Kenya invested in many anti-corruption programmes and activities including, public education training and awareness, institutional system reviews such as risk assessments and advisories against corruption, ethics and integrity content in the formal education system, integrity vetting of public officers and automation of services in government, setting up institutional structures and systems (such as corruption prevention committees, corruption reporting channels, conflict resolution and redress mechanisms, maintaining operating gift and conflict of interest registers).

The reviewers recommend that Kenya continue efforts to strengthen monitoring and evaluation of the anti-corruption policies, including by committing more resources to further monitor the effective implementation of these policies.

(c) Successes and good practices

- Investing in many anti-corruption programmes, assessments and awareness-raising activities including regular legislative reviews, leading to the comprehensive review in 2015 entailing significant legislative reform;
- Establishment and operationalization of a cooperation, coordination and collaboration framework between law enforcement, prevention and prosecution authorities (The Multi-Agency Team (MAT) framework).

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

1. Evaluation of Anti-Corruption Laws

Kenya has from time to time undertaken evaluation of various Anti-Corruption legal instruments. In the report of the Taskforce on legal, policy and institutional framework for anti-corruption, ethics and integrity comprehensive review was done and recommendations made for amendment and enactment of the following legal instruments:

- The Ethics and Anti-Corruption Act, 2011; the proposals were made to strengthen mechanisms for compliance with prevention recommendations arising from institutional corruption risk assessment and systems review. Other the key proposals are provisions to:

- a. Alter the current structure of EACC in order to facilitate the delivery of its mandate. This has been done by increasing the number of Commissioners from the current three to five (including the Chairperson) and changing their terms of service from full-time to part-time.

- b. Expand and strengthen the mandate and powers of EACC;

- c. Enhance inter-agency collaboration in the fight against corruption;

- d. Ensure that all functions and powers necessary for the execution of the EACC's mandate are provided for.

- Leadership and Integrity Act, 2012; One of the recommendations has to do with candidates seeking election or appointment to State offices. Vesting of more powers on the EACC over vetting of candidates for election and appointment into State offices. The proposed amendments seek to, among other things, strengthen the framework for enforcement of the requirements under the Constitution on leadership and integrity. The Act has not adequately criminalized infractions to the Leadership and Integrity Code as envisaged in the Constitution. Further, the Act has not clearly provided for sanctions which a State officer or a Public officer may be exposed to, or the procedures of invoking the same once it is proved that a State officer or Public officer has violated the various requirements of the Code. The amendments also seek to harmonize LIA with other related laws such as POEA. A proposal is also made for the establishment of an Ethics Tribunal to adjudicate over ethical breaches.

- The Bribery Act, 2016: The Act requires all public and private entities to put in place bribery and corruption prevention procedures failing which the leadership of such bodies will be held strictly and criminally liable. Section 9 of the Act provides:

(1) A public or private entity shall put in place procedures appropriate to its size and the scale and to the nature of its operation, for the prevention of bribery and corruption.

(2) Where a private entity fails to put in place procedures under this section, and where that failure is proved to have been committed with the consent or connivance of -

(a) a director or senior officer of the private entity, or

(b) a person purporting to act in such a capacity, or occupying such a position, by whatever name called, the director, senior officer or other person commits an offence.

Section 12 of the Act sets out:

(1) The Cabinet Secretary shall, in consultation with the Commission, publish guidelines to assist private and public entities in the preparation of procedures required under this Part.

(2) The guidelines under subsection (1), shall be in the Gazette and such other manner as the Cabinet Secretary may consider appropriate.

(3) *The Commission may provide such assistance as may be necessary to any private or public entity or any other person in the implementation of procedures issued under this section.*

- Public Officer Ethics Act, 2003 (No. 4 of 2003) (POEA)

The report proposed to strengthen the regime for management of financial declarations so that they become a more effective tool in checking illicit enrichment by State Officers and Public officers.

- Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) POCAMLA establishes a strong legal framework for dealing with proceeds derived from all crimes including corruption, as well as combating the laundering of such proceeds. The Asset Recovery Agency (ARA) established under the Act has been empowered to undertake asset recovery in respect of corruptly-acquired assets. Both EACC and ARA have the mandate on asset recovery.

- Mutual Legal Assistance Act, 2011 (No. 36 of 2011) (MLA Act)

The legislation aims to inject greater efficiency and effectiveness in international co-operation, the report proposed amendments that aim to provide the necessary legal underpinning for co-operation among competent authorities and their counterparts in foreign jurisdictions. Another important proposal is to recognize “prosecutorial judicial authority established by law” as a mainstream competent authority. It is also aimed at making clear the interpretation of some of the provisions in the Act, which may be amenable to different interpretations.

- Commission on Administrative Justice Act, 2011 (No. 23 of 2011) (CAJ Act)

There are several proposed amendments to the CAJ Act, which seek to, *inter-alia*;

- a. Expand the definition and scope of “fair administrative action” in line with constitutional provisions in Article 47;
- b. Expand the scope of sanctions which can be recommended against a Public officer who is proved to have violated the right to fair administrative action;
- c. Establish an enforcement mechanism for implementation of the recommendations made by the Commission, including timelines for compliance.

- 9.2.9 The Elections Act, 2011

It is recommended that Section 22(1) of the Elections Act, 2011 be amended to provide for the application of the Leadership and Integrity Act, 2012, as one of the laws to be employed in the determination of the eligibility of persons seeking election to a public office.

- Government Contracts Act (Cap. 25)

It is recommended that the Government Contracts Act be amended to provide for a new paragraph 4A, whose effect is to render null and void any Government contract obtained through corrupt conduct and absolve the Government from any liability in case a contract was obtained through corrupt acts. This is meant to send a warning to contractors not to bribe public officials.

- Legislative proposals

The Task Force identified and reviewed Bills which address some of the challenges faced by institutions which play key roles in the fight against corruption. These Bills are pending in parliament. The Bills include:

i. Public Audit (Amendment) Act, 2015

This Amendment Act seeks to overhaul the Public Audit Act, which provides the framework of operation for the Office of the Auditor General, an independent office established under Article 229 of the Constitution. It is mandated to audit and report, at the end of every financial year, the accounts of the national and county governments, all courts, every Commission and Independent Office, Parliament and County Assemblies, and political parties funded from public coffers. In the process of conducting such audits, the Office often establishes cases of fraud or corruption. The Office is, therefore, a key stakeholder in the fight against corruption and economic crime. The proposed amendments to the Bill seek to make it possible for the Office to share, in a timely manner, information on suspected fraud or corruption with other law enforcement authorities.

ii. Controller of Budget Act 2016

The Office of the Controller of Budget is established under Article 228 of the Constitution, to oversee the implementation of the budgets of the national and county governments by authorizing withdrawals from the public funds such as the Consolidated Fund, Contingencies Fund and the Equalisation Fund. Just like the Auditor General, this is an important undertaking in terms of combating corruption as the main target of the corrupt individuals is the public purse from whose coffers the withdrawals have to be approved by the Office. Under Section 10(b) of the Act, the Controller of Budget is empowered to prepare and submit a Special Report to any State agency as may be appropriate pursuant to an investigation the Office has conducted pursuant to Article 252(1) (a) of the Constitution. This presupposes that the Office can share information, in the form of a report, on matters such as suspected fraud or corruption it has established in any of the public bodies whose budgets it is monitoring. Though this is a laudable provision in terms of fighting corruption, it suffers a limitation to the effect that such information must be preceded by an investigation. A proposal is made that this provision should be reviewed to enable the Controller of Budget to share such information when it is reasonably suspected, instead of waiting until an investigation is conducted as this may take time. This would also reduce the chance of duplicated investigation since the State agency with whom the information is shared may also be required to initiate an investigation into the matter.

iii. Public Procurement and Assets Disposal (Amendment) Act, 2015

Public procurement accounts for over 70% of the National Gross Domestic Product (GDP). Notably, it has been established through various surveys that almost 80% of all corruption in the country is procurement-related. The Public Procurement Regulatory Authority (PPRA) is the national agency dedicated to regulation and oversight of public procurement. PPRA is established pursuant to the Public Procurement and Disposal Act, 2005 (PPDA). The PPDA, together with the PPDA Regulations of 2006, and Procurement Guidelines issued from time to time by PPRA, constitute the main legal regulatory framework for public procurement and disposal in the country. Article 227 of the Constitution sets the constitutional basis of oversight over public procurement and disposal of goods and services in the public sector. PPRA has been overseeing the review of the regulatory framework in the country annually, as it is mandated to do so under the law. Various legislative interventions have thus been undertaken on the law. However, in 2014, the Public Procurement and Assets Disposal (Amendment) Bill was developed, which seeks to review and overhaul the entire PPDA. From experience, some of the critical areas which the country must ensure have been well addressed through the Bill include the following:

a. The issue of capacity constraints within PPRA.

b. PPRA must be enabled to enforce discovery of documents from procuring entities when they are the subject of inquiry or investigation.

c. To grant operative immunity to the Public Procurement Administrative Review Board (PPARB), for decisions made in good faith.

d. Extension of debarment sanction to the individual owners or directors of companies found to have engaged in procurement irregularities.

e. The law must ensure public entities adopt the e-procurement platform, as a corruption reduction strategy in public procurement and disposal.

f. Handling procurement in corruption-prone areas, such as: mega-projects; security; extractive industries; and emergency operations (such emergencies or as during national, disasters), among others.

g. Provide for consumer rights to quality goods and services, as per Article 46 of the Constitution, and address procurement complexities involving disadvantaged groups.

- Further, some additional amendments are proposed to the Public Procurement and Asset Disposal (Amendment) Bill, 2015, as follows:

a. To provide for a Code of Conduct and Ethics (in the Schedule to the Act) to be signed by all suppliers of goods and services to government MDAs; committing themselves to uphold integrity in the procurement process.

b. Provide capacity-building of persons involved in public procurement as a function of the Authority to enhance corruption prevention.

c. A clause be inserted in all contracts entered into by public entities to the effect that if it is discovered that the contractor bribed a public official or offered any form of benefit before, during or after the conclusion of the contract, the contract shall be rendered null and void and that the Government shall be under no obligation to honour any term or condition in the contract, and further, the Government, through EACC, shall initiate proceedings towards the recovery of any benefit so obtained.

d. An amendment to include additional offences:

(i). Inappropriate disposal of assets

(ii). Failure to have an approved procurement plan by a procuring entity

(iii). Failure to comply with reporting requirements to the Authority

(iv). Varying or amending procurement contracts beyond stipulated limit

(v). Failure to staff a procurement unit with procurement professionals.

(vi). Wilful negligent use of a procurement method without satisfying conditions set forth for the method, and,

(vii). Failure to submit documents required by the Authority.

(iv). False Claims Bill, 2017

This Bill seeks to strengthen the mechanism of social accountability and the use of *qui tam* actions in the fight against corruption more specifically the to curb false and fraudulent claims against government. *Qui Tam* actions are actions whereby recovery suits are instituted by private persons for the State with a portion of recovered damages being awarded to the plaintiff as incentive.

(v) Anti-Corruption Laws (Amendment) Bill, 2017

(vi). Whistle-blower Protection Bill, 2017

This Bill provides for the protection and other measures to ensure the safety and well-being of those who risk their lives and livelihood by disclosing and exposing corruption scandals to law enforcement agencies. The report recommended the finalization of this Bill as a matter of priority.

vii. Access to Information Act, 2016

The report acknowledged that an effective war on corruption presupposes a situation where there are appropriate mechanisms to facilitate access to public information by the citizens. It recommended that Kenya enacts legislation to give effect to the right of Access to Information. In furtherance to the recommendation, Kenya enacted the Access to Information Act, 2016. This Act gives effect to Article 35 of the Constitution (Right to Access to Information); further it confers on the Commission on Administrative Justice the oversight and enforcement functions and powers.

2. Review of administrative instruments. Code of conduct for Public officers

Kenya has initiated a raft of measures aimed at strengthening administrative mechanisms to regulate the conduct of public officials. These includes: Leadership and integrity code of conduct for State officers and public officers in line with the provisions of the Leadership and Integrity Act. According to the EACC annual report 2016-2017, 118 out 136 public entities had their codes for State officers approved by EACC. In addition, in their assumption of office by governors and MCAs all State officers subscribed to the leadership and integrity code for State officers. The EACC further reviewed codes of conduct and ethics for public officers from 47 public entities to align them with section 57 of the Leadership and Integrity Act.

Executive Administrative Recommendations

Some of the recommendations of the taskforce was that the President should take the following measures:

- Non-appointment of persons to boards, Ambassadorial, Cabinet or Principal Secretary positions who are under investigation and/or prosecution for corruption-related offences and whose integrity is deemed compromised.
- Removal from office for persons appointed as Cabinet Secretary or Principal Secretary positions, board members, ambassadorial and other offices who are under investigation and/or prosecution for corruption related offences and whose integrity is deemed compromised.
- Repeated and re-emphasized public statements and support for anti-corruption efforts in all required reports to Parliament, public holiday addresses.
- Public endorsement and participation in activities of relevant agencies responsible for and/or undertaking anti-corruption and integrity activities.
- Secure the protection and motivation of public officers who report acts of corruption intimidation against or reprisals or dismissal from employment and facilitate public commendation and recognition for public officers who are champions of integrity.
- Enhance initiatives that provide an enabling environment for the media, civil society organizations and ordinary citizens to report cases of corruption and ensure that such reports are acted upon and feedback given within a reasonable time by the recipients of such reports

Periodic reviews

- Under sec 6 of the Kenya Law Reform Act provides:

6. (1) The Commission shall:

- (a) keep under review all the law and recommend its reform to ensure:
- (i) that the law conforms to the letter and spirit of the Constitution;
 - (ii) that the law systematically develops in compliance with the values and principles enshrined in the Constitution;
 - (iii) that the law is, among others, consistent, harmonized, just, simple, accessible, modern and cost-effective in application;
 - (iv) the respect for and observance of treaty obligations in relation to international instruments that constitute part of the law of Kenya by virtue of Article 2(5) and (6) of the Constitution;
 - (v) keep the public informed of review or proposed reviews of any laws; and
 - (vi) keep an updated date of all laws passed and reviewed by Parliament;
- (b) work with the Attorney-General in preparing for tabling, in Parliament, the legislation and administrative procedures required to implement the Constitution;
- (c) provide advice technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law;
- (d) upon request or on its own motion, undertake research and comparative studies relating to law reform;
- (e) formulate and implement programmes, plans and actions for the effective reform of laws and administrative procedures at national and county government levels;
- (f) consult and collaborate with State and non-State organs, departments or agencies in the formulation of legislation to give effect to the social, economic and political policies for the time being in force;
- (g) formulate, by means of draft Bills or otherwise, any proposals for reform of national or county government legislation;
- (h) upon request or on its own motion, advise the national or county governments on the review and reform of their legislation;
- (i) undertake public education on matters relating to law reform; and
- (j) perform such other functions as may be prescribed by the Constitution, this Act or any other written law.
- The EACC also continually proposes reviews to laws to integrate ethics and anti-corruption provisions.
 - PPRA has annual procurement summits in which they deliberate on any reviews on procurement laws.
 - There are Annual Miscellaneous Amendments to the Law where the AG writes to all the agencies to suggest areas of the law that ought to be reviewed.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In March 2015, five Cabinet Secretaries who were implicated in ongoing corruption investigation were prevailed upon to step aside pending the conclusion of the investigations.

Persons proposed for appointment to State Office under go vetting by the National Assembly in the case of appointment by the National Executive and the County Assembly in the case of County Executives prior to their appointment.

(b) Observations on the implementation of the article

In addition to establishing a Law Reform Commission, Kenya conducts regular review of its anti-corruption relevant legal instruments and administrative measures, including a comprehensive review in 2015 that led to significant legislative reform.

The reviewers noted during the country visit that there was little information available about planned, periodic review cycle(s) in the future. The reviewers were informed about the Kenya Integrity Plan 2019 – 2023 that is currently under development and that it would be revised in light of progress against Kenya 2030, the Taskforce Recommendations, and this review.

The Executive Administration Recommendations from the taskforce are comprehensive and, while much remains to be done before they are fully adopted, significant work has already gone into implementing them.

Kenyan authorities confirmed during the country visit that the work of the multi-sectoral National Steering Committee on UNCAC Review appointed by the Attorney General will not end with the completion of the review. The Committee is chaired by the Secretary, Justice and Constitutional Affairs and drew membership from public, private and civil society organisations that have a major stake or interest in the fight against corruption in Kenya. Among the tasks of the Committee are to make recommendations for new legislation or review of existing legislation and regulations to address some legislative gaps and to advise the Government on measures necessary to comply with Kenya's obligations under UNCAC.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In compliance with this requirement Kenya has membership in various local, regional and international organizations.

a) Local collaborations:

- Kenya Leadership and Integrity Forum which brings together 15 sectors which play an active role in the prevention of corruption through various institutional measures and mechanisms.
- Inter-agency collaboration within government on corruption prevention (EACC-NACCSC collaboration on public education and awareness campaign, KSG-EACC collaboration on training of public officials, Kenya Association of Public Administration and Management, Ministry of Education-EACC-KICD collaboration on mainstreaming anti-corruption, ethics and integrity content in curriculum development, EACC-APSEA collaboration on prevention of corruption, EACC-NACCSC-Faith Sector NACCSC-Maendeleo ya Wanawake collaboration, EACC Performance Contracting Secretariat collaboration On mainstreaming corruption prevention).

b) Regional collaborations

Kenya collaborates with the following regional and sub-regional bodies on corruption prevention:

- African Union
- African Union Advisory Board on Corruption
- African Association of Anti-Corruption Agencies
- African Ombudsman and Mediators Association
- African Management Development Institute
- African Association for Public Service Commissions
- East African Community
- African Association of Public Administration and Management
- African Peer Review Mechanisms
- East African Association of Anti-Corruption Authorities (EAAACA)
- East African Revenue Authorities
- East African Police Chiefs Cooperation Organization (EAPCCO)

c) International Collaborations

At the international level Kenya or some of its State authorities are members of the following organizations:

- United Nations
- International Anti-Corruption Academy (IACA)
- Association of Anti-Corruption Agencies in Commonwealth Africa
- Commonwealth Africa Anti-Corruption Centre
- International Association of Anti-Corruption Authorities
- Inter-American Association of Tax Administrators (CIAT)
- Commonwealth Association of Tax Administrators

- Commonwealth Association Administration and Management
- World Customs Association

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In February 2017 Kenya in collaboration with EAAACA and UNODC hosted a training programme for Anti-Corruption officials in the Eastern African region.

Kenyan Anti-Corruption and public officials have undergone training on Anti-Corruption at the IACA, Austria. Regionally the training has been undertaken in Kampala, Uganda. In 2016, IACA trained 9 Kenyans on anticorruption issues during the IACA Regional Summer Academy-Eastern Africa held in Kampala Uganda held from 3rd-9th September 2016. A number of other Kenyan Public Officials and Non-Public Officials have also been trained at the IACA Headquarters in Laxenburg, Austria.

Anti-Corruption officers under the Commonwealth Africa Anti-Corruption Centre in Botswana (see www.thecaacc.org).

Public officials on Anti-Corruption under the African Association of Public Administration and Management, and the African management institute (www.aapam.org; www.africamdin.net).

Annual Conferences of Heads of Anti-Corruption Agencies in Commonwealth Africa - Heads of Anti-corruption agencies in Africa hold annual conferences during which they share ideas on best practices in the fight against corruption. Kenya is a member through EACC.

The Conferences have been held since 2013-2017 in Mauritius, Tanzania, Ghana, Namibia, Malawi.

Examples of Collaborations

- East Africa Community, ministries exchange ideas on policy and best practices.
- EAACA collaborates with EACC on how to handle challenges and best practices.
- EAPCCO cooperates with Kenya on joint operations with regard to corruption, exchange of information, and best practices. East African Police Chiefs have in the last two years met in Nairobi.
- APRM gives an opportunity to African countries to monitor effectiveness of their policies and for the countries to deliberate on governance issues (Kenya is currently Chair).
- The Public Service Commission has participated in collaboration with sister commissions' e.g. South Africa, Australia, and New Zealand etc.
- Kenya is a member to the African Ombudsman and Mediators Association (AOMA) - a membership association for ombudsman associations in Africa with objective to provide best practices in Ombudsmanship. Currently, Kenya's Ombudsman is the Secretary General of AOMA

(b) Observations on the implementation of the article

Kenya actively engages in regional and international cooperation and participates regularly in relevant conferences, meetings and fora, including the working groups under this Convention. National entities have signed a number of memoranda of understanding on cooperation and engage in training and exchange of expertise with other government agencies involved in combating corruption. Kenya is also member to several anti-corruption networks including the East African

Association of Anti-Corruption Authorities (EAAACA), Asset Recovery Inter-Agency Network for Southern Africa (ARINSA), Asset Recovery Inter-Agency Network for Eastern Africa (ARINEA), and International Association of Anti-Corruption Authorities (IAACA).

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;*
- (b) Increasing and disseminating knowledge about the prevention of corruption.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

a) Bodies that Prevent Corruption

1. Ethics and Anti-Corruption Commission

The EACC is established in the Constitution of Kenya 2010 (Article 79) and the EACC Act, 2011. Section 11 sets out its functions as follows:

(1) the Commission shall-

(a) in relation to State officers-

(i) develop and promote standards and best practices in integrity and anti-corruption; (ii) develop a code of ethics;

(b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anticorruption;

(c) receive complaints on the breach of the code of ethics by public officers;

(d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution;

- (e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;
- (f) oversee the enforcement of codes of ethics prescribed for public officers; (g) advise, on its own initiative, any person on any matter within its functions;
- (h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), as to confidentiality;
- (i) subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and
- (j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

(3) The Commission may cooperate and collaborate with other State organs and agencies and any foreign government or international or regional organisation in the prevention and investigation for corruption. (4) The Commission shall have all powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, this Act or any other written law.

1. National Anti-Corruption Campaign Steering Committee

The National Anti-Corruption Campaign Steering Committee (NACCSC) was first established by the Government, vide Kenya Gazette Notice No. 4124 of 28th May, 2004 to complement the enforcement of laws that were enacted to fight corruption. It is one of the approaches to the war against corruption targeting the members of the public. NACCSC mandate was renewed in 2009, 2011 and 2014. Since inception until 2013, NACCSC was policy wise under the then Ministry of Justice and Constitutional Affairs. Following the merger of the Ministry with the Office of the Attorney General to form the Office of the Attorney General and Department of Justice (OAG&DOJ) in July 2013 vide Executive Order No. 2/2013, NACCSC policy direction flows from OAG&DOJ. The current NACCSC members were appointed by the President vide Kenya Gazette Notice No. 6707 dated 19th September 2014.

NACCSC is a multi-sectoral Committee established by the Government to spearhead the conduct of a mass anti-corruption awareness campaign throughout the country, with a view to creating a cultural renaissance that cherishes zero tolerance to corruption and insists on transparency and accountability in the management of public affairs. Membership is drawn from Religious Institutions - Muslims and Christians; Youth, Women and Persons with Disabilities (PWDs) umbrella bodies; and MDAs relevant to the campaign against corruption, including EACC. The campaign is implemented through collaborative efforts and partnership with these member institutions. The Chairperson, EACC is a member of NACCSC (this provides a vital linkage between the two agencies to collaborate) and paragraph 5 (b) of the current Kenya Gazette Notice obligates NACCSC to work closely with EACC.

NACCSC is mandated to undertake a nationwide public education, sensitization and awareness creation campaign aimed at effecting fundamental changes in the attitudes, behaviour, practices and culture of Kenyans towards corruption. Establishment of the campaign was to diversify the approaches to the fight against corruption to include mobilization of the public in the fight and rally

popular support particularly for the enforcement agencies and implementation of the law. NACCSC imparts to the public deeper understanding of corruption, mobilizes the public to participate in fighting and preventing corruption, rallying support for the anti-corruption agencies and initiatives. NACCSC's only mandate is corruption prevention through public education.

Paragraph 5 (g) provides that NACCSC shall have all powers necessary or expedient for the proper execution of its functions, including the power to regulate its own procedures. NACCSC therefore develops its own strategic plan, flowing from which annual workplans are developed and implemented without reference to any other authority, hence its independence is guaranteed.

This independence enables NACCSC to carry out its functions effectively and protect it from any undue influence.

2. Kenya School of Government

The School is established under the KSG Act No 9 of 2012. KSG provides training and research services designed to inform public policy, promote national development and standards of competence and integrity in the public service. It also provides programmes that promote a culture of decency, honesty, hard work, transparency and accountability among public servants.

3. Responsible Commissions under the Public Officers Ethics Act, 2003 and other legislations to administer financial disclosures as a corruption preventive measure. The responsible commissions are set out in section 3 of the POEA as follows:

- The Public Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control and for the public officers described in sub article (d) and (e) of Article 107(4) of the Constitution and for public officers who are officers, employees or members of State corporations that are public bodies.
- The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.
- The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.
- The Electoral Commission is the responsible Commission for councillors of local authorities.
- The Teachers Service Commission established under the Teachers Service Commission Act (Cap. 212) is the responsible Commission for teachers registered under that Act.
- The Defence Council established under the Armed Forces Act (Cap. 199) is the responsible Commission for members of the armed forces, within the meaning of that Act.

The National Security Intelligence Council established under the National Security Intelligence Service Act, 1998 (No. 11 of 1998) is the responsible Commission for members of the National Security Intelligence Service established under that Act.

- The Witness Protection Advisory Board established under the Witness Protection Act, 2003 shall be the responsible commission for the members of the Witness Protection Agency established under that

- There is a proposed amendment to section 3 of POEA through the Anti-Corruption Laws (Amendment) Bill 2017 to align the responsible commissions to the Constitution and other laws.

4. Public Service Commission

Established under article 233 of the Constitution of Kenya 2010 is mandated to promote, evaluate and report to the President and Parliament to the extent to which the values and principles in Articles 10 and 232 are complied with in the public service.

5. National Police Service

Established under Article 243 of the Constitution of Kenya. Article 244 (b) obligates the NPS to prevent corruption and promote and practice transparency and accountability. Section 28 of the National Police Service Act creates the Directorate of Criminal Investigations whose core functions are set out at Section 35 (b) including money laundering, economic crimes, organized crimes, among others.

a) Institutional Structures and Units for Implementation, Monitoring and Evaluation of the Implementation of National Anti-Corruption Strategies.

In every Government Ministry Department and Agency corruption prevention committees have been established which provide reports to EACC which analyses the reports and provides advisory. The OAG & DOJ is responsible for the coordination of the implementation of the Anti-Corruption strategy.

In Kenya there are:

- The EACC - CAJ
- Public Procurement Administrative Review Board
- Ministerial Public Complaints Committee
- IPCRM
- The Office of the Auditor General also receives complaints albeit indirectly from the audit reports.

b) Bodies that Carry out Research and Disseminate Knowledge on Corruption Prevention

- Ethics and Anti-Corruption Commission
- National Anti-Corruption Campaign Steering Committee
- Kenya School of Government
- Public Service Commission
- Ministry of Education

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

3.1 External Reports

- EACC prepares annual reports to president and parliament available at www.eacc.go.ke.
- NACCSC prepares half year progress reports to the President available at www.naccsc.go.ke
- PSC prepares an *Annual Compliance*

Evaluation Report to the president and parliament and compliance audit report available at www.publicservice.go.ke.

- Ministry of Education

3.2 Internal Reports

- KSG prepares annual reports available on request from KSG.
- PSC prepares an *Annual Compliance Audit Report on among other things Declaration of Income, Assets and Liabilities by Public Officers; Conflict of Interest Register; Gifts Registers and Discipline* (available at www.psc.go.ke).

3.3 Survey

3.4 Public awareness Campaigns

- NACCSC half year progress reports available at www.naccsc.go.ke
- EACC

3.5 Methods used to Disseminate Knowledge on the Prevention of Corruption

Increasing and disseminating knowledge about prevention of corruption includes training of public officers, leadership and integrity education and other Anti-Corruption initiatives as detailed below:

3.5.1 Training of Public Officers

Section 53(a) of the Leadership and Integrity Act, 2012 provides for long term education training on leadership and integrity in the public sector, all levels of education and for the general public. This provision has been implemented through the collaboration of the OAG & DoJ, Ministry of Public Service, EACC and KSG. Kenya has established the KSG as the lead training and capacity building institution for public officials. In addition, the school has set up the Centre for Public Service Value and Ethics and Integrity in order to inculcate anti-corruption, ethics and integrity skills and values among public officers in the national and county levels of government. The School has also mainstreamed ethics and values into all its training programmes. directive through *Executive Order no 6 of March 2015* requiring all public officers to undergo training on leadership ethics and integrity at the KSG. In compliance with this directive the KSG is in the process of developing curricula and manuals in ethics and values for training all cadres in the public service.

3.5.2 Leadership and integrity Education

Section 53(b) of the Leadership and Integrity Act, 2012 provides for long term education training on leadership and integrity to all levels of the education system. This provision has been implemented through the collaboration of the OAG & DoJ, Ministry of Education, EACC and KICD. In compliance with this directive the KICD has mainstreamed leadership and integrity in all the curricula at all levels of basic education in Kenya. Plans are underway to develop leadership and integrity training programmes for tertiary institutions under the auspices of the Commission of University Education and Technical and Vocational Education and Training Authority (TIVETA)

3.5.3 Anti-Corruption initiatives for the General Public

The Leadership and Integrity Act in section 53(c) provides for long term education and training on leadership and integrity to the general public. In compliance with this provision, the Government of Kenya has undertaken to carry out public awareness programmes under the auspices of OAG & DOJ, EACC, NACCSC, CAJ, among others as follows:

3.5.4 EACC

Under section 11(1)(h) of the EACC Act, 2011, EACC is required to raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption. Further section 53 (c) of the Leadership and Integrity Act, 2012 provides that the Cabinet Secretaries responsible for leadership and integrity, constitutional affairs, education and the public service shall collaborate with the EACC and the relevant public entity for the purpose of developing and overseeing the provision of long-term education and training on leadership and integrity to-

- a. all public officers;
- b. all levels of the education system; and
- c. the public

3.5.5 National Anti-Corruption Campaign Steering Committee

The NACCSC undertakes nationwide public education, sensitization and awareness creation with the aim of effecting fundamental changes in the attitudes, behavior, practices and culture of Kenyans towards corruption. Gazette Notice No 6707 of 19th September 2014 (available at www.naccsc.go.ke <<http://www.naccsc.go.ke>>). NACCSC is established and recognized in Kenya as one of the National Competent Authorities (preventive authority) that fights corruption through public education and awareness creation campaigns aimed at behavioural change - see attached copy of letter to the Principal Secretary, Ministry of Foreign Affairs and International Trade ref no DOJ/COM/8/11 VOL. IX/ (110) dated 2nd April 2014.

3.5.6 Commission on Administrative Justice

Established under Article 59(4) of the Constitution of Kenya and the CAJ Act, 2011. The Act mandates it to among other things promote public awareness of policies and administrative procedures on matters relating to administrative justice.

3.6 Methods Used by Anti-Corruption to Increase and Disseminate Knowledge About The Prevention Of Corruption.

The following methods are used by the institutions to increase and disseminate knowledge about the Prevention of Corruption.

1. Advisory services

The purpose of the advisory services is to ensure mainstreaming of anti-corruption initiatives in public institutions. The EACC provided 1,370 advisories to 265 public institutions under the Performance Contracting (PC) framework and also to 13 Counties not included in the Performance Contracting. This involved analyzing, acknowledging and providing feedback to Ministries, Departments and Agencies (MDAs) under the Corruption Eradication Indicator for Performance Contracting Period. Further, the EACC visited 13 public institutions to verify the level of

implementation of the anti-corruption indicator in the Performance Contracting framework (see www.eacc.go.ke <<http://www.eacc.go.ke>>)

2. Establishment of public complaints infrastructure

The Integrated Public Complaints Referral Mechanism (IPCRM) is a multi-agency/sector initiative which provides a mechanism through which members of the public can lodge complaints on corruption.

3. Civic education (Kenya National Integrated Civic Education)

The Kenya National Integrated Civic Education Programme (K-NICE) is a multi-stakeholder government-led process for creating the necessary civic awareness on issues including corruption

4. Information Education Communication materials

In line with their public education mandate, the agencies above mentioned have developed Information, Education and Communication (IEC) materials in both Kiswahili and English languages focusing on anti-corruption laws and the foundational understanding of corruption and anti-corruption processes in Kenya

5. The County Public Education Forums

The EACC conducted County Public Education Forums in four Counties namely; Kajiado, Uasin Gishu, Meru and Garissa. The objective of the programme was to enlist citizen participation by training and sensitizing opinion leaders at the grassroots level there by building an effective countrywide anti-corruption network and provide an opportunity for residents to voice their concerns on the quality of service delivery at the county level. A total of 347 participants among them religious leaders, Chiefs, Assistant Chiefs, Ward Administrators, Sub-County Administrators, opinion leaders, Community Based Organizations, youth, women, representatives from the County Government, Public Officers, business community and Non-Governmental Organizations were trained.

6. Mainstreaming Ethics, Integrity and Good Governance in Institutions of Learning

This is the process of including ethics, integrity and values in the schools and colleges curriculum.

7. Multi media campaigns

The above-mentioned agencies engaged various media platforms to educate the public on leadership, ethics, integrity, good governance and anti-corruption measures. Platforms used were television, national and vernacular radio stations, print media and social media platforms. Media education employs repetition as a means of reinforcing the message. The agencies presence on radio and television therefore exposes the same message several times to the same audience. EACC estimated that they reached approximately 39,000,000 listeners, viewers and readers.

8. Community Based Anti-Corruption Monitors (CBAMs) Training

The training of CBAMs aims at mainstreaming anti-corruption, ethics and integrity at the grassroots level Other methods used include:

9. Joint Public Initiatives.
10. County Corruption Civilian Oversight Committees and Corruption Monitors
11. Social Audits
12. Public Barazas and Fora
13. Workshops, seminars and other informal training anti-corruption.

(b) Observations on the implementation of the article

Article 79 of the Constitution mandated Parliament to establish an independent anti-corruption commission for purposes of ensuring compliance with, and enforcement of ethics and integrity requirements. The EACC Act was thus enacted, establishing the EACC. EACC replaced the Kenya Anti-Corruption Commission (KACC).

As part of its preventive measures, the EACC is empowered to monitor the practices and procedures of State and public bodies to detect corrupt practices (S. 11(1)(i) EACC Act). However, the failure to adopt its recommendations is not sanctioned.

It is recommended that Kenya establish consequences or sanctions for non-compliance by public bodies, with recommendations issued by EACC (Art. 6(1)).

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Legal Framework Providing for Independence and Autonomy

The EACC is established under article 79 of the Constitution of Kenya with the status and powers of commissions under chapter 15 of the Constitution which provides for constitutional commissions and independent offices. Article 79 of the Constitution provides as follows:

Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under Chapter Fifteen, for purposes of ensuring compliance with, and enforcement of, the provisions of this Chapter

The powers and functions of EACC are set out in section 11 of the Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011). The overall mandate of EACC is to combat and prevent corruption and unethical practices in Kenya. Under the law, EACC is vested with the following mandate:

- 1) Investigation into corruption offences and unethical practices; and making recommendations for prosecution to the Director of Public Prosecutions.
- 2) Tracing of illegally acquired public property, and instituting proceedings for recovery and/or protection of such assets.
- 3) Instituting proceedings towards freezing or confiscation of proceeds of corruption or related to corruption, payment of compensation, or other punitive or disciplinary measures.
- 4) Instituting proceedings for forfeiture of unexplained assets
- 5) Corruption prevention, through measures such as monitoring the practices and procedures of public bodies to detect corruption and secure revision of methods of work to corruption loopholes
- 6) Public education to raise awareness on corruption and ethics
- 7) Enforcement of ethics and integrity requirements under chapter six of the constitution and the Leadership and Integrity Act.
- 8) Providing advisory services on matters within its functions
- 9) Overseeing the development of, and enforcement of codes of conduct and ethics for State and public officers
- 10) Investigating and recommending prosecution for violation of codes of ethics
- 11) Establishing partnerships with state, public officers and other agencies to promote ethics and integrity.
- 12) Conciliation, mediation and negotiation.

More specifically, Section 11 of the EACC Act vests the following additional functions on EACC -in addition to those provided for under the Constitution:

"11. Additional functions of the Commission

(1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall-(a) in relation to State officers-

(i) develop and promote standards and best practices in integrity and anti-corruption;

(ii) develop a code of ethics;

(b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;

(c) receive complaints on the breach of the code of ethics by public officers;

(d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution;

(e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct; (f) oversee the enforcement of codes of ethics prescribed for public officers;

(g) advise, on its own initiative, any person on any matter within its functions;

(h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), as to confidentiality;

(i) subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and

(j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

(2) Deleted by Act No. 18 of 2014, Sch.

(3) The Commission may co-operate and collaborate with other State organs and agencies and any foreign government or international or regional organisation in the prevention and investigation for corruption.

(4) The Commission shall have all powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, this Act or any other written law.

(5) The Commission may request and obtain professional assistance or advice from such persons or organizations as it considers appropriate."

Section 28 of the EACC Act, provides for independence of the Commission in the performance of its function. The section provides as follows-

Except as provided in the Constitution and this Act, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

The Ethics and Anti-Corruption Commission succeeded Kenya Anti-Corruption Commission. KACC was a public body and a body corporate established under the Anti-Corruption and Economic Crimes Act, 2003. The Commission was headed by a Director and had four main departments/directorates Legal Services, Investigations and Asset Tracing, Preventive Services and Finance and Administration. The Act further provided for the establishment of the Kenya Anti-Corruption Advisory Board, an unincorporated body comprising persons nominated by a cross-section of stakeholders. The Advisory Board would make recommendations for appointment of a Director and Assistant Directors and would also provide advice to the Commission on the exercise of its powers and performance of its functions under the Act.

On its part, KACC had succeeded the Anti-Corruption Police Unit (ACPU), which was established by the Commissioner of Police in October 2001, following the dissolution of the Kenya Anti-Corruption Authority (KACA). ACPU inherited most of the ex-KACA staff and assets and operated under the auspices of CID but had some operational autonomy. ACPU performed all the functions of the defunct KACA except prosecution (which was now under the aegis of the Attorney General) until creation of KACC through the Anti-Corruption and Economic Crimes Act, 2003.

KACA was dissolved pursuant to a decision of the High Court in *Stephen Mwai Gachiengo & Another v. Republic* [2000]eKLR of 22nd December, 2000, through which the Court had declared

KACA unconstitutional. The court held that the existence of KACA undermined the powers conferred on both the Attorney General and the Commissioner of Police by the Constitution of the Republic of Kenya. In addition, the court held that the statutory provisions establishing KACA were in conflict with the Constitution. That spelt the death of KACA and the various efforts in the fight against corruption in Kenya, leading to increased skepticism of the government's commitment to the fight against corruption.

KACA had been established in 1997 following an amendment to the then Prevention of Corruption Act (Cap. 65 of the Laws of Kenya). The Authority had a four-pronged approach for fighting corruption: investigations; prosecution; prevention, and education. Thus, KACA used to prosecute with the consent of the Attorney General, who at that time was vested with the constitutional role of overseeing criminal prosecutions in the Republic.

Prior to the establishment of KACA, the fight against corruption was spearheaded by the Kenya Police. In 1992, the Anti-Corruption Police Squad was set up under the Police Department to ensure effective onslaught on corruption. The Squad faced a lot of opposition from within and without the Police Department. Eventually in 1995, the Squad was dissolved, as a result of which the Criminal Investigations Department (CID) assumed the responsibility of fighting corruption, like any other crime.

Owing to increased allegations of corruption and following pressure from good governance institutions, politicians, civil society and development partners, the Government decided to establish a dedicated anti-corruption body through an amendment to the Prevention of Corruption Act (Cap. 65), hence the establishment of KACA in 1997. At that time, the President had power to appoint the Director/Chief Executive of the Authority.

Following the promulgation of the Constitution of Kenya on 27th August 2010, which (under Article 79) required the establishment of a body to enforce Chapter Six of the constitution relating to leadership and integrity, Parliament passed the Ethics and Anti-Corruption Commission Act, 2011 ON 5th September 2011, providing for the establishment of EACC and the dissolution of KACC. EACC took over the staff, assets and liabilities of KACC except the top management of the Commission (the Director and his Assistant Directors).

The historical evolution of anti-corruption agencies in Kenya is as follows:

Period	Anti-Corruption Agency
Up to 1997	Kenya Police
1997 - 2000	Kenya Anti-Corruption Authority
2000 - 2004	Anti-Corruption Police Unit (ACPU)
2004 - 2011	Kenya Anti-Corruption Commission (KACC)
2011 - to date	Ethics and Anti-Corruption Commission (EACC)

For more information on the history of Kenya's anti-corruption initiatives, visit the EACC website: www.eacc.go.ke or see: *Report of the Task Force on the Review of the Legal, Policy and*

Institutional Framework for Fighting Corruption in Kenya (2015), available at: <http://www.statelaw.go.ke/wp-content/uploads/2016/08/Republic-of-Kenya-Report-of-the-Task-Force-on-the-Review-of-the-Legal-Policy-and-Institutional-Framework-for-Fighting-Corruption-in-Kenya-2015.pdf>

EACC is composed of a Chairperson and four other members (Commissioners). The Secretary/Chief Executive Officer is the Secretary to the Commission and head of the Secretariat. The Commissioners are recruited through a transparent public recruitment process undertaken by the Public Service Commission, PSC forwards a shortlist of candidates to the president for consideration and nomination. The President nominates the candidates he considers suitable to the position and refers the names to the National Assembly for approval. Once the National Assembly approves the names, the names are then referred to the president for a formal appointment. Once appointed the commissioners are required to take an oath of office before the Chief Justice (See sections 7,8,9 and 10 of the EACC Act, 2011).

The Secretary/Chief Executive Officer of EACC is recruited and appointed by the Commission (the Chairperson and members of EACC) through a public and transparent recruitment process, including approval by the National Assembly, and in accordance with the provisions of section 16 of the EACC Act, 2011. Positions of other senior technical staff are recruited competitively.

2.2 Office of the Attorney General & Department of Justice

OAG&DOJ is part of the Executive arm of government and deals only with policy issues relating to the fight against corruption and, therefore, does not require independence. However, under the former Constitution of Kenya where the Attorney General (AG) was also vested with prosecutorial powers, which have now been transferred to the Director of Public Prosecutions (DPP), the AG used to enjoy independence and would not act under authority or instructions of any one. This independence is now vested on the DPP by virtue of article 157 of the Constitution.

Under the Office of the Attorney General Act, 2012, the Attorney General is required to submit an annual report to Parliament and the President on the activities of the Office.

In the organisation of the Government of the Republic of Kenya, the Office of the Attorney General and Department of Justice (OAG&DOJ) is responsible for co-ordinating the development and overseeing the implementation of national anti-corruption policies and strategies. However, EACC provides the main back up in terms of technical support to the development of such policies and also plays a critical role in terms of implementation. The separation of policy-making role from anti-corruption enforcement is aimed at ensuring that the Commission focuses on its core mandate of fighting corruption through enforcement measures, while OAG&DOJ deals with policy issues.

OAG&DOJ does not have investigative or prosecutorial powers but it facilitates the work of investigative and prosecuting agencies through chairing a Multi-Agency Team (MAT) which brings together all law-enforcement agencies involved in the fight against corruption to ensure real-time collaboration in the investigation and prosecution of corruption and economic crime offences, and also in cases involving asset recovery.

Further, being the Central Authority for Mutual Legal Assistance (MLA), OAG&DOJ supports the work of the Ethics and Anti-Corruption Commission, and the Office of the Director of Public Prosecutions by processing MLA requests to or from the said institutions to ensure effective co-operation in fighting corruption which may have some trans-boundary dimensions.

OAG&DOJ was established in May 2013, following the merger of the then Office of the Attorney General, and the former Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA). At that time, MOJNCCA used to have policy responsibility over anti-corruption, integrity and ethics. The merger was effected through a Presidential Circular on the *Organisation of the Government of the Republic of Kenya* (Executive Order No. 1 of May, 2013), issued by H.E. the President when forming his Government following the 4th March, 2013 general elections. OAGDOJ is headed by the Attorney General who also discharges the responsibilities of the Cabinet Secretary for Justice. Within OAG&DOJ, anti-corruption function is discharged through the Department of Justice. More information on the history and functions of OAGDOJ may be obtained from: <http://www.statelaw.go.ke>.

For the successes realised by OAG&DOJ in the fight against corruption, see the OAG&DOJ *Strategic Plan, 2013-2017* (<http://www.statelaw.go.ke/wp-content/uploads/2016/08/OAGDOJ-Strategic-Plan-2013-2017.pdf>)

2.3 Commission on Administrative Justice

Kenya has established the Commission on Administrative Justice (Office of the Ombudsman) under Article 59(4) of the Constitution and the Commission on Administrative Justice Act [Chapter 102A of the Laws of Kenya] to enforce administrative justice by addressing maladministration in the public sector. This relates to investigations of any conduct in State affairs, or any act or omission in public administration in any sphere of government, as would be prejudicial, constitute improper conduct, or amount to abuse of power, unfair treatment, manifest injustice or unlawful, oppressive or unresponsive official conduct. Such instances include delay, inefficiency, discourtesy, abuse of power, improper conduct, misbehaviour in public office, unlawful conduct, oppressive conduct, ineptitude or unresponsiveness. Additionally, the Commission is empowered to oversee and enforce the right to access to information under Article 35 of the Constitution and the Access to Information Act, 2016.

The independence of the Commission of the Ombudsman is guaranteed under Article 249(2) of the Constitution and the Commission on Administrative Justice Act. In particular, Article 249(2) of the Constitution provides that the Commission is only subject to the Constitution and the law, and is independent and not subject to direction or control by any person or authority. The independence is further buttressed in the transparent and participatory appointment process of the Commissioners and staff. Furthermore, the Commission reports directly to Parliament and the President through bi-annual, annual and special reporting on measures taken to realize its mandate. In spite of the above, inadequate financial resources remain the main challenge facing the Commission.

2.4 National Anti-Corruption Campaign Steering Committee

The NACCSC is established under Kenya Gazette Notice No 6707 of 19th September 2014 as reproduced herein below. Paragraph 5(g) of the Gazette Notice grants NACCSC all the powers necessary or expedient for the proper execution of its functions including the power to regulate its own procedures.

The Chairperson of NACCSC is appointed by the President. Members are appointed by the president from nominees submitted by various umbrella bodies which are Maendeleo ya Wanawake organisation, National Youth Council, National Council for Persons with Disability, Inter-religious Council of Kenya and Representatives of MDAs relevant to the fight against corruption.

The Director of NACCSC is the Secretary/Chief Executive of the Committee and is recruited through a competitive process and appointed by the Attorney General. Positions of other senior technical staff are recruited competitively. NACCSC has a staff establishment of 18 officers. For more information on NACCSC see www.naccsc.go.ke.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- i. EACC has undertaken public education training and awareness to the public on the dangers of corruption and to enlist their support in the fight against corruption and promotion of ethics and integrity. (see EACC annual report available at www.eacc.go.ke <<http://www.eacc.go.ke>>)
- ii. Mainstreaming Anti-Corruption content in the formal education system of Kenya and development and dissemination of curriculum support materials. In addition, integrity clubs and integrity movements have been established in schools and institutions of higher learning. Education managers and students are also trained and sensitized on integrity ethics and anti-corruption.
- iii. Systems reviews and corruption assessment for public institutions at the national and county level of government. The objective of this review is to identify weaknesses and loopholes in the systems policies procedures and practices and to make recommendations to remove the loopholes and secure revision of work methods. (see EACC annual report available at www.eacc.go.ke)
- iv. Provision of advisory services on the prevention of corruption. Such advisory services cover development of corruption prevention plans, development and implementation of codes of conduct, maintenance of conflict of interest and gift registers, mainstreaming prevention measures.
- v. Partnerships and coalitions have been forged with various stakeholders in the fight against corruption. Key among them include partnership at the international level within the framework of the international association of anti-corruption authorities, regionally for the East African Association of Anti-Corruption Authorities and the Association of Anti-Corruption Authorities of Commonwealth Africa. At the National level the partnership includes the Kenya Leadership and Integrity Forum, EACC-Faith sector, EACC-APSEA and various inter-agency collaboration at the government level such as the EACC-KRA, KSG-EACC on training, MAT (see www.eacc.go.ke)

(b) Observations on the implementation of the article

Section 26 of the Ethics and Anti-Corruption Commission Act makes statutory independence explicit. Media and civil society reports have, however, suggested that this statutory guarantee has not been fully implemented in practice.

The EACC is established under article 79 of the Constitution of Kenya with the status and powers of commissions under chapter 15 of the Constitution which provides for constitutional commissions and independent offices. Article 79 of the Constitution provides as follows:

Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under Chapter Fifteen, for purposes of ensuring compliance with, and enforcement of, the provisions of this Chapter

The budget of the EACC is determined by Parliament (art. 249(3) of the Constitution).

EACC has the status and powers of a Commission under Chapter Fifteen for purposes of ensuring compliance with and enforcement of the provisions of Chapter Six. A Chairperson, four Commissioners and the Secretary head the EACC. Although the EACC receives adequate annual

budgetary allocation from the Government to cater for its operations, it has not been fully facilitated to enable it hire staff to the approved level. The current staff complement is about 30% of the approved level. EACC has also in previous years experienced high turn-over amongst its senior officials.

It is recommended that Kenya provide the EACC with adequate financial and human resources and take measures to ensure its operational independence including by looking into reasons for turn-over of senior officials.

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.

YES. In April 2014, OAG& DOJ communicated to the Secretary General of the United Nations through the then Principal Secretary, Ministry of Foreign Affairs and International by letter reference no **DOJ/COM/8/11 VOL. IX/ (110)**, **setting out the competent National Authorities for purposes of Article 6(3) of the Convention:**

1. Ethics and Anti-Corruption Commission

Art. 5(Preventive anti-corruption policies and practices); Art. 7(Public Sector); Art 8(Code of conduct for public Officials); Art. 10(Public Reporting); Art 12(Private Sector); Art 13(Participation of society). EACC is the Asset Recovery Focal point for the purposes of UNCAC

2. Office of the Attorney General & Department of Justice

Art. 5(Preventive anti-corruption policies and practices); Art 8(Code of conduct for public Officials); Art 13(Participation of society). OAG&DOJ is the Mutual Legal Assistance (Central Authority) for Art. 46(13) of UNCAC

3. Office of the Director of Public Prosecutions

Art. 11(2) measures relating to the prosecution services.

4. The Judiciary

Art. 11(1) measures relating to the judiciary

5. Public Service Commission

Art.7 Public Sector, and Art. 8 codes of conduct for public officials.

6. Public Procurement Oversight Authority

Art. 9 Public procurement and management of public finances

7. Financial Reporting Centre

Art. 14 Measures to prevent money laundering

8. Commission on Administrative Justice

Art. 10 Public Reporting

9. National Anti-Corruption Campaign Steering Committee (NACCSC)

Art. 13 Participation of society

(b) Observations on the implementation of the article

Kenya is in compliance with this Article.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent

in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has two levels of government namely National and County which have responsibilities for recruitment, hiring, retention, promotion and retirement of public official. Public officers and State officers are defined under article 260 of the Constitution. State officers are senior public officers who hold policy and decision-making responsibilities at the strategic level of government. State officers are expected to maintain and promote high levels of integrity and good standing in society in line with the provisions of Chapter 6 of the Constitution (Leadership and Integrity) and the Leadership and Integrity Act, 2012. In accordance with Article 80 (c) of the Constitution and section 52 of the Leadership and Integrity Act some of the provisions touching on the integrity of State officers have been extended to apply to all other public officers.

Article 260 provides that a State office means any of the following offices:

- a. President;
- b. Deputy President;
- c. Cabinet Secretary;
- d. Member of Parliament;
- e. Judges and Magistrates;
- f. Member of a commission to which Chapter Fifteen applies;
- g. Holder of an independent office to which Chapter Fifteen applies;
- h. Member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;
- i. Attorney-General;
- j. Director of Public Prosecutions;
- k. Secretary to the Cabinet;
- l. Principal Secretary;
- m. Chief of the Kenya Defence Forces;
- n. Commander of a service of the Kenya Defence Forces;
- o. Director-General of the National Intelligence Service;

- p. Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or
- q. An office established and designated as a State office by national legislation;

A State officer means a person holding any of the above-mentioned State office;

The rest of public officer both at the national and county level serve within their levels of administration namely MDAs. In addition, constitutional commissions and independent offices provided for in Chapter 15 have powers and responsibilities to undertake similar responsibilities under the constitution.

At the National level, the Constitution, in Chapter 13 (Article 233), establishes the Public Service Commission (PSC) (www.publicservice.go.ke) with the powers and mandate to:

- a) subject to the Constitution and legislation:
 - i. establish and abolish offices in the public service; and
 - ii. appoint persons to hold or act in those offices, and to confirm appointments;
- a) exercise disciplinary control over and remove persons holding or acting in those offices;
- b) promote the National values and principles of governance mentioned in the Constitution;
- c) investigate, monitor and evaluate the organization, administration and personnel practices of the public service;
- d) ensure that the public service is efficient and effective;
- e) develop human resources in the public service;
- f) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service;
- g) evaluate and report to the President and Parliament on the extent to which the values and principles mentioned in articles 10 and 232 are complied with in the public service;
- h) hear and determine appeals in respect of county governments' public service;

At the County level, the County Public Service Boards are established by the County Government Act, 2012, in Part VII, with the functions and responsibilities to:

- (a) establish and abolish offices in the county public service;
- (b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
- (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;
- (d) prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
- (e) promote in the county public service the values and principles referred to in articles 10 and 232;
- (f) evaluate and report to the county assembly on the extent to which the values and principles referred to in articles 10 and 232 are complied with in the county public service;
- (g) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;

- (h) advise the county government on human resource management and development;
- (i) advise county government on implementation and monitoring of the national performance management system in counties;
- (j) make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employ.

In undertaking any of the functions and exercise of their powers, the Public Service Commission and the County Public Service Board are bound by National Values and Principles of Governance set out in article 10 of the Constitution.

Legal and Regulatory Framework for Human Resource Management in the Public Service

Kenya has enacted a number of laws to govern human resource management in the public service.

1. The Public Service Commission Act, 2017

Provides for the functions, powers and administration of the PSC established under article 233 of the Constitution of Kenya, to give effect to article 234 of the Constitution which gives the PSC functions and responsibilities. It also has provisions for processes, procedures for recruitment, promotion, discipline, among others. (www.publicservice.go.ke, www.kenyalaw.org)

2. Public Service (Values and Principles) Act 2015.

The Act gives effect to the provisions of Article 232 of the Constitution regarding the values and principles of public service and for connected purposes. Section 8 provides for transparency and provision to the public of timely accurate information. Section 10 provides that the public service, a public institution or an authorized officer shall ensure that public officers are appointed and promoted on basis of fair competition and merit.

3. Public Officer Ethics Act, 2003

4. Leadership and Integrity Act

5. Service Policies Regulations and Guidelines

- Human resource policies and procedures manual for the public service

The Public Service Commission has come up with policies, guidelines amongst other measures to implement this provision. They include:

- Draft Human Resource Plan Template
- Draft Human Resource Planning and Succession Management Strategy for the Public Service
- Draft Guidelines for Implementation of Performance Rewards and Sanctions in the Public Service
- Guidelines on Establishment and Abolition of Offices in the Public Service, May 2015
- Guidelines on Design of Organization Structures in the Public Service, May 2015
- Draft Induction Handbook for the Public Service, October 2016
- Guidelines on Secondment in the Public Service, October 2016

- A Framework for the Implementation of Values and Principles in articles 10 and 232 of the Constitution in the Public Service Public Service Commission Republic of Kenya - 2015
- Staff Performance Appraisal Report (For officers on Job Group 'J' and above in the Public Service) - Revised 2016
- Staff Performance Appraisal Report (For officers on Job Group 'H' and below in the Public Service) - Revised 2016
- Guidelines to the Staff Performance Appraisal System (SPAS) in the Public Service, May 2016
- Performance Rewards and Sanctions Framework for the Public Service, May 2016
- Internship Policy and Guidelines for the Public Service, May 2016
- Framework for the Development and Review of Terms and Conditions of Service in the Public Service, May 2016
- Discipline Manual for the Public Service, May 2016
- Diversity Policy for the Public Service, May 2016
- Human Resource Policies and Procedures Manual for the Public Service, May 2016
- Human Resource Development Policy for the Public Service, June 2015
- Draft Guidelines on Managing Training in the Public Service
- Public Service Commission (Removal of the Director of Public Prosecutions) Regulations, 2016
- Guidelines on Declaration of Income, Assets and Liabilities, 29 May 2009
- Delegation of Public Service Commission Human Resource Functions to the Cabinet Secretary (Revised August 2015)

Article 230(1) of the Constitution establishes the Salaries and Remuneration Commission. Under Article 230(4), it is mandated to:

- a) set and regularly review the remuneration and benefits of all State officers; and
- b) advise the national and county governments on the remuneration and benefits of all other public officers.

Where a person is aggrieved with any human resource decision taken against him by a public body he can institute formal proceedings at the Employment and Labour Relations Court or Institute Judicial Review Proceeding at the High Court. Also, where a human resource decision has been made contrary to the Constitution or any other law any person can challenge that decision in the High Court.

How vacancies are generally advertised, particularly for sensitive or high-level positions

Every Ministry/State Department prepares Human Resource Plan to support achievement of goals and objectives in their Strategic plan. The plan is based on comprehensive job analysis and should be reviewed every year to address emerging issues and needs. Based on the Human Resource plan, a Ministry/State Department develops annual recruitment plan which is forwarded to the Public Service Commission at the beginning of each financial year to enable it plan to fill the vacancies.

An Authorized Officer declares all vacant posts to the Public Service Commission in accordance with the procedures set out in the Commission's regulations.

All vacancies at entry levels for graduates are reported to the Public Service Commission for filling. The Commission considers requests for approval of declaration of vacancies forwarded by the Authorized Officer upon recommendation by the MHRMAC. Such recommendations should be accompanied by a draft indent.

Appointments in the public service fall into two categories as: Pensionable and Contract. Ministries/State Departments advertises all vacant posts in a manner that reaches the widest pool of potential applicants and allow for at least twenty-one (21) days before closing the advert.

The advert shall have the following details:

- the title of the post,
- number of vacancies,
- person specification
- the proposed remuneration.
- job descriptions

The advert shall be delivered in soft copy to the Public Service Commission to be posted in its website.

Advertisement of vacancies

Where the Commission or authorized officer is required by legislation to conduct a recruitment process for a position in the public service, the advertisement is guided by the Constitution, the relevant legislation, and Section 37 of the PSC Act, 2017.

This is undertaken by inviting applications by advertising the vacancy in the Commission's website, at least one daily newspaper of nationwide coverage, the radio and other modes of communication, to reach as wide a population of potential applicants as possible and;

- a) does not discriminate against any person.
- b) conducted in an efficient and effective manner to ensure that the applicants, including persons who for any reason have been or may be disadvantaged, have an equal opportunity to apply for the advertised positions.
- c) shall provide for:
 - o the title and rank of the public office;
 - o the public body in which the office is tenable;
 - o the background and context of the work, where necessary;
 - o the terms of employment;
 - o the applicable remuneration including salary, allowances and other benefits;
 - o the prescribed qualifications applicable, including any desired previous achievements;
 - o the core duties of the office;
 - o the expected deliverables of the office;
 - o the supervision, accountability and reporting arrangements;
 - o any added advantage applicable;

- o the mode and deadline of transmitting the application;
- o any consideration that may occasion disqualification; and
- o any consideration of equity or affirmative action.

Pursuant to the provisions of Section 39 of the Act and subject to the relevant statutory provisions on disposal of Government records, all records of applications received in response to an advertisement inviting applications shall be kept in hard and electronic formats.

In selecting candidates for appointment or promotion, the provisions of Section 36 of the Act and Section 10 of the Public Service (Values and Principles) Act applies and the Commission or authorized officer shall have regard to:

- o merit, equity, aptitude and suitability;
 - o the prescribed qualifications for holding or acting in the office including abilities, skills, knowledge, experience and personal qualities relevant to the carrying out of the duties in question;
 - o the efficiency of the public service;
 - o the provable experience and demonstrable milestones attained by the candidate and potential for development;
 - o integrity of the candidate; and
 - o the standards, values and principles set out in articles 10, 27, 54(2), 55(c), 56 (c), 232 and Chapter 6 of the Constitution.
- Any appointment, acting appointment, promotion, re-designation, transfer, deployment, delegation or assignment of a duty in the public service shall be in writing.

Rotation of individuals in sensitive positions (particularly in those sectors which reviews have previously identified as being particularly high risk)

- Appointments on Job Groups 'S' and above from the effective date of Guidelines, should be on Contract terms of service, provided that serving officers appointed to Job Group 'S' and above shall continue to serve in their existing terms.
- Advertisement for the posts clearly indicates all the terms of engagement. The Contract is for a term not exceeding three (3) years, and may be renewed, subject to annual performance review.
- The following guidelines on appointment on contract terms shall apply:
 - (a) Appointments and renewal of contracts are to be made on authority of the Public Service Commission;
 - (b) All cases of appointment on contract terms which require renewal shall be forwarded to the Commission for approval at least three (3) months before expiry and supported by a performance review;
 - (c) An officer serving on contract shall express his/her wish to renew the contract at least three (3) months before the expiry of the contract;
 - (d) An officer serving on contract, and whose services are still required, has to be informed in writing at least three (3) months before the expiry of the contract;

- (e) In Development Projects and Programmes, appointment on contract terms not exceeding three (3) years may be made where vacancies exist in any Job Group subject to the delegated authority.
- Appointments and renewal of contracts will only be made on authority of the Public Service Commission. Retention of Officers in Job Group 'S' and above is based on satisfactory performance and achievement of their targets.

Appointment of Principal Secretaries

- Within twenty-one (21) days of a Presidential election, the Public Service Commission commences a competitive recruitment and selection exercise for identifying persons to be recommended for nomination by the President for appointment as a principal secretary, provided that the Commission may on request, and if circumstances warrant, carry out a recruitment and selection exercise at any other time.
- In recommending persons for nomination by the President for appointment as a Principal Secretary in accordance with the provisions of Section 47 of the PSC Act, the Commission shall:
 - a. publish in the Kenya Gazette, Commission's website and a newspaper with national circulation, the criteria including the qualifications, disqualifications, experience and other requirements for recommending persons to be appointed as Principal Secretaries; and
 - b. abide by the provisions of article 10 on national values and principles of governance, article 232 on values and principles of public service and Chapter six of the Constitution on leadership and integrity in making the recommendation.
- Where the Commission alters the qualifications, disqualifications, experience and other requirements for the office of a Principal Secretary, the Commission shall publish the alteration in the gazette.
- In making the recommendations, the Commission acts independently and has regard to the provisions of article 249(2) of the Constitution.
- Regular transfers of staff: – Kenya Revenue Authority (KRA) 3 years, Judiciary- 3 years, EACC-2- 3 years, National Police Service 3 years.
- In EACC there is also departmental rotations.

During the country visit, it was explained that recruitment is done through one of the 5 public service commissions. The recruitment process includes: identification of vacancies, advertising the vacancies, short listing process, interviews conducted by panels, vetting process (clearance from the EACC) and other criteria (social justice and other considerations are taken into consideration in the recruitment process. Although there are different types of contracts in the public service, the recruitment process is the same. The Constitution provides for limited exceptions such as for the personal staff of the President.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The High Courts will declare any human resource decision, taken by the above-mentioned bodies, that is contrary to the Constitution and the law null and void.

In the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR*, the Court of Appeal held that the High Court is entitled to conduct a review of appointments to State or Public Office to determine the procedural soundness as well as the appointment decision itself to determine if it meets the constitutional threshold. Therefore, the High Court had jurisdiction to review and set aside the appointment of the appellant on grounds of constitutionality or legality.

Article 165 (3) (d) (ii) of the Constitution which grants the High Court jurisdiction to hear any question respecting the interpretation of the Constitution, including the determination of a question regarding whether an appointment by any organ of the Government is inconsistent with, or in contravention of the Constitution.

The Courts have given effect to the values and principles articulated in article 10 and 232 of the Constitution and the Public Service (Values and Principles) Act, 2015. In the case of *Benson Riitho Mureithi v J. W. Wakhungu & 2 others [2014] eKLR* the petitioner challenged the constitutionality of the appointment of the Interested Party as the Chairman of the Athi Water Services Board by the 1st respondent for a term of three years vide Gazette Notice No. 115 dated 10th January 2014. The Court held that:

What does the Constitution require with regard to appointments to public office? As already observed, public officers must be appointed on the basis of the criteria set out in Chapter 6. They must also, in addition, be appointed in accordance with the national values and principles set out in Article 10. It may seem that the Constitution has imposed an irksome and onerous burden on those responsible for making public appointments by requiring that they make the appointments on the basis of clear constitutional criteria; that they allow for public participation; and that those they appoint meet certain integrity and competence standards. This burden, however, is justified by our history and experience, which led the people of Kenya to include an entire chapter on leadership and integrity in the Constitution. (Emphasis added)

(b) Observations on the implementation of the article

Once identification of a vacancy has occurred, a description of the job is widely circulated in the media, including e-media. Shortlisting and interview processes then take place. The reviewers invited Kenya to provide information about how hiring of sensitive or high-level public-sector positions takes place. The reviewers understand that:

- Shortlisting panel and interview panel are comprised of different people.
- The applicant is also required to go through a credit check and make a declaration of any interests.
- Depending on the level of the position, names of potential applicants will be made available to give the public an opportunity to contest qualifications as well as past civil or criminal records.
- The EACC clears applicants. An applicant will be considered ‘cleared’ if no matters about them have been reported to the EACC. In practice, only shortlisted applicants are cleared. Private sector entities also forward names of candidates to the EACC for vetting.
- Unsuccessful applicants can write in and seek the reason for they were not offered the job.

For particularly sensitive positions, such as officers of the National Treasury, staff are rotated every three years. False declaration prosecutions do occur e.g. if they claim that they do not have a criminal record, but it is later discovered that they do, a prosecution can occur.

The recruitment, hiring, promotion, and retirement of public officials is guided by the Constitution (art. 10 on national values and principles of governance, art. 232 on values and principles of public service and Chapter six on leadership and integrity) and regulated by the Public Service Act (PSA) of 2015 and the Public Service Commission Act (PSCA) of 2017. Other applicable laws include the Public Officer Ethics Act (POEA) of 2003 and the Leadership and Integrity Act (LIA) of 2012.

The two levels of government have responsibilities for recruitment, hiring, retention, promotion and retirement of public officials. At the National level, the Constitution (art. 233) establishes the Public Service Commission (PSC) while at the County level, the County Public Service Boards are established by the County Government Act of 2012. In undertaking any of their functions, the PSC and the County Public Service Boards are bound by articles 10 and 232 of the Constitution.

Pursuant to article 232 of the Constitution, fair competition and merit as the basis of appointments and promotions.

To achieve the principle of merit, the PSA and the PSC Act set rules and procedures for the selection and assessment of candidates.

Vacancies are published online through the PSC website and in at least one daily newspaper of nationwide coverage, the radio and other modes of communication (PSCA, art. 37).

In selecting candidates for appointment or promotions, the PSC or other appointing authority shall have regard to: merit, equity, aptitude and suitability; the prescribed qualifications for holding in the office; the efficiency of the public service; the provable experience and demonstrable milestones attained by the candidate; and the personal integrity of the candidate (PSCA, art. 36).

Additional measures on hiring, promotion and termination apply to certain categories of officials, such as principal Secretaries, judges and magistrates and other State officers (Constitution, art. 260).

Retirement is governed by sections 79-84 of the PSCA.

The Constitution establishes the Salaries and Remuneration Commission (SRC) which includes representatives from different service commissions, the trade unions and the employers. The SRC sets and regularly reviews the remuneration and benefits of all State officers and advise the national and county governments on the remuneration and benefits of all other public officers.

Development of human resource in the public service including training of public officers and promotion of an ethical environment for public service is a key function of the PSC.

Regular rotation of staff takes place in different institutions including in the judiciary, the EACC, Kenya Revenue Authority (KRA) and the National Police Service.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Those seeking to be elected to public office have to comply with Chapter six of the Constitution. Chapter six provides for leadership and integrity. Under Article 73(2), the guiding principles of leadership and integrity include:

- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;*
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;*
- (c) selfless service based solely on the public interest, demonstrated by:*
 - (i) honesty in the execution of public duties; and*
 - (ii) the declaration of any personal interest that may conflict with public duties;*
- (d) accountability to the public for decisions and actions; and*
- (e) discipline and commitment in service to the people*

Article 80 of the Constitution obligates Parliament to enact legislation-

- (a) establishing procedures and mechanisms for the effective administration of this Chapter;*
- (b) prescribing the penalties, in addition to the penalties referred to in Article 75, that may be imposed for a contravention of this Chapter;*
- (c) providing for the application of this Chapter, with the necessary modifications, to public officers;*
- (d) making any other provision necessary for ensuring the promotion of the principles of leadership and integrity mentioned in this Chapter, and the enforcement of this Chapter.*

Pursuant to the Requirements of Article 80 of the Constitution, Kenya has enacted the Leadership and Integrity Act 2012.

Article 79 of the Constitution, as read with the EACC Act, gives the Ethics and Anti-Corruption Commission power to ensure compliance with and enforcement of, the provisions of Chapter six. In order to fulfil the aforementioned mandate, Section 13 of the Ethics and Anti-Corruption Commission Act gives the commission powers generally necessary for the execution of its functions under the Constitution, this Act, and any other written law.

The Commission has the power to:

- (a) educate and create awareness on any matter within the Commission's mandate;*
- (b) undertake preventive measures against unethical and corrupt practices;*
- (c) conduct investigations on its own initiative or on a complaint made by any person;*

- (d) conduct mediation, conciliation and negotiation; and
- (e) hire such experts as may be necessary for the performance of any of its functions.

Other Constitutional and Legislative measures undertaken by Kenya:

1. The Constitution

With regards to the qualification and disqualification for election as president the Constitution provides as follows in Article 137.

- (1) A person qualifies for nomination as a presidential candidate if the person-*
 - (a) is a citizen by birth;*
 - (b) is qualified to stand for election as a member of Parliament;*
 - (c) is nominated by a political party, or is an independent candidate; and*
 - (d) is nominated by not fewer than two thousand voters from each of a majority of the counties.*
- (2) A person is not qualified for nomination as a presidential candidate if the person:*
 - (a) owes allegiance to a foreign State; or*
 - (b) is a public officer, or is acting in any State or other public officer*

With regard to the qualification and disqualification for election as a member of Parliament the Constitution provides in article 99 as follows:

- (1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament if the person:*
 - (a) is registered as a voter;*
 - (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; and*
 - (c) is nominated by a political party, or is an independent candidate who is supported:*
 - (i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or*
 - (ii) in the case of election to the Senate, by at least two thousand registered voters in the county.*
- (2) A person is disqualified from being elected a member of Parliament if the person:*
 - (a) is a State officer or other public officer, other than a member of Parliament;*
 - (b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Independent Electoral and Boundaries Commission;*
 - (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;*
 - (d) is a member of a county assembly;*
 - (e) is of unsound mind;*
 - (f) is an undischarged bankrupt;*

(g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or

(h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six

(3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

With regards to qualifications and disqualification for election as a member of county assembly the Constitution in article 193 as follows:

(1) A person is eligible for election as a member of a county assembly if the person-

(a) is registered as a voter;

(b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and

(c) is either-

(i) nominated by a political party; or Suspension of a county government.

(ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.

(2) A person is disqualified from being elected a member of a county assembly if the person-

(a) is a State officer or other public officer, other than a member of the county assembly;

(b) has, at any time within the five years immediately before the date of election, held office as a member of the Independent Electoral and Boundaries Commission;

(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;

(d) is of unsound mind;

(e) is an un-discharged bankrupt;

(f) is serving a sentence of imprisonment of at least six months; or

(g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six.

(3) A person is not disqualified unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

Article 180(2) provides that for a person to be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.

2. The Elections Act 2011

Provides for the conduct of elections to the office of the President, the National Assembly, the Senate, county governor and county assembly; to provide for the conduct of referenda; to provide for election dispute resolution and for connected purposes. The Act provides for qualification for nomination and election to elective posts. Qualifications as set out in the Act are:

2.1. To qualify for nomination (for any of the abovementioned elective positions) the following has to apply:

- (a) is qualified to be elected to that office under the Constitution and the Elections Act; and
- (b) holds—
 - (i) in the case of a Member of Parliament, a degree from a university recognized in Kenya; or
 - (ii) in the case of member of a county assembly, a degree from a university recognized in Kenya.

2.2. A person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognized in Kenya. A person who directly or indirectly participates in any manner in any or public fundraising or Harambee within eight months preceding a general election or during an election period, in any other case, shall be disqualified from contesting in the election held during that election year or election period.

2.3. A person qualifies for nomination as a presidential candidate if the person:

- (a) is a citizen by birth;
- (b) is qualified to stand for election as a member of Parliament;
- (c) is nominated by a political party, or is an independent candidate; and
- (d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

A person is not qualified for nomination as a presidential candidate if the person:

- (a) owes allegiance to a foreign State; or
- (c) is a public officer, or is acting in any State or other public office

2.4. A person qualifies for nomination as a member of Parliament if the person-

- (e) is registered as a voter;
- (f) satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act; and
- (g) is nominated by a political party, or is an independent candidate who is supported:
 - (i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
 - (ii) in the case of election to the Senate, by at least two thousand registered voters in the county.

2.5. A person is disqualified from being elected a member of Parliament if the person:

- (a) is a State officer or other public officer, other than a member of Parliament;
- (b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Commission;

- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is a member of a county assembly;
- (e) is of unsound mind;
- (f) is an undischarged bankrupt;
- (g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
- (h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.

2.6. A person is not disqualified, under 2.4 above, unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

2.7. a person qualifies for nomination as a member of a county assembly if the person:

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed the Constitution and this Act; and
- (d) is either-
 - (i) nominated by a political party; or
 - (iii) An independent candidate supported by at least five hundred registered voters in the ward concerned.

2.8. A person is disqualified from being elected a member of a county assembly if the person:

- (a) is a State officer or other public officer, other than a member of the county assembly;
- (b) has, at any time within the five years immediately before the date of election, held office as a member of the Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is of unsound mind;
- (e) is an un-discharged bankrupt;
- (f) is serving a sentence of imprisonment of at least six months; or
- (g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six of the Constitution.

A person is not disqualified unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

1. Leadership and Integrity Act

This Act gives effect to and establishes procedures and mechanisms for the effective administration of Chapter Six of the Constitution and for connected purposes. The EACC is given power to enforce this Act. The Act establishes a general Leadership and Integrity Code for State officers. According

to the Act a person who wishes to be elected to a State office shall submit to the Independent Electoral and Boundaries Commission a self-declaration in the form (the format of this form is set out in the First Schedule of the Act).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

To implement the leadership and integrity requirements the IEBC formed a working group with other agencies. The agencies are:

- i. The Judiciary
- ii. Office of the Attorney General and Department of Justice
- iii. Independent Electoral and Boundaries Commission
- iv. Ethics and Anti-Corruption Commission
- v. Office of the Registrar of Political Parties
- vi. Office of the Director of Public Prosecutions
- vii. Public Service Commission
- viii. Higher Education Loans Board
- ix. Kenya Revenue Authority
- x. Commission for University Education
- xi. Kenya National Examination Council
- xii. Department of Immigration
- xiii. The Official Receiver
- xiv. Credit Information Sharing Association of Kenya
- xv. Professional Bodies

The objectives of the working group were:

- To create awareness on the leadership and integrity requirements for candidates seeking election to various elective posts during the 2017 general elections;
- To re-emphasize the roles and responsibilities of various actors in terms of ensuring compliance with leadership and integrity provisions under the Constitution of Kenya, 2010, the Elections Act, 2011, the Leadership and Integrity Act, 2012, and the Political Parties Act, 2011.
- To enhance collaboration in the enforcement of Chapter Six of the Constitution of Kenya (on Leadership and Integrity) and other relevant laws;
- To provide an integrated, effective and efficient mechanism for resolving issues of leadership and integrity in the electoral process.

whether a person found to have misused or abused State office, or otherwise breached Chapter 6 of the Constitution, may stand for the Presidency, but not as a member of Parliament (Elections Act 2011, s 24(2)(h) refers)

- There not being specific provisions regarding the President in the Elections Act does not bar a person to challenge the eligibility of a person to run for presidency.

Also, it would also be against the provisions of the Constitution for someone who has abused public office to run for Presidency. The Constitution is Supreme.

- The MP is excluded to vie for political office after being convicted of abuse of office or breach of chapter 6 of the Constitution and has exhausted all possibilities of appeals.

Whether a non-State officer, who is found to have contravened Chapter six, (for example, a lay-person who bribes a public official) is excluded from standing for election as a Member of Parliament per article 99 of the Constitution.

- One can only be barred under article 99 (2) of the Constitution and therefore for elective position it is there.

- Sections 23 and 24 of the Elections Act provide for the qualification and disqualification of president and a member of parliament respectively.

- In the case of *Luka Angaiya Lubwayo and Another vs Gerald Otieno Kajwang and Another (2013) eKLR*, there are two interpretations on the kind of standards for appointed and the elected officers.

(b) Observations on the implementation of the article

There is a legal and constitutional framework for standing for election, including a list of posts incompatible with candidacy.

The Constitution (Chapter six) and the Elections Act of 2011 set forth eligibility requirements including moral and ethical requirements. Those seeking to be elected to public office have to comply with Chapter six of the Constitution including by declaring of any personal interest that may conflict with public duties (art. 73).

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Art. 92 of the Constitution deals with legislation of political parties and requires Parliament to enact a law to deal with several aspects of political parties including their registration and regulation, establishment, management, funding and financial reporting.

Kenya has enacted the **Election Campaign Financing Act, 2013**. The commencement date for this Act is 2022. It provides for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns; and for connected purposes. Section 3 of the Act gives the Independent Electoral Boundaries Commission (IEBC) responsibility for the regulation and administration of campaign financing. The Commission is required to:

- (a) Keep a register of authorised persons under this Act;
- (b) Supervise candidates, political parties, referendum committees and authorized persons in relation to campaign expenses;
- (c) Set spending limits and enforce compliance with such limits;
- (d) Set limits and verify sources of contributions to a candidate, a political party or a referendum committee;
- (e) Monitor and regulate campaign expenses;
- (f) provide a framework for the reporting of campaign expenses;
- (g) advise a candidate, a political party or a referendum committee on any matter relating to campaign expenses; and
- (h) provide and enforce a framework for the regulation of media coverage;
- (i) perform such other functions as may be necessary for the purposes of this Act.

In performing its functions abovementioned, the Commission may act in consultation with the Registrar of Political Parties.

The sources of funds for purposes of financing party nomination, election or referendum campaign are:

- (a) contributions received from any person, political party or any other lawful source;
- (b) contributions from a lawful source, not being directly from a foreign government; and
- (c) contributions from a Harambee.

The Act prohibits contributions from anonymous sources. A foreign agency, or a foreign political party which shares an ideology with a political party registered in Kenya, may provide technical assistance but not assets to that political party

The Act requires a candidate, political party and a referendum committee to disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum,

as the case may be. A candidate who, or a political party or referendum committee which fails to disclose funds or donations as required commits an offence.

The Election Offences Act 2016 makes it an offence to use public resources to campaign. Section 14 provides:

- (1) Except as authorized under this Act or any other written law, a candidate, referendum committee or other person shall not use public resources for the purpose of campaigning during an election or a referendum.
- (2) No government shall publish any advertisements of achievements of the respective government either in the print media, electronic media, or by way of banners or hoardings in public places during the election period
- (3) For the purposes of this section, the Commission shall, in writing require any candidate, who is a member of Parliament, a county governor, a deputy county governor or a member of a county assembly, to state the facilities attached to the candidate or any equipment normally in the custody of the candidate by virtue of that office.
- (4) A person who is requested to supply information required under subsection shall submit the information within a period of fourteen days from the date of the notice.
- (5) The provisions of subsection (3) shall apply with necessary modifications, to an employee of a statutory corporation or of a company in which the Government owns a controlling interest.
- (6) A person who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding six years or to both.
- (7) A member of the Commission, any person designated by the Commission or any authorized agency shall have the power to impound or to order the impounding of any State resources that are unlawfully used in an election campaign.

Kenya has enacted the **Political Parties Act, 2011**. The Act provides an effective management of political parties and establishes the Political Parties Fund. The Fund is administered by the Registrar of political parties. The Act has provisions on political parties funding and accounting to ensure that funds are used prudently. Main source of the political parties Fund is the National Government (0.3 % of National Revenue). Other sources include: membership subscription fee, contributions and donations. Benefits of Public Funding include:

- Public funding can limit the influence of interested money, thereby help curb corruption.
- With public funding comes in level playing field.

Political parties are prohibited from spending money from the Fund:

- to directly or indirectly pay remuneration, fees, rewards, allowances or any other benefit to a member or supporter of the political party, other than a member of staff;
- to finance or as a contribution to any matter, cause, event or occasion directly or indirectly in contravention of any code of ethics binding on public officers;
- to directly or indirectly for the purposes of establishing any business or acquiring or maintaining any right or financial interest whatsoever in any business or in any immovable property; or

- for any other purpose incompatible with the promotion of a multiparty democracy and the electoral processes, or with the Constitution.

Qualification and Distribution of the Fund:

A political party is not entitled to funding if;

- 1) The party does not secure at least three percent of the total number of votes at the preceding General Elections.
- 2) More than two thirds of its registered office bearers are of the same gender.
- 3) the party does not have;
 - a) twenty elected members of the National Assembly;
 - b) three elected members of the senate;
 - c) three elected members who are Governors; and
 - d) forty members of County Assemblies

The Act also creates the following offences:

- a) A political party that receives funds from a non-citizen commits an offence
- b) No person or organization shall, in one year, contribute to a political party an amount, whether in cash or in kind exceeding five percent of the total expenditure of the political party
- c) A political party which fails to declare its sources of funds (section 29 (3))
- d) A party which fails to submit to the Registrar (within 60 days before an election) a register of its members and a statement of its assets and liabilities commits an offence
- e) A party which fails to keep proper books of accounts commits an offence

The Fund is financed by taxpayers and, therefore, has to be audited to ensure that money allocated is used prudently and in accordance with the objective for which it was allocated. A political party shall, within three months after the end of each financial year, submit to the Auditor-General its accounts. The Auditor-General shall audit the accounts and submit them to the Registrar for tabling in the National Assembly.

Within ninety (90) days after the end of its financial year (which must government financial year), a political party must publish in two newspapers having nationwide circulation:

- Its sources of funds;
- Its income and expenditure; and
- Its assets and liabilities.

Why the Election Campaign Financing Act has not come into force

- Section 1A of Election Campaign Financing Act provides as follows:

“The operation of this Act is suspended, and the Act shall come into force immediately after the general elections to be held in the year 2017.”

- The Election Campaign Financing Act was gazetted in December 2016. The coming into force of the Act with regard to the 2017 August Elections was challenged in court. The Court ruled that the Act would not be applicable in the 2017 Elections.
- The Act comes into force immediately after the 2017 General Elections. The By-Elections are therefore covered.

How new parties may access public funding

- The country has over 1000 political parties; the country is therefore not in a position of fund all of them. However, there is a criteria of funding eligible political parties under Section 25 of the Political Parties Act that gives the criteria on funding. The section provides as follows:

25 “Distribution of the Fund

(1) The Fund shall be distributed as follows:

(a) eighty per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election;

(aa) fifteen per cent of the Fund proportionately to political parties qualifying under paragraph (a) based on the number of candidates of the party from special interest groups elected in the preceding general election; and

(b) five per cent for the administration expenses of the Fund.

(2) Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if:

(a) the party does not secure at least three per cent of the total number of votes at the preceding general elections; or

(b) more than two-thirds of its registered office bearers are of the same gender;

(ba) the party does not have, in its governing body, representation of special interest groups;

(c) the party does not have at least:

(i) twenty elected members of the National Assembly; and

(ii) three elected members of the Senate; and

(iii) three elected members who are Governors; and

(iv) forty members of County Assemblies.

(2A) For purposes of this section, "office bearers" means national and county officials elected or nominated by a political party in accordance with the party constitution.

(3) For purposes of subsections (1)(a) and (2)(a), the total number of votes secured by a political party shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, county governors and members of county assemblies.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Office of Registrar of Political Parties has published reports available at www.orpp.go.ke.

(b) Observations on the implementation of the article

While the Election Campaign Financing Act has been passed in 2013, it does not come into force until 2022 and there are no transitional rules in place to regulate electoral campaign financing in any elections prior to that date.

The Act gives the Independent Electoral Boundaries Commission (IEBC) responsibility for the regulation and administration of campaign financing and requires the IEBC to set spending limits, verify sources of contributions to a candidate and a political party and to provide a framework for the reporting of campaign expenses.

The Election Offences Act of 2016 makes it an offence to use public resources to campaign. Kenya also enacted the Political Parties Act of 2011 which establishes the Political Parties Fund and regulates political parties funding, accounting and auditing. The Act also criminalizes the failure to declare the funding sources and to keep proper books of accounts by a political party.

The main source of the political parties Fund is the National Government. Other sources include: membership subscription fee, contributions and donations.

It is recommended that Kenya consider establishing transitional rules to regulate electoral campaign financing in any elections prior to the enforcement date of the Election Campaign Financing Act in 2022. IEBC should also put in place the necessary implementing framework in preparation of the enforcement of the Act.

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Chapter Six of the Constitution of Kenya, which covers articles 73 to 80 (both inclusive) is entitled "Leadership and Integrity" and is geared towards ensuring that States officers (and this is also extended to public officers under Article 80(c) of the Constitution) avoid situations that raise conflicts of interest.

Under Article 73 of the Constitution sets out the responsibilities of leadership. Article 73(2) thereof sets out the guiding principles of leadership and integrity, under which (c)(ii) deals with the issue of personal interests vis-à-vis public duties:

(2) The guiding principles of leadership and integrity include:

- (a) Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
- (c) Selfless service based solely on the public interest, demonstrated by -
 - (i) Honesty in the execution of public duties; and
 - (ii) The declaration of any personal interest that may conflict with public duties (emphasis added);
- (d) Accountability to the public for decisions and actions; and
- (e) Discipline and commitment in service to the people.

In the case of *Luka Angaiya Lubwayo and Another vs Gerald Otieno Kajwang and Another (2013) eklr*, the High Court held that there is a distinction in the application of Article 73 on leadership and integrity between elected and appointed leaders. Specifically, the Court held that in appointive positions the criteria is personal integrity, competence and suitability while in elective positions, the criteria is election in free and fair elections. This distinction is important because in elective positions, it is the electors to determine those to elect based on the assessment of the candidates including their honesty, rectitude, uprightness and scrupulousness. That is why Article 38(2) of the Constitution provides that every citizen has the right to free fair and regular elections based on universal suffrage and the free expression of the will of electors.

In the same vein, Article 75(1) of the Constitution deals with the issue of the conduct of State officers and requires them to avoid participating in matters where a conflict of interest situation might arise. It states that:

"(1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids:

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest; or
- (c) demeaning the office the officer holds."

On its part, the Leadership and Integrity Act, 2012 (No. 19 of 2012) creates a general Leadership Code under which Section 16(1) and (2) require a State or public officer to use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties.

Section 16(3) requires that a State officer or a public officer whose personal interests conflict with their official duties shall declare the personal interests to the public entity or EACC.

Just like the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 (which applies to all other categories of public officers who are not State officers) criminalises situations of conflicts of interest, as per under Section 12.

Section 12 sets out as follows:

12. Conflict of interest

(1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

(3) A public officer whose personal interests conflict with his official duties shall-(a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter

(4) Notwithstanding any directions to the contrary under subsection (3)(a), a public officer shall not award a contract, or influence the award of a contract, to-

(a) himself;

(b) a spouse or relative;

(c) a business associate; or

(d) a corporation, partnership or other body in which the officer has an interest.

(5) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section

(6) In this section, "personal interest" includes the interest of a spouse, relative or business associate

In some public institutions, such as the Office of the Attorney General and the Office of the Director of Public Prosecutions, the enabling statutes require their staff to declare any interests they may have in a particular matter and also proceed to provide for Codes of Conduct that spell out similar precepts albeit in detail.

In the case of the Office of the Attorney General, Section 24(1) of the Office of the Attorney General Act, 2012 (No. 49 of 2012) provides for the establishment of a Code of Conduct for State Counsel, which is set out in the Schedule to the Act. All State counsel have to subscribe to and observe the provisions of the Code, which contains various Ethical Values and Principles. For instance, on the issue of conflicts of interest, Paragraph 16 of the Code states as follows:

16. Conflict of Interest

(a) a State Counsel shall ensure that no conflict arises or appears to arise between his official duties and his private interests.

(b) a State Counsel shall not:

(i) appear, advise or represent any party against the Government; and

(ii) be a member of, belong to, or take part in any society the membership of which is incompatible with the functions or dignity of his office.

And in the case of the Office of the Director of Public Prosecutions, to avoid conflicts of interest situations, Section 54 of the Office of the Director of Public Prosecutions, 2013 requires a member of staff or any person who attends a meeting of the Office or a Committee of the Office where a matter comes up in which he has an interest, the person is required to declare such interest and the matter should be recorded. Failure to make such a declaration is an offence which attracts a fine of not more than Kshs. 100,000 or to a fine not exceeding one year or both. ODPP has a Code of Conduct for Prosecutors which also addresses conflict of interests.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In the 2015/2016 financial year, EACC received 7929 reports out of which 61 complaints/reports touching on conflict of interest were processed. Out of the 78 completed investigations during the year, 2 were on conflict of interest by Public Officers. The following cases are pending in court where public officers have been charged with conflict of interest:

- **ACC 18/2012 Republic vs Stephen Ajengo Musila:** the accused was convicted on 11th March 2016 and sentenced to 2 and half years for the offence of failure to declare conflict of interest.
- **ACC 19/2015 Republic vs Bramwel Wanyalikhha:** the accused had been charged with seven counts of conflict of interest. However, the case was withdrawn in 2016 following the judgement in Engineers' Kamau's case. However, the case is going to be reinstated.

ACC 18/2016 Republic vs Francis Githaiga: The particulars are that the accused was the finance Director of Sports – acquired an interest in one of the companies supplying to the Sports and failed to declare conflict of interest. The judgement shall be on Monday 25th June 2018.

(b) Observations on the implementation of the article

The Constitution (arts. 73, 75 and 80), the LIA (sec. 16) and the POEA (sec. 12) require public officials to avoid situations involving conflict of interest and to declare any personal interest that may conflict with public duties. Personal interest includes the interest of a spouse, child, business associate or agent or any other matter in which the officer has a direct or indirect pecuniary or non-pecuniary interest. The EACC holds primary responsibility for overseeing management of conflicts of interest. Conflicts are disclosed to the principal (or other appropriate body) or any other person or entity and to the EACC. The EACC can institute proceedings in cases of non-compliance and can also issue advisories to principals or any other person or entity on managing conflicts of interest.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has undertaken the following measures to ensure full compliance with this provision of the Convention.

- i. Enactment of Laws regulating Codes of Conduct including:
 - The Constitution (Chapter 6 on leadership and integrity, article 10 on National Values and Principles of Governance, article 232 on Values and Principles of Public Service)
 - Public Officer Ethics Act, 2003
 - Leadership and Integrity Act, 2012
 - Public Service (Values and Principles) Act, 2015
- ii. Development and Application of Codes of Conduct and Ethics by Responsible Commissions
 - General Code of Conduct and requirement for the development of specific codes as provided for in Part II of the Leadership and Integrity Act
 - Public Service Code of Conduct, 2016
 - Public Service Procedures for Administration of Part IV of the POEA, 2016
 - All MDAs are required to develop and submit their Codes of Conduct for State and Public Officers for approval by the EACC.
- iii. All State Officers as defined under article 260 of the Constitution are required to take oath or affirmation of office upon assumption of office and commit to the specific Leadership and Integrity Code as provided for under the Leadership and integrity Act, 2012
- iv. Plans are underway to establish Integrity Awards Scheme for the Public Service. To this end the EACC in collaboration with partners held a consultative meeting on the modalities of launch and operationalization of the integrity awards scheme. The scheme is designed to identify and recognize key public institutions and public officers who have exemplified integrity in the discharge of their responsibilities.
- v. In the development and enforcement of Code of Conduct and Ethics, Kenya has two approaches towards promoting ethics and integrity among public officials. All public entities which have State officers are required under LIA to develop and Implement specific leadership and integrity codes, the EACC vets and approves such codes and oversees their implementation. Regarding other public officers the development and implementation of their Codes of Conduct and Ethics is vested in the following responsible commissions in line with the provisions of section 3 of the POEA. Responsible Commissions under the Public Officers Ethics Act, 2003 and other legislations to administer financial disclosures as a corruption preventive measure. The responsible commissions are set out in section 3 of the POEA as follows:

- The Public Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control and for the public officers described in paragraphs (d) and (e) of section 107(4) of the Constitution and for public officers who are officers, employees or members of State corporations that are public bodies.
- The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.
- The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.
- The Electoral Commission is the responsible Commission for councillors of local authorities.
- The Teachers Service Commission established under the Teachers Service Commission Act (Cap. 212) is the responsible Commission for teachers registered under that Act.
- The Defence Council established under the Armed Forces Act (Cap. 199) is the responsible Commission for members of the armed forces, within the meaning of that Act.
- The National Security Intelligence Council established under the National Security Intelligence Service Act, 1998 (No. 11 of 1998) is the responsible Commission for members of the National Security Intelligence Service established under that Act.
- The Witness Protection Advisory Board established under the Witness Protection Act, 2003 shall be the responsible commission for the members of the Witness Protection Agency established under that Act.

In addition, all MDAs have responsibilities of implementation of codes in their areas of jurisdiction in the promotion of integrity, honesty and responsibility in public service.

- vi. Section 53 of LIA provides for a long-term framework for education and training on Leadership and Integrity to all public officers, all levels of the education system and the public. In line with this provision a number of institutions are undertaking training and capacity building on leadership integrity and ethics. These institutions include:

- **EACC**

Undertakes training for public officials on integrity assurance and mainstreaming corruption prevention measures in the public service is a requirement under the performance contracting framework which is administered under the Presidency.

- **Kenya School of Government**

Has established the Centre for public service values, ethics and integrity which coordinates the training of public officers on values, ethics and integrity in the public service. In addition, the school has mainstreamed ethics and values training in all its programmes.

- **Centre for parliamentary studies** Coordinates training for elected leaders and staff of the parliamentary service commission. The training provided includes modules on leadership, ethics and integrity.

- **Judiciary Training Institute**

Coordinates training for judicial officers and staff of the Judicial Service Commission. The training provided includes modules on leadership, ethics and integrity.

- **DCI training school, Kenya Defence College, Police Training College in Kiganjo, Kenya Education Management Institute**

Coordinates training which includes modules on leadership, ethics and integrity.

- **Kenya School of Revenue Administration** The school specializes in tax administration, customs administration and fiscal policy. All of these programs incorporate training on integrity, ethics and leadership. A curriculum for the Joint Integrity Assurance Officers course and the Quality Management Program (QMP) was developed and now operational. The school also offers training for corruption Prevention Committee. The two courses (IAO and CPC) are facilitated by EACC and customized to KRA. In the long term, Kenya is planning on establishing a dedicated National Anti-Corruption Academy to provide quality training on Anti-Corruption, ethics and integrity especially for officers working for EACC, ODPP, Judiciary, OAG & DOJ among others. The establishment of the Academy was one of key recommendations of the Task Force on the review of the legal, policy and institutional framework for fighting corruption (2015)

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

EACC conducts national and sector surveys.

· **The National Survey on Corruption and Ethics,**

The Survey was conducted between August and October 2015. The overall objective of the Survey was to measure the nature, extent and magnitude of corruption and unethical practices which the public encounter. The Survey engaged a representative nation-wide sample of 5,260 households drawn from 46 Counties and 10 key informant interviews. (Available at www.eacc.go.ke)

· **Survey on Corruption and Ethics in Devolved Services: County Public Officers Experiences, 2015**

The overall objective of the Survey was to map out corruption prone areas and unethical practices in the County public service delivery. The Survey focused on corruption and unethical practices in Departments within County Government whereby 4,965 respondents were interviewed. The highlights of the findings of the Survey are as follows:

I. Status of Corruption

The service areas perceived to be most prone to corruption in counties are procurement (46%), employment and promotion (31%), allocation of funds (11%), revenue collection (11%), road construction and infrastructure development (11%).

II. Status of Ethics

The common forms of misconduct witnessed in County Government offices include; unprofessionalism (39.5%), lateness (21.4%), absenteeism (20.3%) and use of abusive behaviour and language (14.9%)

(Available at www.eacc.go.ke)

· **Impact Assessment of the Corruption Eradication Indicator under the Performance Contracting Framework in Kenya for the Period 2007-2014**

The overall objective of this evaluation was to measure the impact of the corruption eradication indicators in performance contracting to establish whether there is a positive, negative or no change.

The evaluation covered 300 public institutions under performance contracting in the 11th Cycle. The implementation of the Corruption Eradication Indicators has brought about a structured institutional anti-corruption infrastructure such as, development of Corruption Prevention Policies and structures and establishment of integrity committees. The training and sensitization of staff has empowered them to conduct rapid corruption risk assessment, avoid and report acts of corruption. The assessment revealed that since performance contracting is not anchored in law and the score allocated for Corruption Eradication Indicators is only five percent (5%), there was reluctance from institutions to fully implement the Indicators. (Available at www.eacc.go.ke)

· Statistics Regarding the Number of Public Officials who have been trained

1. As part of the EACC's strategy of intensifying anti-corruption, ethics and integrity in the public service a total of 910 Integrity Assurance Officers and 1,440 Corruption Prevention Committee members from 85 CPCs trained during the 2015-2016.
2. The EACC builds the capacity of MCAs, County executives and staffs of the County Assembly through training to enable them to carry out their legislative, oversight and administrative roles effectively. In this respect, a total of 1,878 officers were trained. (see EACC annual report 2015-2016)
3. The EACC trained 1,273 students and senior management staff from seven institutions of higher learning. The overall objective of the training was to equip the students and management with relevant knowledge, skills and values on leadership and integrity with a view to deepening good governance and corruption intolerance in their institution. (Available at www.eacc.go.ke)

During the 2015/16 FY the Commission's trained 910 integrity assurance officers and 1,440 members of Corruption Prevention Committees from 85 CPC's. In addition, the Commission trained 1,878 MCAs, County executives and staff of County Assemblies to build their capacity to carry out their legislative, oversight and administrative roles effectively.

The year 2013-2015 biennial declaration of Income, Assets & Liabilities and capacity building programme on code of conduct and ethics for the Public Service was launched by the Chairperson Public Service Commission on 25th September 2015 at the Commission House. In launching the exercise, the Chairperson said that financial disclosure is an effective tool for promoting accountability and transparency in the management of public resources and conflicts of interest. **Five hundred and six (506)** participants attended the sensitization/training workshops for the year 2015-2017 biennial declaration of Income, Assets & Liabilities and capacity building programme, **four hundred and six (406)** were sensitized on code of conduct and ethics. The participants were drawn from Members of County Public Service Boards, County Secretaries, Directors of Human Resource Management (HRM/D) in the Ministries and State Departments and Heads of HRM in Parastatals.

(b) Observations on the implementation of the article

Kenya has taken multiple measures and initiatives to promote integrity and ethics in the public service including through education and training provided to all public officers by different institutions (i.e. EACC, Kenya School of Government, Centre for parliamentary studies). Kenya has established the National Integrity Academy which was launched on 17th October 2018. Its curricula focus on leadership, ethics, anti-corruption and integrity.

Kenya has also established the "Service Excellence Award" award with integrity as one of the

selection criteria. Plans are also underway to establish Integrity Awards Scheme for the Public Service.

(c) Successes and good practices

- Promoting integrity and ethics in the public service through education and taking steps toward the establishment of a dedicated National Anti-Corruption Academy.

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

As of August 2017, most agencies with State officers had submitted their specific codes to the Commission for approval and out of those submitted many had been approved. Examples of Agencies that had their codes approved are: The Presidency (The President, Deputy President and Cabinet Office) Code was approved on 29th January 2016.

Ministry of Interior & Coordination of National Government Code was approved on 20th May 2015.
Gazette Notice No. 1341 of 4th March 2016

Ministry of Devolution and Planning Code was approved Gazette Notice CXVII No.67(4537) dated 26th June 2015.

In addition, 46 County Assemblies and 35 County Executives had submitted their codes and the same had been approved. Out of 47 county executives: www.eacc.go.ke

Part II of LIA establishes the General Leadership and Integrity Code which provides for among other things:

- A State officer shall respect and abide by the Constitution and the law.
- A State officer shall carry out the duties of the office in accordance with the law.
- In carrying out the duties of the office, a State officer shall not violate the rights and fundamental freedoms of any person unless otherwise expressly provided for in the law and in accordance with Article 24 of the Constitution.
- A State officer shall, to the best of their ability:
 - a. carry out the duties of the office efficiently and honestly;
 - b. carry out the duties in a transparent and accountable manner;
 - c. keep accurate records and documents relating to the functions of the office; and
 - d. report truthfully on all matters of the organization which they represent

Part III of LIA provides for Specific Leadership and Integrity Codes

Section 37 provides for Establishment of specific codes as follows:

(1) Each public entity shall prescribe a specific Leadership and Integrity Code for the State officers in that public entity.

(2) The specific Leadership and Integrity Code prescribed by a public entity shall include all the requirements in the general Leadership and Integrity Code under Part II of this Act and may provide for the manner in which any requirements of the specific or general Code may be satisfied.

The Act requires that a public entity shall submit the specific Leadership and Integrity Code prescribed to the EACC for approval. The specific Leadership and Integrity Code has to be in conformity with the General Leadership and Integrity Code. All Codes of Conduct are established under LIA and EACC moderates all of them.

There are two types of codes, one is meant for State Officers the other for Public Officers.

Various professionals working in the public service are bound by their specific professional codes of practice. Such as Accountants, Auditors, Lawyers, Procurement Officers and Human Resource Officers among others.

Following the enactment of LIA in 2012 all codes of conduct and ethics existing in the civil service were reviewed to align them with the provision of LIA. Relevant initiatives of regional, interregional and multilateral organizations have been incorporated into codes or standards of conduct for public officials.

Kenya is in the process of developing citizen wide service delivery charter based on various international standards.

Responsibility to specialized staff or bodies to ensure that the codes or standards of conduct are applied, including induction and/or ongoing training

The Commission is mandated to promote, evaluate and report on the constitutional values and principles including respect for human rights, accountability, transparency, integrity and good governance. Other institutions vested with the responsibility of implementing and enforcing these values includes the Ethics and Anti-Corruption Commission, the Gender and Equality Commission, Commission on Administrative Justice, the Kenya Human Rights Commission, the Kenya Police Service, the Attorney General and the Director of Public Prosecutions. The Commission will establish a structured collaboration linkage with these key institutions to ensure that matters touching on values requiring law enforcement are dealt with and reported on a timely basis.

Subject to the Constitution and any other law, a public officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

A public officer violating the provisions of this Code is liable and may be penalised in accordance with the provisions of Part V of the Leadership and Integrity Act, 2012 and Part VI of the Public Officers Ethics Act, 2003

Monitoring of compliance, the provision of advisory service on resolving ethical issues

A breach of the Code amounts to misconduct for which the officer may be subjected to disciplinary proceedings.

A person who alleges that an officer has committed a breach of the Code, may lodge a complaint with the relevant public entity and the public entity shall register and inquire into the complaint.

Initiatives aimed at raising awareness of the codes or standards of conduct among public officials as well as among the public at large

The commission in Collaboration with other State organs has participated in development of Curriculum and trainings of Public Officers on Ethics and Integrity.

Awareness on compliance with Public Officer Code of Conduct and Ethics was in December 2017 at 64%.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The year 2013-2015 biennial declaration of Income, Assets & Liabilities and capacity building programme on code of conduct and ethics for the Public Service was launched by the Chairperson Public Service Commission on 25th September 2015 at the Commission House. In launching the exercise, the Chairperson said that financial disclosure is an effective tool for promoting accountability and transparency in the management of public resources and conflicts of interest.

Five hundred and six (506) participants attended the sensitization/training workshops for the year 2015-2017 biennial declaration of Income, Assets & Liabilities and capacity building programme, **four hundred and six (406)** were sensitized on code of conduct and ethics.

The participants were drawn from Members of County Public Service Boards, County Secretaries, Directors of Human Resource Management (HRM/D) in the Ministries and State Departments and Heads of HRM in Parastatals If applicable.

The General objective of this Code is to give full effect to provisions of chapter six of the Constitution on Leadership and Integrity and the Leadership and Integrity Act, 2012 as read with the Public Officer Ethics Act, CAP. 183.

The Commission is mandated to promote, evaluate and report on the constitutional values and principles including respect for human rights, accountability, transparency, integrity and good governance. Other institutions vested with the responsibility of implementing and enforcing these values includes the Ethics and Anti-Corruption Commission, the Gender and Equality Commission, Commission on Administrative Justice, the Kenya Human Rights Commission, The Kenya Police Service, The Attorney General and The Director of Public Prosecutions. The Commission will establish a structured collaboration linkage with these key institutions to ensure that matters touching on values requiring law enforcement are dealt with and reported on a timely basis.

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A person who alleges that an officer has committed a breach of the Code, may lodge a complaint with the relevant public entity and the public entity shall register and inquire into the complaint.

The commission in Collaboration with other State organs has participated in development of Curriculum and trainings of Public Officers on Ethics and Integrity.

- Development of Codes of conduct is a process. So far there is about 70% compliance. The agencies who have not submitted are those recently established by the Statute Law and the Constitution 2010 and are in the process of establishing structures and building capacity.
- EACC however expects that in 6 months there shall be a 100% compliance. The list of entities who have not complied is available in EACC's website and a statement of non-compliance by the agencies provided. www.eacc.go.ke

(b) Observations on the implementation of the article

Kenya has two approaches in the development and enforcement of Code of Conduct. The LIA establishes a General Leadership and Integrity Code for State officers and mandates all public entities which have State officers to develop and implement specific leadership and integrity codes. Similarly, the POEA establishes a General Code of Conduct and Ethics for all public officers and mandates all Commissions to establish a specific Code for their public officers.

In both cases, the specific codes should include all the requirements in the respective general Code, including requirements on political neutrality, asset declaration, conflict of interest, gifts and harassment. All specific codes should be gazetted.

While most institutions have codes of conduct, the relevant general code of conduct applies in cases where a specific code has not been adopted.

A State officers or a public officer violating the provisions of the code is liable and may be penalised

in accordance with the provisions of Part V of the LIA and Part VI of the POEA.

The EACC vets and approves the specific Leadership and Integrity Code for State officers and oversees their implementation. According to the EACC annual report 2016-2017, 118 out of 136 public entities had their codes for State officers approved by EACC.

According to the authorities, all codes of conduct and ethics existing in the civil service were reviewed to align them with the provision of LIA following its enactment in 2012.

A State officer or a public officer should use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties. A State officer or a public officer should not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in a conflict of interest (LIA, sec. 16; POEA, sec. 12).

A State officer or a public officer may only accept a gift given to him in his official capacity if the gift is a non-monetary gift and does not exceed a prescribed value, such a gift should be deemed to be a gift to the public officer's organisation or to the State (Constitution, art. 76; LIA, sec. 14; POEA, sec. 11). The LIA also requires every public entity to a register of gifts received by a State officers and gifts given by the public entity to other State officers (Sec. 14).

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has put in place an enabling environment for reporting corruption and unethical practices. Some of the measures include;

- a) Ensuring that EACC's services are reasonably accessible in all areas by establishment of 12 regional offices.
- b) Putting in place various mechanism and medium through which members of the public can make reports to EACC including telephones, emails, the business keeper monitoring system (BKMS), letters. EACC has a fully-fledged report centre which also provides call back services to the customers. Thus, BKMS is an anonymous online reporting platform.

- c) The establishment of a web based integrated public complaints referral mechanism (IPCRM). EACC has partnered with other agencies in the EIPCRM framework to enhance receiving and referral of reports on corruption and other forms of maladministration.
- d) A mobile report receiving facility which moves across the country promoting regional reach.
- e) Establishment of offices within Huduma centres in county headquarters.

The Bribery Act, section 14 obligates every State officer/public officer or any other person holding a position of authority in a public or private entity to report to the commission in the following terms;

“14(1) Every State officer, public officer or any other person holding a position of authority in a public or private entity shall report to the Commission within a period of 24 hours any knowledge or suspicion of instances of bribery.

(2) A State officer, public officer or any other person who despite being aware or suspicious of the commission of an offence under this Act fails to report the act to the commission within the specified period commits an offence.

Section 21 of the Bribery Act provides for the protection of whistle-blowers and witnesses in the following terms;

“Protection of whistle blowers and witnesses

(1) A whistle blower, informant or a witness in a complaint or a case of bribery shall not be intimidated or harassed for providing information to law enforcement institutions or giving testimony in a court of law.

(2) A person who demotes, admonishes, dismisses from employment, transfers to unfavourable working areas or otherwise harasses and intimidates a whistle blower or a witness under this Section is guilty of an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

(3) A whistle blower or a witness under this Act shall be entitled to protection of such extent as may be determined by the Witness Protection Agency.

(4) Every law enforcement agency shall put in place reasonable mechanisms to protect the identity of informants and witnesses.

(5) Any person who knowingly or negligently discloses the information of informants and witnesses and as a result of which those informants are harassed or intimidated commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

Corruption Reporting Channels

The Integrated Public Complaints Mechanism (IPCRM) offers a platform for the public to report corruption matters through a public portal (www.sema.go.ke). This is an initiative launched by the following institutions to jointly receive complaints on corruption, discrimination and hate speech, administrative injustice, and human rights violations.

These institutions are:

1. The Ethics and Anti-Corruption Commission (EACC)

2. The Kenya National Commission on Human Rights (KNCHR)
3. The National Cohesion and Integration Commission (NCIC)
4. The Commission on Administrative Justice (CAJ)
5. Transparency International Kenya (TI-Kenya)
6. The National Anti-Corruption Campaign Steering Committee (NACCSC).

A complaint that can be dealt with by one of the above institutions may be lodged at any of the institutions listed above depending on the convenience of the person making the complaint. The complaint is then referred to the right institution through their internal mechanisms. Such persons receive feedback within 10 days of making the complaint.

KRA has set up the following corruption reporting mechanism for members of the public to report corruption:

- Corruption reporting office on 26th Floor, Times Tower KRA headquarters
- Hotline Telephone No. +254 726 984 668
- Email: corruption.reporting@kra.go.ke or cic@kra.go.ke
- Physical visit to report on Corruption
- KRA also has Informer Reward system whereby informers are encourage to submit information that will will enable the authority to collect revenue and pay the informer of 5% of the tax collection from the information but a maximum of Kshs 2 million (US D 20,000)

KRA whistle blower policy, KRA informer reward system, KRA anti-corruption and policy are at KRA website (www.kra.go.ke)

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

How the reporting channels have been/are publicised, how many reports have been acted on, and the practical steps taken to ensure retaliation is not taken against reporting persons.

- Both EACC and KRA have a policy of sensitising the public through public education forum on matters of corruption. Sensitisation includes educating the public on reporting.
- EACC has Information Education Communication materials available to the general public on their website.
- EACC and KRA have anonymous reporting systems which protect the reporting person's identity. For EACC the Business Keeper Management System (BKMS) and KRA the Intelligence Gathering System, Systems which have their server in Germany ensuring that no official of the two agencies can tamper with the information so provided, neither can they get to know the identity of the whistle-blower unless where they have expressly provided to be known.

Reports acted on:

- In 2015/2016 the EACC acted on 7,929 reports while in the year 2016/ 2017 they acted on 8,044 reports. However, this is uncategorized since the reporting is anonymous. There is no report for the 2017/ 2018 as at the time of making this report the financial year had not ended.

(b) Observations on the implementation of the article

Kenya has Put in place various channels through which members of the public, including public officials, can report wrong-doing to EACC including an anonymous online reporting platform (BKMS), telephones and emails. EACC also receives reports through a web based integrated public complaints referral mechanism (IPCRM). EACC has a fully-fledged report centre which also provides call back services to the customers.

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has put in place mechanism for compliance with the provisions of this article through the enactment of the POEA and LIA which have provisions for declaration and registration of conflict of interest and declaration of income asset and liabilities.

Part IV of POEA sets out Declarations of Income, Assets and Liabilities. Section 26 provides that every public officer shall once every two years submit to the responsible Commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years.

Section 12 A of LIA provides that any person intending to be appointed to a State office shall submit to the EACC a self-declaration form.

In the implementation of these laws all public entities are required to open and maintain conflict of interest and gift registers while responsible commissions administer the provision on declaration of income, assets and liabilities which are filed by all public officials (including State officers) biennially. The declarations are filled with the relevant organisations established under POEA. There is a proposed amendment through the Anti-Corruption Laws Amendment Bill, 2017 to amend POEA to designate EACC as the responsible Commission and central depository of financial declarations of all State officers.

Responsible commissions are set out in section 3 of POEA as follows:

a) The committee of the National Assembly responsible for the ethics of members is the responsible Commission for-

i. members of the National Assembly including, for greater certainty, the President, the Speaker and the Attorney-General;

ii. members of the Electoral Commission and the Public Service Commission; and

iii. the Controller and Auditor-General

iv. Directors and Assistant Directors of the Kenya Anti-Corruption Commission.

b) The Public Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control and for the public officers described in paragraphs (d) and (e) of section 107(4) of the Constitution and for public officers who are officers, employees or members of State corporations that are public bodies.

c) The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.

d) The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

e) The Electoral Commission is the responsible Commission for councillors of local authorities.

f) The Teachers Service Commission established under the Teachers Service Commission Act (Cap. 212) is the responsible Commission for teachers registered under that Act.

g) The Defence Council established under the Armed Forces Act (Cap. 199) is the responsible Commission for members of the armed forces, within the meaning of that Act.

h) The National Security Intelligence Council established under the National Security Intelligence Service Act, 1998 (No. 11 of 1998) is the responsible Commission for members of the National Security Intelligence Service established under that Act.

i) The Witness Protection Advisory Board established under the Witness Protection Act, 2003 shall be the responsible commission for the members of the Witness Protection Agency established under that Act.

j) The responsible Commission for a public officer for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulation.

In Kenya, all State and Public officers are required to comply with these provisions.

- *Article 75 (1)(a) of the Constitution*

A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids any conflict between personal interests and public or official duties;

Article 76(1) of the Constitution

A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament.

- S23 of POEA

A public officer shall submit any declaration or clarification required under Part IV to be submitted or made by him.

- S12 of POEA

A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

- S16 of LIA - Conflict of interest

A State officer or a public officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties.

- S 14 of LIA - Gifts and Benefits

According to s 26 of LIA every public officer is required to declare their income assets and liabilities once every two years the declaration should also cover the income assets and liabilities of his or her spouse(s) and his or her dependent children under the age of 18 years. The declarations are filed at the relevant responsible commission for the public officer.

The timelines within which the financial declaration should be made by serving, new or outgoing public officers are set out under S 27 of POEA which provides that when declarations must be made.

- (1) The declaration shall be submitted in December of every second year.
- (2) The statement date of a declaration under subsection (1) shall be the first day of November of the year in which the declaration is required.
- (3) Within thirty days after becoming a public officer, the public officer shall submit an initial declaration.
- (4) The statement date of an initial declaration under subsection (3) shall be the date the public officer became a public officer.
- (5) Within thirty days after ceasing to be a public officer, the former public officer shall submit a final declaration.
- (6) The statement date of a final declaration under subsection (5) shall be the date the public officer ceased to be a public officer. (7) The following shall apply with respect to a person who is a public officer on the day the administrative procedures relevant to that public officer are first published under section 33:
 - (a) the public officer shall submit an initial declaration within sixty days after the administrative procedures are published; and
 - (b) the statement date of an initial declaration under paragraph (a) shall be the date the administrative procedures are published.

- Section 26 (2) of the Public Officer Ethics Act provides that the financial declaration shall be in the form set out in the Schedule to the Act and shall include the information required by the form. The information required covers among other things, personal and employment information on the officer, name of spouse or spouses and children under 18 years and their income, assets and liabilities (including approximate amounts) and any other relevant information. There is a proposed amendment through the Anti-Corruption Laws Amendment Bill (2017) to amend the declaration

form so that it contains more relevant information and also to provide for online filing of declarations.

- All the responsible Commissions provided for under Section 33 (1) of POEA are required to provide guidance to their public officers on declarations. In addition, Section 42 of POEA empowers the Cabinet Secretary responsible for integrity issues/Attorney General to make regulations for the better carrying-out of the provisions of the Act. Towards that end, the Ministry of Justice and Constitutional Affairs/

The Office of the Attorney General and Department of Justice has developed regulations and guidelines for the implementation of various provisions of POEA.

- Section 33 (1) of POEA requires responsible Commissions to develop administrative procedures on the management of financial declarations of the public officers they are responsible for. Consequently, all responsible Commissions have set up dedicated Units with trained staff for handling issues to do with financial declarations for public officers. In addition, Section 44 of LIA provides that a State officer or a public entity may request EACC to give advisory opinion on any issue relating to the application of Chapter 6 of the Constitution. In practice, EACC has also been giving such advisory opinions under POEA.

- There are several mechanisms for ensuring compliance with the provisions of POEA regarding financial declarations:

- First, under Article 33 of POEA, all responsible Commissions are supposed to develop administrative procedures which provide guidance on the management of financial declarations of the public officers they are responsible for. Public officer who contravenes such procedures is subjected to disciplinary proceedings.
- Secondly, Section 32 of POEA makes it an offense for a public officer to fail to submit a declaration or a clarification or to submit a false or misleading information. Person who is convicted of such an offense is liable to a fine not exceeding Ksh. 1,000,000 or to imprisonment for a term not exceeding one year or both.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Steps are taken to verify the material accuracy of declarations, or how false declarations are enforced in practice.

- A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct, to the best of his knowledge. Under section 28 of the Public Officer Ethics Act, the Responsible Commission's Secretary or staff authorized in writing shall analyze the submitted declarations and where necessary request clarifications on discrepancies and inconsistencies within six months from the date of submission. Section 23, a public officer shall submit any declaration or clarification required under Part IV to be submitted or made by him.

Secretary or the staff of the Commission authorized in writing by the Secretary for the purpose shall analyses each declaration to ascertain if:

- on the face of the declaration, or in light of any other information the Commission may have, there is reason to suspect the declaration may be false or incomplete; or
- the assets of the person who submitted the declaration are disproportionate to his income; or
- the income, assets or liabilities of the person who submitted the declaration raise concerns of impropriety or conflict of interest or any other breach of the Code of Conduct and Ethics.

- If it is ascertained that any of the conditions above exists, the public officer who submitted the declaration shall be given an opportunity to make a clarification. If, after considering any clarification the public officer who submitted the declaration may make, the Secretary believes any of the conditions above still exists, the Secretary shall bring the matter to the attention of the Commission. The Commission may with respect to a matter brought to its attention undertake such action as it considers appropriate including notifying the Attorney General.

- For public officers in job group below “M” or its equivalent, the concerned authorized officer or the staff authorized in writing by the authorized officer for that purpose analyses each declaration to ascertain if, in the opinion of the authorized officer or the staff, any of the conditions set out above exist. If it is ascertained that any of the conditions mentioned still exists, the authorized officer shall give the public officer who submitted the declaration an opportunity to make a clarification.

- A person who has submitted a declaration to a Commission shall provide, without undue delay, any clarification requested by the Commission if the request is in writing and is made within six months after the declaration was submitted to the Commission. Without limiting what a request for clarification may include, such a request may include:

- i. a request that any information that may have been omitted be provided;
- ii. a request that any discrepancy or inconsistency, including a discrepancy or inconsistency arising because of information other than information included on the declaration, be explained or corrected.

- Public Officers who fail to comply are taken through administrative actions as salaries being withheld pending making of clarifications and explanations as prescribed in the Public Officer Ethics Act. Further, defaulting officers may be liable to prosecution in accordance with the provisions of the Act.

- The contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of this Act, in such declaration or clarification provided that prior to the responsible Commission making an affirmative decision under this section, it shall grant the opportunity to the affected party to make representations on the matter. No information obtained pursuant to subsection (1) shall be published or in any way made public except with prior written authority of the responsible Commission.

- Any person who:

(a) Publishes or in any way makes public any information obtained under the foregoing sections without prior permission of the responsible Commission;

(b) Knowingly republishes or otherwise disseminates or discloses to another person information to which this section relates where:

- (i) such information was disclosed to himself or to some other person; or

(ii) such information was obtained in contravention of this Act, shall be guilty of an offence and liable on conviction to imprisonment for five years or to a fine not exceeding five hundred thousand shillings, or to both.

- A Commission shall keep information collected under this Part concerning a person for at least five years after the person ceased to be a public officer. A person who fails to submit a declaration or clarification as required under this Part or who submits, in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

Consequence of non-compliance

- A public officer who fails to make a declaration or a clarification or who makes a false or misleading declaration or clarification may be prosecuted in a court of law or subjected to disciplinary proceedings. In that regard, the authorized officer or the Commission will initiate action. POEA 32. A person who fails to submit a declaration or clarification as required under this Part or who submits, in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

- Also, there is submission of the register of declarations on conflict of interest by MDAs to EACC on quarterly basis. Once the public officers make declaration, they are only verified when a person is under investigation.

- KRA have a policy to manage declarations where each officer's entry is vetted by their seniors.

- Submitting a false declaration is a criminal offense punishable under Law. An example of prosecution is R vs Gabriel Mbiti Mulei, the accused was charged with giving information which he knew or ought to have known was false in a declaration contrary to section 32 of the POEA. The accused was acquitted however the matter is under appeal.

(b) Observations on the implementation of the article

The Constitution (arts. 73, 75 and 80), the LIA (sec. 16) and the POEA (sec. 12) require public officials to avoid situations involving conflict of interest and to declare any personal interest that may conflict with public duties. Personal interest includes the interest of a spouse, child, business associate or agent or any other matter in which the officer has a direct or indirect pecuniary or non-pecuniary interest. The EACC holds primary responsibility for overseeing conflicts of interest. Conflicts are disclosed to the principal (or other appropriate body) and to the EACC. The EACC can institute proceedings in cases of non-compliance and can also issue advisories to principals on managing conflicts of interest.

A State officer or a public officer should not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in a conflict of interest (LIA, sec. 16; POEA, sec. 12).

A State officer or a public officer may only accept a gift given to him in his official capacity if the gift is a non-monetary gift and does not exceed a prescribed value, such a gift should be deemed to be a gift to the public officer's organisation or to the State (Constitution, art. 76; LIA, sec. 14; POEA, sec. 11). The LIA also requires every public entity to a register of gifts received by a State officers and gifts given by the public entity to other State officers (Sec. 14).

The Public Officers Ethics Act (POEA) of 2003 has established a financial disclosure system which requires State and public officers to submit financial disclosures periodically (every two years) and at the beginning and end of their service. The disclosure should cover the income, assets and liabilities of the public officer, his spouse or spouses and his dependent children under the age of 18 years. The contents of a declaration are accessible to any person, with legitimate interest and good cause, upon application to the responsible Commission. The POEA also provides penalties for non-declaration or false declaration, including fines and imprisonment.

The Public Service Commission (PSC) administers financial disclosures for all public organisations not excluded under Article 234(3) of the Constitution and is also the residual commission for all the other entities for whom no responsible commission is prescribed.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Part 5 of the POEA deals with the enforcement of codes of conduct and ethics. Section 35 of the POEA provides for the investigation for the contravention of codes of conduct and ethics by a public officer. Section 36 of POEA empowers relevant responsible commissions to take disciplinary actions against a public officer who has contravened a code of conduct. Section 37 of POEA requires the responsible commission to publish information on any action it has taken against a public officer who has contravened a code of conduct and ethics. Section 38 of POEA provides for a referral for possible civil or criminal proceeding where the responsible commission considers that civil or criminal proceedings should be instituted against a public officer who has contravened the code of conduct and ethics. For criminal cases, referral should be made to the Director of Public Prosecutions while civil matters may be referred to the Attorney General or other appropriate agencies such as EACC.

The Leadership and Integrity Act on its part provides an equally elaborate framework for the enforcement of the Leadership and integrity code. Part 4 of the Act deals with the enforcement of the leadership and integrity code applicable to State officers. Section 40 of the Act requires every State officer to sign and commit to their specific leadership and integrity codes at the time of taking the oath of office or within seven days of assuming State office. Section 41 of the Act provides that a breach of the code amounts to misconduct for which the State officer may be subjected to disciplinary proceedings unless the procedure for disciplining such an officer is provided for by the Constitution or any other law.

Section 42 of the Act provides the procedure of lodging complaints and the investigations of such complaints relating to breaches of the Leadership and Integrity Act.

Section 43 of LIA is similar to section 38 which deals with referral for possible civil or criminal proceedings. Therefore, in appropriate cases, if a public entity considers that a civil or criminal proceeding ought to be preferred against a State officer, then the public entity may refer a matter to the EACC or the Attorney General with respect to civil matters or to the Director of Public Prosecutions with respect to criminal matters or any other relevant authority.

Section 44 allows a State officer or a public entity to request EACC for an advisory opinion on any issue relating to the application of chapter 6 of the Constitution. This also extends to the implementation of the Leadership and Integrity codes.

Section 45 of LIA requires EACC to submit annual reports on the implementation of the LIA to the President and Parliament. The report is also published in the Kenya gazette and made available to the public.

In 2015/2016 EACC issued 188 pieces of advisory opinion relating to the enforcement of various aspects of chapter six of the Constitution and the Leadership and Integrity Act.

In ACC NO. 12 of 2016 Republic v Francis Githaiga, the accused was charged in court for failure to declare a conflict of interest situation arising as a result of a company associated with him providing services to a public body where he was employed. The matter is still pending in court.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Enforcement of Chapter Six of the Constitution and Leadership and Integrity Act

Reports referred, and Cases concluded and Administrative Action Recommended

From **2013 to 2018**, The EACC referred **144** reports to various public entities and responsible commissions on violation of the codes.

In the same period, in **83** matters where investigations were conducted, recommendations were made to various public entities to take administrative action against public/State officers for violation of ethical breaches.

The nature of ethical breaches includes; providing false information, lack of courtesy, unbecoming behaviour, falsification of documents, failure to meet financial obligations, failure to submit declarations on income, assets and liabilities, double employment and fighting in public among others.

(b) Observations on the implementation of the article

A State officers or a public officer violating the provisions of the code of conducts is liable and may be penalised in accordance with the provisions of Part V of the LIA and Part VI of the POEA.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has implemented the following measures in compliance with the above provisions:

a) The Constitution of Kenya, 2010 under Article 227 (1) provides that the procurement of public goods, services and works shall be done in accordance with a system that is fair, equitable, transparent, competitive and cost effective. Pursuant to this provision, Parliament enacted the Public Procurement and Asset Disposal Act, 2015 (PPADA) which replaced the Public Procurement and Disposal Act, 2005. The country's Public Procurement Laws are in essence largely based on the UNCITRAL Model Law on Procurement of Goods, Works and Services, 2011.

b) Specifically, the Act provides that:

· A Procuring Entity shall advertise tenders in the Government Tenders Portal or the Procuring Entity Website and in at least two daily newspapers of nation-wide circulation (S.96)

· The Public Procurement Regulatory Authority is required to develop and manage a State Portal on Public Procurement and Asset Disposal and the create a central repository /database that includes complaints and redress mechanisms against procuring entities and disciplinary mechanisms, pricing, statistics on tenders within public institutions and any information related to procurement that may be necessary to the Public - S.9 (k) & (m)

c) The PPADA sets out the basis for eligibility to participate in tenders under section 55. These include by ensuring the person or entity has a legal and professional capacity, has fulfilled their tax obligations and has not previously been convicted either of corrupt or fraudulent practices or violated of fair employment laws and practices. Section 80 of the Act sets out the evaluation standards that the procuring entity will follow to ensure that the outcome of the evaluation process is objective, quantifiable and gives value for money for the goods, services or works being procured.

d) The PPADA, 2015 establishes the Public Procurement Regulatory Authority as the body responsible for ensuring compliance with the Public Procurement Laws and regulations and clearly spells out its responsibilities and powers.

e) In the Standard bid documents developed by PPRA under section 58 of the PPADA, 2015 is a mandatory declaration form which is signed by all bidders committing not to engage in corruption in the course of procurement process

f) The PPRA is in the Process of revising the code of ethics for persons involved in public procurement which had been developed in 2011 to conform both to the Constitution and the PPADA, 2015.

g) The PPADA, 2015 establishes the Public Procurement Administrative Review Board with the mandate to review, hear and determine tendering and asset disposal disputes - S.27 & S.28

h) The PPADA, 2015 provides for the debarment of persons and entities who have breached or violated provisions of the various Acts that govern the procurement process. It provides for offences, classifies areas of conflict of interest, fraudulent and corrupt practices, collusion and provides for mechanisms for sanction and resolution.

i) The Country enacted the Supplies Practitioners Act, 2007. The Act established the Kenya Institute of Supplies Management (KISM) which is the Professional Body for Procurement Practitioners. KISM is responsible for the Professional Development of procurement personnel and also the enforcement of the code of conduct for its members. The PPADA, 2015 (S.47) provides that the procurement function shall be handled by procurement professionals. To be a procurement professional as defined in S. 2 of the Act, membership of KISM is Mandatory

j) In addition, the Access to Information Act, 2016 requires institutions to proactively disclose information relating to award of contracts by public entities. Section 5(e) states that upon signing any contract, the procuring entity shall publish on its website or through other suitable media the following particulars in respect of the contract entered into:

(i) the public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and terms of reference;

(ii) the contract sum;

(iii) the name of the service provider, contractor or individual to whom the contract has been awarded; and

(iv) the periods within which the contract shall be completed.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The following are examples of implementation of the above measures:

- A Tenders Portal has been developed where all public procuring entities advertise tenders. (See <http://supplier.treasury.go.ke/site/tenders.go>)
- The Public Procurement Regulatory Authority is in the process of developing a Central Database which will contain procurement information published by the Authority. (www.ppoa.go.ke)
- The Public Procurement Administrative Review Board effectively handles tendering disputes: in the last three financial years, the Review Board handled 63, 80 and 128 cases respectively. All cases handled by the Board are published on the Authority's website. Data on cases handled is summarized in the Authority's Annual reports, which are also published on its website.

In the financial year 2015/2016, EACC received and processed a total of 7,929 reports out of which 389 were in relation to public procurement irregularity.

- The Public Procurement and Assets Disposals Act, 2015 (PPAD) has decentralised Public Procurement Decision Making to Accounting Officers in all public organisations spread out throughout the country.
- According to the PPAD, 2015, the decision of the Accounting Officer in procurement matters may be informed by recommendations of the Evaluation Committee or the professional opinion of the Head of Procurement. However, the Accounting Officer is not bound by the recommendation of the Evaluation Committee or the professional opinion of the Head of Procurement hence the discretionary powers of the Accounting Officer can easily be abused.
- The oversight role in the public procurement system is vested in the Public Procurement Regulatory Authority which is not adequately resourced for that role. The Authority is understaffed and does not have adequate relevant skills to effectively undertake its oversight role.
- Due to lack of real time monitoring by the Public Procurement Regulatory Authority, irregularities in public procurement proceedings can go undetected and may only be unearthed during post-procurement audits which are more reactive as opposed to being proactive in dealing with possible corruption in public procurement.
- Although the PPADA, 2015 proposes open Tender as the preferred procurement method, many procurement entities have disregarded this and use less competitive methods e.g. Restricted Tender and Request for Quotations even without meeting the conditions for use of such methods.
- The largely manual procurement processes make it easy for corrupt public officials to tamper with procurement documents so as to manipulate the procurement process outcome. The current e-procurement platform cannot accommodate all the stages of procurement for large complex projects which are often targets for corruption.
- The Tenders Portal is currently only used for advertising tenders and publishing contract awards. Transparency and accountability in public procurement will be enhanced when all public entities migrate to 100% online e-procurement platform.
- Debarment under section 41 of the PPADA, 2015 applies where "the person is guilty of corrupt or fraudulent practices" even if the corruption was not part of a procurement process.

- On 13 June 2018, the president issued an executive order on “Procurement of Public Goods, Works and Services by Public Entities” that requires all government entities and public owned institutions to publish full details of tenders and awards from the 1st of July 2018. The publication will allow members of the public to access the information – which information shall include the items or services purchased, contract prices, and the particulars of the suppliers including owners, directors and beneficial ownership. This will enhance the highest level of public scrutiny at all units of public administration, and thereby improve the management of public resources for public good.

Further, from the 1st of January 2019, all public procurement will be undertaken through the electronic platform of the Integrated Financial Management Information System (IFMIS). The Cabinet Secretary National Treasury has been directed to guarantee the integrity of the system and secure the seamless integration of all public procuring entities.

<http://www.president.go.ke/2018/06/13/executive-order-on-procurement-of-public-goods-works-and-services-by-public-entities/>

(b) Observations on the implementation of the article

Article 227 of the Constitution on Procurement of public goods and services provides that when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

Public procurement in Kenya is regulated by the Public Procurement and Asset Disposal Act of 2015 (PPADA) which replaced the Public Procurement and Disposal Act of 2005. The Act came into force in January 2016 and applies to all State organs and public entities with respect to procurement planning, procurement processing, inventory and asset management, disposal of assets, and contract management (art. 4). PPADA sets out a comprehensive public procurement regime and provides that open tendering should be the preferred procurement method. The procuring entity may however use an alternative procurement procedure if the required conditions under the Act are met (art. 91).

If the estimated value of the contract is equal to, or more than a prescribed threshold, the procuring entity should advertise the tender in the dedicated Government tenders' portals or in its own website, or a notice in at least two daily newspapers of nationwide circulation.

On 13 June 2018, the president issued an executive order on “Procurement of Public Goods, Works and Services by Public Entities” that requires all government entities and public owned institutions to publish full details of tenders and awards from the 1st of July 2018. The publication will allow members of the public to access the information - which information shall include the items or services purchased, contract prices, and the particulars of the suppliers including owners, directors and beneficial ownership. Further, from the 1st of January 2019, all public procurement will be undertaken through the electronic platform of the Integrated Financial Management Information System (IFMIS).

PPADA sets out the evaluation standards that the procuring entity should follow to ensure that the outcome of the evaluation process is objective, quantifiable and gives value for money for the goods, services or works being procured (art. 80).

PPADA establishes the Public Procurement Regulatory Authority (PPRA) as the authority responsible for ensuring compliance with the Public Procurement Laws and regulations. However, the PPRA seems to be lacking necessary resources to undertake its functions. The Act also establishes the Public Procurement Administrative Review Board which is responsible for handling complaints arising from tendering processes. Data on cases handled by the Board is summarized in

the PPRA's Annual reports published on its website. PPADA provides for the debarment of persons and entities who have breached or violated provisions of the various Acts that govern the procurement process. It provides for offences, classifies areas of conflict of interest, fraudulent and corrupt practices, collusion and provides for mechanisms for sanction and resolution. The debarment extends to the directors of the company but not to the shareholders. Decisions on debarment should be taken by the Public Procurement Regulatory Board which was appointed in September 2018. It has 7 members and 2 are yet to be appointed.

The Supplies Practitioners Act of 2007 established the Kenya Institute of Supplies Management (KISM) which is the professional body for procurement practitioners. KISM is responsible for the professional development of procurement personnel and also the enforcement of the code of conduct for its members. The staff of the procurement unit in every procuring entity should be members of the KISM.

It is recommended that Kenya further enhance the effectiveness of the procurement system including by committing the necessary resources to the PPRA.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following measures have been undertaken in compliance with the above provision:

a) Principles of Public Finance

Article 201 of the Constitution contains a raft of principles which should guide all aspects of public finance in the Republic. With regard to the accounting and oversight of Kenya's public funds, the principles state as follows;

“The following principles shall guide all aspects of public finance in the Republic: (a) there shall be openness and accountability, including public participation in financial matters; (b) the public finance system shall promote an equitable society, and in particular: (i) the burden of taxation shall be shared fairly; (ii) revenue raised nationally shall be shared equitably among national and county governments; and (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas; (c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations; (d) public money shall be used in a prudent and responsible way; and (e) financial management shall be responsible, and fiscal reporting shall be clear”

b) Procedures for the adoption of the national budget

Kenya enacted the Public Finance Management Act (PFMA), 2012 whose sections 35-45 provide for the procedures for the adoption of national and county budgets. Each year, Treasury issues detailed guidelines to public agencies for the preparation of the annual budgets. As required by Article 10 of the Constitution, Kenya has developed public participation guidelines at the national and county government levels that guide the participation of the public in the budgeting processes. These include the County Public Participation Guidelines, 2016.

c) Timely reporting on revenue and expenditure;

Section 80-85 of the PFMA 2012 sets provisions for timely reporting on revenues and expenditures. Treasury has issued detailed guidelines and templates guiding how public entities should do the quarterly and annual reporting and how to prepare consolidated financial statements.

d) A system of accounting and auditing standards and related oversight;

Article 201 of the Constitution sets out the principles of public finance relating to among other things accounting and oversight of public funds. Article 201 (d) & (e) states that, “public money shall be used in a prudent and responsible way; and financial management shall be responsible and fiscal reporting shall be clear.

The Constitution in Article 226(1) provides for the keeping of financial records and auditing of public entities. The Constitution and the Public Audit Act, 2015 establish the office of the Auditor General whose obligation is to audit and report on accounts of all public entities. The Auditor General uses the International Standards which are issued by International Organization of Supreme Audit Institutions.

The Constitution of Kenya, 2010 provides an elaborate framework for accounting and auditing as well as oversight for the management of public funds. Articles 228 and 229 establishes the office of the Controller of Budget and Auditor General respectively. According to article 248(3) both offices are independent. Article 249(2) of the Constitution provides that constitutional commissioners and the holders of independent offices are:

- a) only subject to the Constitution and the law and
- b) not subject to the direction and control of anybody.

Further, article 249(3) requires Parliament to allocate adequate funds to enable constitutional commissions to perform their functions among other things.

The mandate of the Controller of Budget is set out under article 228(4) of the Constitution which states that the Controller of Budget shall, “oversee the implementation of the budgets of the National and County governments by authorizing withdrawals from public funds under article 204, 206 and 207”. The office of the Controller of Budget Act, 2016 provides further and better particulars over the operations over the office of the Controller of Budget.

The mandate of the Auditor General is set out under article 229(4) of the Constitution which states as follows,

229. (1) There shall be an Auditor-General who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President. (2) To be qualified to be the Auditor-General, a person shall have extensive knowledge of public finance or at least ten years' experience in auditing or public finance management.

(3) The Auditor-General holds office, subject to Article 251, for a term of eight years and shall not be eligible for re-appointment. (4) Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on- (a) the accounts of the national and county governments; (b) the accounts of all funds and authorities of the national and county governments; (c) the accounts of all courts; (d) the accounts of every commission and independent office established by this Constitution; (e) the accounts of the National Assembly, the Senate and the county assemblies; (f) the accounts of political parties funded from public funds; (g) the public debt; and (h) the accounts of any other entity that legislation requires the Auditor-General to audit. (5) The Auditor-General may audit and report on the accounts of any entity that is funded from public funds. (6) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way. (7) Audit reports shall be submitted to Parliament or the relevant county assembly. (8) Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action

The Public Audit Act, 2015 provides further and better particulars on the powers, functions and operations over the office of the Auditor General.

e) Effective and efficient systems of risk management and internal control

The Public Audit Act further vests on the Auditor General powers to give assurance on the effectiveness of internal control, risks management and overall governance at the national and county level.

f) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

Article 226(5) of the Constitution provides for corrective action in cases where a public officer approves the use of public funds contrary to the law. The Public Finance Management Act further criminalizes conduct that violates the requirements of the Act.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Government has rolled out an automated system that enhances efficiency in planning, budgeting, procurement, expenditure management and reporting. This is done through the Integrated Financial Management Information System (IFMIS). The system is operational both at

the national and county governments. It guarantees that each expense is traceable, thereby delivering optimal value to the taxpayer. (www.ifmis.go.ke).

Offences in breach of the Public Finance Management Act are triable under the Economic Crimes Act. (The NYS case is alleged to have been exposed through IFMIS)

In 2013, the office of the Auditor General trained 750 auditors on risk-based audit methodology.

How regularly are more intensive audit processes used, particularly in high risk areas?

- KRA undertakes an in-depth audit of about 5% of the Kenyan taxpayers.

How effective public audits have been in identifying and preventing corrupt behaviour?

- Audited reports are debated by the National Assembly and County Assemblies. Most of the cases that are forwarded to EACC come from the Office of the Auditor General. In addition, Parliament follows up on these reports through the Parliamentary Accounts Committee and Parliamentary Investments Committee, where they summon implicated agencies to shed light on the reports.

How the Auditor General undertakes this task?

- The Office of the Auditor General draws its mandate from the Constitution of Kenya. Chapter 12, Part 6, Article 229 establishes the Office of the Auditor General. Chapter 15, Article 248, Section 3 and Article 249, Section 2 (a) and (b) provides for the independence of the Office of the Auditor General.
- Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on:
 - The accounts of the national and county governments;
 - The accounts of all funds and authorities of the national and county governments;
 - The accounts of all courts;
 - The accounts of every commission and independent office established by this Constitution;
 - The accounts of the National Assembly, the Senate and the county assemblies;
 - The accounts of political parties funded from public funds;
 - The public debt; and
 - The accounts of any other entity that legislation requires the Auditor-General to audit.

For an explanation of how the Auditor general executes his mandate we have attached a document setting out the audit process.

(b) Observations on the implementation of the article

There are several classes of audit, including annual, periodic, performance, and forensic audits.

The reviewers were informed during the country visit that the Office of the Auditor-General is largely up to date with routine audits, which happen on a rolling basis (not every entity audited every year). The reviewers also heard that the Office is well resourced and staffed. The National Assembly and County Assemblies debate audited reports. Most of the cases that are forwarded to EACC come from the Office of the Auditor General. In addition, Parliament follows up on these

reports through the Parliamentary Accounts Committee and Parliamentary Investments Committee, where they summon implicated agencies to shed light on the reports.

The management of public finances is mainly regulated by the Constitution and by the Public Finance Management Act (PFMA) of 2012. The Act establishes the National Treasury and provides for the procedures for the adoption of national and county budgets. Kenya has developed public participation guidelines at the national and county government levels that guide the participation of the public in the budgeting processes. These include the County Public Participation Guidelines of 2016.

The Constitution and the Public Audit Act of 2015 provide for the establishment the Office of the Auditor General whose obligation is to audit and report on accounts of all public entities. The Auditor General uses the International Standards which are issued by International Organization of Supreme Audit Institutions.

The Constitution and the Controller of Budget Act of 2016 provide for the establishment of the Controller of Budget. The Controller is appointed by the President with the approval of the National Assembly and oversees the implementation of the budgets of the national and county governments by authorising withdrawals from public funds. The Controller submits to each House of Parliament a quarterly report on the implementation of the budgets of the national and county governments.

Kenya has established an automated system that enhances efficiency in planning, budgeting, procurement, expenditure management and reporting. This is done through the Integrated Financial Management Information System (IFMIS). The system is operational both at the national and county governments and facilitates the traceability of expenses.

The Public Audit Act further vests on the Auditor General powers to ensure the effectiveness of internal control, risks management and overall governance at the national and county level.

(c) Successes and good practices

- Establishment of an Integrated Financial Management Information System (IFMIS) that enhances efficiency in planning, budgeting, procurement, expenditure management and reporting.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Public Finance Management Act, 2012 (PFMA), 2012 establishes the Public-Sector Accounting Standards Board whose function is to set generally accepted accounting standards and to prescribe the minimum standards for proper maintenance of books of accounts for all levels of Government. The Board was constituted in 2014.

Commercial banks in Kenya began implementing the International Financial Reporting Standards in 2003.

The Government has set up punitive mechanisms to deal with fraudulent actions through the establishment of the Banking Fraud and Investigations Unit domiciled at the Directorate of Criminal Investigations. Its mandate is to investigate acts of fraud involving financial records in the financial sector. The Penal Code sets the offences, which include forgery, uttering false documents with the attendant penalties of up to 7 years imprisonment.

The Access to Information Act, 2016 requires public entities to maintain records that are accurate, authentic, have integrity and useable. It further provides the minimum standards for a public entity to qualify to have complied with the duty to keep and maintain records to include computerization of records and information management systems in order to facilitate more efficient access to information. This provision will come into effect in September 2019. Some public entities have begun digitizing their records.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Public-Sector Accounting Standards Board has developed reporting tools and illustrative financial statements. The annual templates have been automated in IFMIS. In October 2014, they managed to consolidate Government wide financial statements. All public-sector entities have embraced and applied the gazetted standards in preparation of financial statements.

The Board has from 2015, established an award scheme, for the public entity that best implements the standards.

The Board in conjunction with the National Treasury has been able to train over 5000 accountants from the public sector.

Several public officers are currently facing both administrative and criminal sanctions for the violation of the requirements set out in these laws and regulations.

Whether section 18 of the Access to Information Act protects against alteration, defacement, etc. of information prior to it being requested.

- Section 18 of the Access to Information Act does not specifically cater for where alterations are made before the application for access to information is made. However, the gap in the section has been covered under other laws. For example, the Penal Code provisions on forgery.
- Section 353 of the Penal Code makes it a criminal offence to alter or deface documents.
- Further section 357 of the Penal Code also makes it a criminal offence to alter or make documents without authority.

- Various Legislations also protect documents from alterations. E.g Land Registration Act, Kenya National Examinations Council Act.

(b) Observations on the implementation of the article

The PFMA establishes the Public-Sector Accounting Standards Board whose function is to set generally accepted accounting standards and to prescribe the minimum standards for proper maintenance of books of accounts for all levels of Government. The Board was constituted in 2014. The Penal Code provides for penalties of up to 7 years imprisonment for forgery (art. 351), uttering of documents (art. 357), and falsification of register (art. 361).

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

- Adoption of International Public-Sector Accounting Standards (IPSAS) accrual for general government entities.
- Training and capacity development on curriculum on IPSAS and International Financial Reporting Standards (IFRS) for public sector.
- Collaboration with key stakeholders including private sector, international standards setting bodies e.g. the International Public Sector Accounting Standards Board and International Federation of Accountants.
- Development and Automation of all public records
- Adoption of a Public Procurement Performance Monitoring System for the Authority.
- Timely and regular reconciliation of accounts.
- Full consolidation of public financial statements and publication

(c) Technical assistance needs

Training on monitoring and evaluation of public procurement systems, procurement investigations, risk-based audit of procurement and contract management activities, prevention and detection of fraud, corruption in public procurement, preparation of procurement audit/ investigation reports.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its*

public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following measures have been taken in compliance with this Article:

i) Constitutional

Promulgation of the Constitution of Kenya, 2010 whose salient provisions on transparency include the following:

- Article 35 entrenches the right to access to information as a fundamental right and freedom. This guarantees every citizen the right of access to information held by the State or held by another person and required for the exercise or protection of any right or fundamental freedom. The same Article further obligates the State to publish and publicize any important information affecting the nation.
- Article 31 (c & d) protects personal data from unnecessary and unlawful disclosure.
- Article 10 which provides for the National values and principles of governance to include transparency and accountability

Article 232 sets out the values and principles of public service which include accountability in administrative acts, high standards of professional ethics and transparency and provision to the public of timely, accurate information;

- Chapter 6 provides guidelines on leadership and integrity
- Article 118 of the Constitution provides procedures for petitioning Parliament and county assemblies for information

ii) Legislative

- Public Service (Values and Principles) Act - Leadership and Integrity Act
- Public Officer Ethics Act
- Access to Information Act - Bribery Act
- Ethics and Anti-Corruption Commission Act
- Commission on Administrative Justice Act
- Anti-Corruption and Economic Crimes Act -County Governments Act
- Petition to Parliament (Procedure) Act and Petition to County Assembly (Procedure) Act

- Diverse county government public participation laws

iii) Policies

- Public participation policies (there are a number of them, including for County Governments)
- Public institutions have developed in-house anti-corruption policies which provide for mechanisms to report corruption cases.

Pursuant to Article 35 of the Constitution, Parliament enacted the Access to Information Act in 2016. The Act confers on the Commission on Administrative Justice the oversight and enforcement functions under the Act. The Act lays emphasis on the duty to disclose and non-disclosure is only allowed within the accepted limitations.

a) Obligations on public entities and private bodies

Among the key provisions of the Act are the requirements of public entities and private bodies to proactively disclose information that they hold and to provide information on request, routine and systematic information disclosure on constitutional principles relating to accountability, transparency and public participation and access to information and to provide public education on the right to access information. Furthermore, the Act provides for access to information held by private bodies in compliance with any right protected by the Constitution and any other law.

b) Requirements on proactive disclosure

Under proactive disclosure, public entities are required to facilitate access in regard to the following information:

- (i) the particulars of its organization, functions and duties;
- (ii) the powers and duties of its officers and employees;
- (iii) the procedure to be followed in the decision-making process, including channels of supervision and accountability;
- (iv) salary scales of its officers by grade;
- (v) the norms set by it for the discharge of its functions;
- (vi) guidelines used by the entity in its dealings with the public or with corporate bodies, including the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; and
- (vii) a guide sufficient to enable any person wishing to apply for information under this Act to identify the classes of information held by it, the subjects to which they relate and the location of any indices to be inspected by any person

The requirements on proactive disclosure came into effect on 21st September 2017, which is one year after enactment of the Act.

c) Yearly update of information

Public entities are required to update information set out in (b) above annually and to publish all relevant facts while formulating important policies or announcing the decisions which affect the public in general or to the persons likely to be affected directly.

d) Protection of whistle blowers, privacy and personal data in the disclosure of information

The Act provides for the protection of persons who disclose information of public interest in good faith. Such includes violations of the law, human rights violations; mismanagement of funds; conflict of interest; corruption; abuse of public office; and dangers of public health, safety and the environment. The Whistle Blowers Protection Bill, 2018 seeks to provide an elaborate framework on the protection of whistle blowers.

The Constitution also safeguards every person's right to privacy, which includes the right not to have their person, home or property searched; their possessions seized; information relating to their family or private affairs unnecessarily required or revealed; or the privacy of their communications infringed. The Data Protection Bill seeks to regulate the collection, processing, keeping, use and disclosure of certain information relating to individuals that is processed automatically.

e) Awareness creation initiatives on access to information

One of the mandates of CAJ is to develop and facilitate public education awareness and develop programmes on the right to access to information and the right to protection of personal data. To date the Commission has endeavoured to mainstream awareness creation on the rights and obligations under the Access to Information Act in its program of activities. This has been through education on the obligations of public entities and public officers, the responsibilities of the Commission under the Act, procedure of handling of complaints by the Commission, as well as ways of reporting to the Commission. This has been done through public engagement forums as well as communication through the media. To this end, CAJ has published an awareness creation article on Access to Information and CAJ role in the implementation process which was run in the Daily Nation newspaper in December 2016.

f) Mechanism for appeal against the denial of requests for access to information

The Act designates the Commission on Administrative Justice as the institution to handle reviews of decisions by both public entities and private bodies regarding requests for access to information. A review may be in regard to:

- a decision refusing to grant access to the information applied for;
- a decision granting access to information in edited form;
- a decision purporting to grant access, but not actually granting the access in accordance with an application;
- a decision to defer providing the access to information;
- a decision relating to imposition of a fee or the amount of the fee;
- a decision relating to the remission of a prescribed application fee;
- a decision to grant access to information only to a specified person; or

- a decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.

g) Compliance with international obligations on access to information

An analysis of relevant international legal instruments to determine Kenya's level of compliance with its obligations, including reporting obligations has been initiated and is at an advanced stage.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The following measures have been put in place to implement the above provision:

- Many public institutions have developed reporting mechanisms that promote anonymous reporting of corruption incidents
- The Government has established Huduma Centers, Judiciary service desk and several institutional help lines that promote corruption reporting
- Establishment of online access to government services like the e-government, e-citizen, e-procurement, i-tax
- Most public institutions have developed websites for ease of access
- Establishment of the Kenya National Library Service, Kenya National Archives, Kenya Gazette, County Gazettes, Kenya Law Reports, Judiciary Libraries
- Anti-Corruption oversight institutions including EACC, CAJ and NACCSC and some public institutions have established corruption committees at the community level that help report corruption incidents
- Various private institutions have service desks through which they can receive complaints anonymously.
- Public institutions develop annual reports on corruption prevention, which they submit to EACC.
- Since the commencement of the access to information law, the Commission has received and processed 37 access to information requests.

(b) Observations on the implementation of the article

The Constitution enshrines the principle of access to information held by the government and prescribes relevant procedures (arts. 35 and 118). The Access to Information Act of 2016 (AIA) designates the chief executive officer of each public entity as the Access to Information Officer (S. 7) and prescribes bases for refusal of requests which may be considered broad or vague in nature (S. 6(1)). These prescribed bases for refusal are subject to exceptions where the public interest outweighs the harm to protected interests (S. 6(4)). Requests that are denied or not satisfactorily attended to can be appealed to the Commission on Administrative Justice, and then to the High Court (S. 20-23).

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following measures have been taken in compliance with this Article:

i. Constitutional

Promulgation of the Constitution of Kenya, 2010 whose salient provisions on transparency include the following:

- Article 35 the right to access to information entrenched as a fundamental right and freedom. This guarantees every citizen the right of access to information held by the State or held by another person and required for the exercise or protection of any right or fundamental freedom. The same Article further obligates the State to publish and publicize any important information affecting the nation.
- Article 31 (c & d) protects personal data from unnecessary and unlawful disclosure.
- Article 10 which provides for the National values and principles of governance to include transparency and accountability
- Article 232 on the values and principles of public service which include accountability in administrative acts, high standards of professional ethics and transparency and provision to the public of timely, accurate information;
- Chapter 6 on leadership and integrity
- Article 118 of the Constitution on procedures for petitioning Parliament and county assemblies for information

i) Legislative

- Public Service (Values and Principles) Act - Leadership and Integrity Act
- Public Officer Ethics Act
- Access to Information Act in 2016 - Bribery Act

- Ethics and Anti-Corruption Commission Act
- Commission on Administrative Justice Act
- Economic Crimes Act
- County Governments Act
- Petition to Parliament (Procedure) Act and Petition to County Assembly (Procedure) Act
- Diverse county government public participation laws

ii) Policies

- Public participation policies (there are a number of them, including for County Governments)
- Public institutions have developed in-house anti-corruption policies which provide for mechanisms to report corruption cases.

The Access to Information Act, 2016 designates the accounting officer of each public institution as the Access to Information Officer.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The following are examples of implementation of the above provisions:

- a) It is a requirement for public entities to sign performance contracts and one of the main deliverables is the development and display of service charters, which provide information to the members of the public on the organization, functioning and decisions making processes.
- b) Recruitment of public officers is done openly and competitively and includes vetting by various institutions.
- c) Most public institutions have developed Information, Education and Communication materials which are freely available to the members of the public in regard to the organization, processes and cost of services in the respective entities.
- d) The Commission on Administrative Justice has developed reporting guidelines for public institutions under the Access to Information Act
- e) The Government developed the e-government and e-citizen platform that public entities publish information for consumption by the members of the public

(b) Observations on the implementation of the article

Kenya has made progress in simplifying access to information in accordance with S. 5(1)(e) of the Access to Information Act by creating a number of internet portals such as online access to government services like the e-government, e-citizen, e-procurement, i-tax. The EACC, the Auditors and other institutions publish their periodic performance reports on their respective websites.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following measures have been taken in compliance with the above provisions:

a) Article 35 the right to access to information entrenched as a fundamental right and freedom. This guarantees every citizen the right of access to information held by the State or held by another person and required for the exercise or protection of any right or fundamental freedom. The same Article further obligates the State to publish and publicize any important information affecting the nation.

b) The Access to Information Act, 2016 whose provisions include requirements of public entities and private bodies to proactively disclose information that they hold and to provide information on request, routine and systematic information disclosure on constitutional principles relating to accountability, transparency and public participation and access to information and to provide public education on the right to access information. Furthermore, the Act provides for access to information held by private bodies in compliance with any right protected by the Constitution and any other law.

c) Other legislations require public institutions to publish information on certain parameters periodically.

i) Public institutions are required to publish annual reports on activities undertaken including anti-corruption strategies

iii) Other Anti-Corruption bodies like EACC are required to report quarterly to Parliament on anti-corruption activities implemented.

d) The law requires oversight institutions to issue advisory opinions on public interest matters including corruption

Please provide examples of the implementation of those measures, including related court or

other cases, available statistics etc.

Every public institution publishes an annual financial report which is transmitted to the Auditor General and Parliament.

- The Judiciary prepares and gazettes the State of the Judiciary Report (SOJAR) annually and transmits it to Parliament.
- The Judiciary undertakes corruption mapping survey every two years to identify corruption prone areas and units and takes remedial action. These reports can be obtained on the Judiciary website: www.judiciary.go.ke.
- EACC undertakes various surveys on integrity and corruption. The reports can be obtained on the EACC website: <http://www.eacc.go.ke>.
- Information on recruitment of public officers is publicized in daily newspapers and the relevant websites. Such information includes list of applicants, shortlisted and successful candidates

(b) Observations on the implementation of the article

Kenya has undertaken a number of risk assessments. The EACC reports appear particularly comprehensive and are targeted at specific areas of risk. The reports are available online but appear to be out of date (i.e. the last posting was with regard to the year 2007).

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

The need to put in place a mechanism to act on recommendations in the various reports including criminal prosecutions and administrative action.

- The need to simplify information that goes to the public especially in reports by use of language that can be understood by majority of the public
- There is need to adopt dissemination strategies that reach majority of the citizenry
- There is need to promote literacy levels among the citizens to enhance the absorption of information.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following measures have been put in place in compliance with the above provision:

- Entrenching the establishment of the Judiciary under Chapter 10, Article 160 of the Constitution as an independent institution subject only to the Constitution and the law. The constitution also secures the tenure of office of judges and the Judiciary under Articles 167 and 168 of the Constitution. Other legislations enacted include the Judicial Service Act, the Supreme Court Act, the Court of Appeal (Organization and Administration) Act, the High Court (Organization and Administration) Act, the Magistrates' Act, the Leadership and Integrity Act, the Public Officer Ethics Act and Public Service (Values and Principles) Act.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- Establishment of the Judicial Service Commission to promote and facilitate the independence and accountability of the Judiciary and efficient, effective administration of justice. The JSC further receives and investigates complaints against judicial officers and other staff of the Judiciary and takes disciplinary action as is appropriate.
- Establishment of the Judges and Magistrates Vetting Board to vet judges and magistrates and those considered unsuitable to serve, as a transitory mechanism in accordance with the Sixth Schedule of the Constitution, Part 5 Section 23 of the Constitution.
- Public interview and scrutiny of potential judicial officers in the course of recruitment.
- Establishment of the Judiciary Training Institute to train judicial officers and staff on topical aspects.
- Digitization of court records.
- Establishment of the office of the Judiciary Ombudsperson in 2011 to address administrative failures within the Judiciary. The Office of the Judiciary Ombudsman has been strengthened since January 2017 with the Deputy Chief Justice being appointed to oversee the operations of that office.
- Formulation of the Judiciary Transformation Framework (JTF) that placed it on the path of institutional transformation. The JTF which was anchored on four pillars, namely; People-focused delivery of justice, Transformative leadership, organizational culture and professional staff, Adequate financial resources and physical infrastructure and Harnessing Technology as an enabler for justice. The JTF laid the foundation for the current framework, Sustaining Judiciary Transformation (SJT) which has six pillars, namely Access to Justice, clearing backlog, Integrity and Fight against Corruption, Restructured Office of the Judiciary Ombudsman, a Winning Digital Strategy and Leadership and Governance.
- Public access to judicial proceedings including access by the media. Publication of court rulings and judgments in the Kenya Law Reports website.
- Publication of daily hearing cause lists for all court stations across the country.
- Declaration of assets and liabilities under the Public Officer Ethics Act every two years.
- Establishment of specialized anti-corruption courts both at the magistracy and High Court level.

- Enactment of the Code of Conduct for judicial officers and staff, 2003. The same is undergoing review.

(b) Observations on the implementation of the article

The independence of the judiciary is established in the Constitution (art. 160). The organization of courts, recruitment and dismissal of judges are governed by the Constitution (arts. 167 and 168) and general provisions of the Judicial Service Act, the Magistrates' Act, LIA, POEA and Public Service Act. Kenya has put in place the Judicial Code of Conduct and Ethics which regulates amongst other things the giving of gifts to judges outside employment.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

1. Compliance with this provision of the Convention.

The following measures have been put in place to ensure compliance with the above provisions:

Constitutional and legislative framework

The Office of the Director of Public Prosecutions (ODPP) is established under Article 157 of the Constitution as an independent institution with prosecutorial powers over criminal matters. Article 157(10) secures the independence of the Director of Public Prosecutions in as far as he does not require the consent of any person or authority for the commencement of criminal proceedings and shall not be under the direction or control of any person or authority. Pursuant to this, Parliament enacted the Office of the Director of Prosecutions Act, 2013 which establishes the ODPP. Section 5 of the ODPP Act provides for the Powers and functions of the DPP, which include:

- a) Power to direct the Inspector-General to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction;
- b) Exercise State powers of prosecution
- c) formulate and keep under review public prosecution policy;
- d) Perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the

Section 16 of the ODPP Act establishes the Advisory Board to the ODPP whose functions are to advise the Office on recruitment and appointment of members of staff of the Office; promotions; discipline; and any other matters that may be referred to the Board by the DPP.

Section 39 of The ODPP Act requires the ODDP to maintain a code of conduct to regulate the conduct of persons subject to the Act. It further provides that breach of the code of conduct shall be treated as misconduct by an officer and punishable with equal measure as a breach of a provision under the Act.

The Leadership and Integrity Act, Chapter 183 of the Laws of Kenya establishes the general Leadership and Integrity Code for State and public officers.

The Public Officer Ethics Act, 2003 seeks to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The following are the examples of the implementation of the measures above:

- ODPP Officers are subject to various codes of conduct which have been developed to guide their work;
- The General prosecution policy has been developed and officers sensitized to apply when making a decision to prosecute. A similar prosecution policy in respect to corruption and economic crimes has been developed and is in use;
- Occasional vetting of the officers handling corruption and economic crimes is done, the last being in 2015;
- Asset and liabilities declaration under the Public Officer Ethics Act is done every two years;
- ODPP officers are taken through a general and specialized training on corruption and economic crimes;
- Quarterly and annual reporting on prosecution of cases is done;
- Creation of prosecution teams to handle corruption cases has been done;
- Work planning and performance management is done to guide the performance of duties by ODPP officers;
- A mechanism for daily returns on court work has been put in place through prescribed forms;
- Sanctions against officers on failure to adhere to codes of conduct including interdiction, dismissal and prosecution where a criminal offence is disclosed have been implemented;
- The total number of corruption reports forwarded to Office of the Director of Public Prosecutions (ODPP) increased from 117 in 2014/15 to 167 in 2015/16. (See Economic Survey 2017, by the Kenya National Bureau of Statistics)

(b) Observations on the implementation of the article

The public prosecutor enjoys functional independence according to the Constitution (Art. 157). The organization and functioning of the Office of the Public Prosecutor is regulated in the Office of the Director of Prosecutions (ODPP) Act which establishes the Advisory Board to the ODPP whose

functions are to advise the Office on recruitment and appointment of members of staff, promotions discipline, and any other matters that may be referred to the Board by the DPP (S. 16). ODPP Officers are subject to the Code of Conduct for Public Prosecutors, they are also guided by a National Prosecution Policy.

(c) Technical assistance needs

Capacity development for investigators and prosecutors.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

(1) Establishment of an independent Ethics and Anti-Corruption Commission:

The Constitution of Kenya, Article 10 outlines principles of governance that are binding on all persons. Further, it establishes the Ethics and Anti-Corruption Commission. The Commission has an independent mandate to investigate corruption-related cases and to provide awareness on the same.

Section 11(1d) of the EACC Act empowers the Commission to investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under the EACC Act, the ACECA or any other law enacted pursuant to Chapter Six of the Constitution. Section 11(1g) of the EACC Act empowers the Commission to advise on its own initiative any person on any matter within its functions. Section 11(1h) empowers the Commission to raise public awareness on ethical issues and educate the public on the dangers of corruption, enlist and foster public support in combating corruption but with due regard to the provisions of the ACECA as to confidentiality.

Under Section 4(2) of the Leadership and Integrity Act, the EACC is responsible for overseeing and enforcing the implementation of the Act. In addition, Section 4(1) of the Act provides that every person has the responsibility of implementing:

“Every person has the responsibility of implementing the provisions of this Act to the extent required by this Act.”

This means the Act may apply to private sector.

(2) The development of policies to promote a multi-sectoral and structured engagements between public and private entities to encourage participation and cooperation in prevention of corruption. The policies include:

(a) The Kenya Integrity Plan (KIP) (2015-2019): KIP is a multi-sectoral integrity plan adopted in August 2015, to guide the fight against corruption and promotion of ethics and integrity in 15 sectors of the Kenyan society cut across the two levels of Government - national and county and operates under the umbrella of the Kenya Leadership and Integrity Forum (KLIF). The Attorney General is the Chairperson of KLIF while the Ethics and Anti-Corruption Commission (EACC) provides its Secretariat. KIP is a successor to the National Anti-Corruption Plan (NACP) adopted in 2006. KIP sector members are drawn from the Executive; Legislature; Judiciary; Law Enforcement bodies; EACC; watchdog agencies; trade unions; professional organizations; organizations; civil private society sector; religious education sector; constitutional commissions, etc.

(3) Enactment and existing legislative frameworks providing a framework for prevention, detection and punishment of corruption and bribery. The Acts are as follows:

(i) Article 10 of the Constitution provides for the principles related to public participation, transparency and accountability, leadership and integrity and conflict of interest.

(ii) **The Bribery Act 2016** This is an Act of parliament which provides for the prevention, investigation and punishment of bribery in both the public and private entities.

S 9 of the Act requires public or private entities to put in place procedures appropriate to the size and scale of the entity and to nature of its operation, for the prevention of bribery and corruption.

S12 of the Act provides that the Cabinet Secretary in consultation with the commission is under an obligation to publish guidance to assist both the public and private sector in preparing for procedures for prevention against bribery.

Sections 14 and 15 of the Act makes it a duty of everyone to report cases of bribery within 24 hours irrespective of the territory where the bribery happened. Section 18 (4) of the Act provides for penalties that a private entity is liable to.

S21 of the Act provides for protection of Whistle-blowers.

(iii) **Access to information Act 2016-** The Act captures the definition of private bodies under S 2 to include any private organization that receives public resources and benefits, utilizes public funds, engages in public functions, provides public services, has exclusive contracts to exploit natural resources or is in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right. This Clause ensures that Private entities that are given licenses and perform public duties comply with the Access to Information Act obligations to proactively disclose information that they hold and to provide information on request in line with the constitutional principles as a way of preventing corruptions 16 (5) lists information on violations of the law, including human rights violations; mismanagement of funds; conflict of interest; corruption among others as part of information that should be disclosed.

Section 4(3) gives any person authority to get information of any private entity at a cost. The Act has also enhanced transparency and accountability in the private sector as it requires for procedures to be put in place for providing the public with access to information with regard to company ownership.

(iv) **The Public Procurement and Disposal Act 2015-** Section 55(2) of the Act provides for instances where a person/ consortium may be ineligible to bid due to conflict of interest.

(v) **The Leadership and integrity Act 2012 and Regulations-** provides for procedures and mechanisms for the effective administration of Chapter Six of the Constitution which includes public trust, personal integrity, accountability to the public for decisions and actions.

(vi) **Capital Markets Authority Act-**the purpose of the law is to promote, regulate companies and facilitate the development of an orderly, fair and efficient capital market in Kenya. Under Section 11 (3) cc of the Act, the Authority is mandated to impose sanctions for breach of the provisions of the Act or the regulations made thereunder, or for non-compliance with the Authority's requirements or directions. Private companies are required to submit to the Authority disclosure, audit and compliance statements.

(4) Establishment of a dedicated Anti-Corruption and Economics Crime Division under the Judiciary and Practice Directions:

The Judiciary has established a High Court Anti-Corruption Division fully dedicated to address corruption cases both original and appellate corruption related cases. The Court became fully functional through the development of Practice Directions.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(1) The following are public and private engagements currently in place between the public and private sectors:

(a) The Kenya Leadership and Integrity Forum (KLIF) established under the Kenya Integrity Plan (KIP) (2015-2019), holds annual integrity peer-review meetings between public and private entities, to assess the implementation of various anti-corruption targets drawn from KIP. The recommendations arising from KLIF meetings have persuasive authority and usually inform various legal, policy and institutional reforms in the prevention and fight against corruption.

(b) Establishment of the Business Community Court Users Committee: The National Council on Administration of Justice (NCAJ) on November 11, 2015 launched the Business Community Court Users Committee considered a historic milestone in Kenya's Judicial System. The Committee brings together main actors in the Justice System and private sector to address key issues affecting private sector including prevention of corruption and the Courts role in resolving commercial dispute resolution in a manner that boosts the country's economic Development.

(2) Development of procedures for the prevention of bribery: With the enactment of the Bribery Act in December 2016, public and private entities are currently developing guidelines and regulations to operationalize the Bribery Act as per Section 9 of the Act. Further, it provides for an offence where the private entity fails to set up such procedures and it can be proved that the failure is as a result of consent or connivance of a director or senior officer of the private entity, or a person purporting to act in such a capacity, or occupying such a position, by whatever name called.

(3) Undertaking specific programmes on public education training and awareness: The public and private sector have been engaging in programmes aimed at education training and awareness on the Bribery Act requirements during the year 2017. Such programmes have been jointly held with the Kenya Association of Manufacturers, a representative body of more than 50% of private manufacturers in the country.

(b) Observations on the implementation of the article

The Kenya Integrity Plan (KIP) (2015-2019) is a multi-sectoral integrity plan which guides the fight against corruption and promotion of ethics and integrity in 15 sectors, including the two levels of Government - national and county. It operates under the umbrella of the Kenya Leadership and Integrity Forum (KLIF), which is chaired by the Attorney General, while secretariat is provided by the EACC. The Capital Markets Authority is responsible for regulating and supervising capital markets in Kenya (See S. 11 of the Capital Markets Act).

Several provisions provide a framework for prevention, detection and punishment of corruption and bribery in the private sector. S. 9 of the Bribery Act requires public or private entities to put in place appropriate procedures for the prevention of bribery and corruption. The relevant implementing regulations are under development. S.12 of the Bribery Act provides that the Cabinet Secretary in consultation with the EACC is under an obligation to publish guidance to assist both the public and private sector in preparing for procedures for prevention against bribery. Sections 14 and 15 of the

Act makes it a requirement to report suspicion or knowledge of bribery in public or private entities. The Act provides penalties for corruption by a private entity (S. 18(4)) as well as whistle-blower protection (S.21). The Access to Information Act requires that private entities given licenses and those performing public duties comply with obligations to proactively disclose information that they hold and to provide information to the public on request (S. 2, 4 and 16 Access to Information Act).

The Capital Markets Authority Act, the Business Registration Service Act, the Leadership and Integrity Act and Regulations prescribe general provisions and requirements for establishing and operating commercial legal entities, including provisions on elimination of conflicts of interest in the private sector. Private associations have also taken steps to subscribe to a Code of Ethics for Businesses in Kenya as a form of self-regulation.

Section 28 of the Leadership and Integrity Act restricts former State officers (which mainly include high ranking public officers and members of the Judiciary, art. 260 of the Constitution) from being engaged by or act for person or entity in a matter in which the officer was originally engaged in as a state officer for at least 2 years after leaving the State office.

It is recommended that Kenya consider enhancing efforts to monitor whether public and private entities have met requirements to put in place appropriate procedures for the prevention of corruption.

It is also recommended that Kenya continue efforts to encourage the observance of codes of ethics in the private sector.

(c) Successes and good practices

Private entities given licenses and those performing public duties are required to comply with obligations to proactively disclose information that they hold and to provide information to the public on request (art. 12).

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Government of Kenya has put in place the following measures for ensuring the maintenance of books and records, financial statement disclosures and accounting and auditing standards to prohibit unethical acts:

(1) Development of relevant legislative frameworks and provisions:

(a)The Companies Act- the Government of Kenya continues to strengthen its legal framework relating to the incorporation, registration, operation, management and regulation of companies. After the passage of the Constitution 2010, the law was reviewed to bring it into conformity with constitutional provisions on transparency and accountability in regulation of companies. The **Companies Act, 2015** has relevant provisions for the prevention of corruption. Key provisions are as follows:

- (i) The Companies Act 2015 in Part XXVII provides for auditing of the Company's financial statements unless it is exempted from such auditing under sections 711 or 714 or 716 of the Act.
- (ii) A requirement for a private and public company to keep company records which shall be available for inspection at a place specified (See section 1008 of the Companies Act 2015). Companies are also required to take precautions against falsification of its records (See section 1009 of the Companies Act 2015).

In addition, a further amendment has recently in 2017 been carried out through **the Companies (Amendment) Act, 2017**. The Amendment Act has introduced:

- (a) An elaborate definition for beneficial ownership. It has also amended Companies Section Act 93 to place a requirement on companies to keep a register of its beneficial owners and the copy be lodged with the Registrar. This makes it mandatory for the private companies to disclose who the beneficial owners of the companies.

(b)The Business Registration Service Act, 2015 came into operation on 6th November 2015. The Act was enacted to establish the Business Registration Service to ensure effective administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The following are some of the key implementation measures:

- (i) Establishment of the Business Registration Service
- (ii) The Business Registration Service has prepared and disseminated IEC materials on the new process of doing business in Kenya.
- (iii) Public private cooperation in the development of ethical codes of conduct for the private sector: Private associations have taken steps to subscribed to the Code of Ethics for Businesses in Kenya as a form of self-regulation. The initiative is a voluntary process by Business community in Kenya to promote and enhance the ethics of business conduct. Associations that have embarked in this initiative are the Kenya Association of Manufacturers, Kenya Private Sector Alliance, Global Compact Network Kenya in line with the ten principles of the United Nations Global Compact

(b) Observations on the implementation of the article

The Companies Act in Part XXVII provides for auditing of financial statements of companies. Private and public companies are also required to keep company records available for inspection at a place specified (S. 1008 of the Companies Act), as well as to take precautions against falsification of records (S. 1009 of the Companies Act). In addition, through a 2017 amendment of the Companies Act, an elaborate definition of beneficial ownership was introduced, together with a requirement for companies to keep a register of beneficial owners and the copy be lodged with the Registrar (S. 2, 93), thereby making it mandatory for the private companies to disclose who the beneficial owners of the companies. The Public Procurement and Disposal Act provides for instances where a person/consortium may be ineligible to bid due to conflict of interest (S. 55(2)).

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Income Tax Act doesn't recognize corrupt activities as deductible expenses. The KRA has however put up measures for scrutiny by Auditors to disallow such expenses which usually appear in most records as facilitation or commission.

The Income Tax Act, CAP 470, part VI provides for a schedule of the deductions allowed in the computation of the total income.

Section 16 (1) of CAP 470 provides that

“save as otherwise expressly provided, for the purposes of ascertaining the total income for any year of income, no deduction shall be allowed in respect of –

- a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;
- b) any capital expenditure or any loss, diminution or exhaustion of capital.”

KRA have already started corruption related tax audits and are in the process of training auditors in order to pick out corruption related incomes. In this respect KRA has trained 100 auditors in collaboration with the EACC.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

KRA undertakes public education programmes on corruption and audit management frameworks between public officials and private sector stakeholders such as Kenya Association of Manufacturers, Kenya Private Sector Alliance and the Kenya Flower Council.

(b) Observations on the implementation of the article

The Income Tax Act does not explicitly disallow the tax deductibility of expenses that constitute bribes (S. 16 on Deductions not allowed).

It is recommended that Kenya explicitly prohibit the tax deductibility of expenses that constitute bribes (art. 12(4)).

KRA has proposed to;

- amend section 16- Deductions not allowed to explicitly state that bribery is a non-allowable expense;
- amend Section 9 of EACCMA-offences by, or in relation to officers to change the law from 3 years (as a fine) to 10 years to be in line with the Bribery Act, 2016. This is in order to make punitive any corruption related offence by a KRA officer.

This is still under consideration.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

- (a) Enhance cooperation engagements between public agencies and private sector.
- (b) Strengthen data-collection systems on compliance of the private sector with Government requirements on prevention of corruption.
- (c) Enhance allocation of resources to support capacity-building for public and private entities on ethical and integrity issues.

(d) Technical assistance needs

- Capacity development for the private sector.
- Implementation of the law on bribery (Bribery Act) particularly on the area of development of guidelines to assist public and private entities to establish procedures for prevention of bribery.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Constitution of Kenya 2010

- Article 10 incorporates public participation as a part of national values and principles of governance.
- Article 35 provides for access to information as one of the freedoms guaranteed under the Bill of rights.
- **The enactment of Access to Information Act, 2016** to give effect to the right of access to information by citizens as provided under Article 35 of the Constitution and to provide a framework to facilitate public education on the right to access information
- Article 174(c) provides that the object of devolution is to: “enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them.” Article 184 (1)

(c) also requires that mechanisms for participation by residents be included in the national legislation relating to urban areas and cities governance and management.

- Article 196(1) (b) of the Constitution requires county assemblies to facilitate public participation in legislative and other business of the assembly and its committees. They should conduct their business in an open manner, and hold their sittings and those of their committees, in public; and facilitate public participation and involvement in the legislative and other business of the assembly and its committees. County Assembly committees responsible should take views from the citizens, at the village, ward, and Sub county and county levels.

- The principles of public participation have subsequently led to passage and amendment of various legislation to promote the principle as follows;

- **The Public Finance Management Act** – S 207 requires County Governments to establish structures, mechanisms and guidelines for citizen participation. Further S 137 promotes establishment of County Budget and Economic Forum for county budget consultation process

- **County Governments Act-** S 91 requires the county government to facilitate the establishment of modalities, and platforms for citizen participation. Sections 94, 95,96 requires the Counties to establish mechanisms to facilitate public communication and access to information using media with the widest public outreach and every county shall designate an office for ensuring access to information. Sections 100 and 101 provides for creation of an institutional framework for civic education by the counties.

- **Urban Areas Act-**Sections 21 and 22 provides for participation by the residents in the governance of urban areas and cities. The Second Schedule of the Act provides for the rights of, and participation by residents in affairs of their city or urban areas.

- **The Public Procurement and Disposal Act 2015-** Section 68(3), 125(5), 138, and 179 lays emphasis on transparency of the procurement process including requirements for procuring entities to publicly avail procurement records after closure of proceedings, publicize notice of intention to enter into contract on websites and public notice boards and publish and publicize all contract awards.

- Several countries have Participation Laws to enacted Public enhance public participation by citizens at the county level.

- Draft Public Participation Bill, 2016 which seeks to provide a general framework for effective public participation to give effect to the constitutional principles of democracy and participation of the people under Articles 1(2), 10(2),35, 69(1) (d), 118, 174(c) and (d), 184(1) (c), 196(2) and 232(1)(d) of the Constitution; and for connected purposes. The Bill is currently before the Senate house of Parliament.

Policy frameworks on public participation

- County Government Public Participation guidelines, 2016- The guidelines provide a framework for participation by stakeholders in different county government processes. It provides guidance on principles of public participation, mechanisms for public participation, enablers for public participation, Petitions, Compliment/Complaint, Grievance and Redress Mechanisms for Public Participation.

- The OAG and DOJ is in the process of developing a National Public Participation Policy to guide the National Government on issues of Public Participation.

- **Social Audits**

The National Anti-Corruption Campaign Steering Committee involves Citizens and stakeholders in decision-making processes through social audits e.g. village seminars for grassroots opinion leaders to form anti-corruption networks.

- Setting up of Complaints reporting mechanisms

Some of the government agencies have set up online complaints reporting mechanisms to facilitate participation of citizens in reporting of complaints. This include the Integrated Public Complaints Referral Mechanism which is an online reporting and referral mechanism that brings together independent commissions with the mandate to receive and investigate complaints reported by members of the public and also institutions that exercise awareness creation. It is an initiative of the Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, National Cohesion and Integration Commission, Commission on Administrative Justice, National Anti-Corruption Campaign Steering Committee and Transparency International Kenya. Through this platform awareness is created on how to detect and prevent corruption by citizens.

EACC has also established an anonymous public reporting system for reporting complaints from the public (Business Keeper Monitoring System- which is an online anonymous monitoring system)

The EACC has been engaging integrity Assurance Officers to help in reporting incidences of corruption that arise within respective organizations.

- Public Education and Awareness programmes

Some of the agencies such as NACCSC undertake public education and awareness forums to sensitize citizens on anti-corruption measures and further disseminate information to the public through use of IEC materials such as handouts, brochures, publications, t-shirt and radio programmes to promote anti-corruption campaigns.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- During the financial year 2016/2017, NACCSC undertook a comprehensive interactive radio campaign on seven radio stations themed 'Elections and Good Governance' aimed at sensitizing the public on the need to elect leaders of integrity during the general election in August 2017. The successful campaign, which featured a majority of stakeholders in the fight against corruption, was implemented through Radio Citizen, Ramogi Radio, Iftiin FM, Pwani FM, Kameme FM, Musyi FM and Hope FM. A total of 71 programmes were transmitted as at 30th June, 2017 reaching an estimated 20.9 million listeners every week. In the same period, NACCSC transmitted 24 Public Service Announcements (PSAs) containing values-based anti-corruption messages through radio and television reaching estimated 15.7 million listeners and 1.4 million viewers respectively per transmission.

- A total of 33 Social Audits and public reporting forums were undertaken by County Anti-Corruption Civilian Oversight Committees (CACCOCs) reaching a total of 3064 key beneficiaries. CACCOCs participated in 36 public meetings (barazas) and sensitization forums to disseminate anti-corruption messages reaching 3,609 community members (see NACCSC Annual Report 2016/2017)

- Capacity Building and Sensitization workshops by NACCSC I. Training of the Administrative Officers:

Two sensitization workshops were held in Kiambu and Meru Counties reaching a total of 127 administrative officers who are in-charge of coordinating the implementation of public project implementation.

II. Village Seminars

10 Village seminars were held reaching a total of 411 village key leaders 2 in Kirinyaga, 4 in Embu and 4 in Meru Counties.

III. Sensitization Workshops for elected Maendeleo Ya Wanawake Organizations

Three anti-corruption sensitization workshops were held for elected Maendeleo Ya Wanawake Organization leaders drawn from 17 counties organized in four regions, thus North Eastern - 3, Eastern - 8, Central - 5 and Nairobi City Counties. A total of 191 elected leaders were sensitized on understanding corruption, manifestations and effects; and actions that should be taken to fight and prevent corruption.

IV. Sensitization Workshops

Four anti-corruption sensitization workshops were held in two counties reaching a total of 289 participants in various segments as indicated below: -

Kakamega

- Day 1: 77 Religious leaders - Day 2: 85 Youth Leaders
- Day 3: 71 Project Management Committees Makueni
- 59 Participants (Religious Leaders)
- Over 22,000 people have been sensitized on how to report corruption, human rights violations, maladministration, discrimination and hate speech through IPCRM activations
- The Judiciary has set up a public online reporting mechanism to facilitate members of the public and staff who wish to report incidences of corruption.
- The Judiciary Ombudsman undertakes public engagement to both sensitize and train the public on how to identify and report corruption issues. In the year 2015/2016 forty (40) of such engagements were undertaken.

(b) Observations on the implementation of the article

The Constitution enshrines the principle of participation by society (Arts. 10, 174(c), 184(c) and 196(1)(b)). Various legislation has been passed or amended to promote participation of society in enhancing transparency, access to information and promoting the contributions of the public to the decision making process (S. 137 and 207 of the Public Finance Management, S. 91 and 94-96 and 100-101 of the County Governments Act, S. 21 and 22 of the Urban Areas Act, S. 68(3), 126(5), 138 and 179 of the Public Procurement and Asset Disposal Act). Civil society is also included in the development of anti-corruption policies.

(c) Successes and good practices

Participation of civil society in the development of anti-corruption policies and standing agreements/MOUs for engagement with civil society.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

- Empowerment of citizens through forums and radio shows to create awareness on the mandates of the anti-corruption bodies which has been done by institutions such as National Anti-Corruption Campaign Steering Committee in partnership with Civil Society organizations such as Transparency International Kenya.
- Creating of online reporting and referral platforms like the Integrated Public Referral Mechanisms which provides a platform for reporting of complaints. The online reporting and referral mechanism brings together independent commissions that have a mandate to receive and investigate complaints reported by members of the public and also institutions that exercise awareness creation. It is an initiative of the Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, National Cohesion and Integration Commission, Commission on Administrative Justice, National Anti-Corruption Campaign Steering Committee and Transparency International Kenya.
- Most of the public bodies have offices in different regions to promote access by citizens to facilitate complaints reporting. Most of these offices have online sites and hotlines through which citizens can lodge complaints. Some of these bodies include the National Police Service, Ethics and Anti-Corruption Commission among others
- Formation of grassroot reporting avenues such as Ombudsman Committees, County Anti-Corruption Civilian Oversight Committee, Integrity Assurance Officers among others.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Description of operational mechanism of IPCRM: -

Six agencies, thus Commission on Administrative Justice, Ethics and Anti-Corruption Commission, National Cohesion and Integration Commission, Kenya National Commission on Human Rights, National Anti-Corruption Campaign Steering Committee and Transparency International (Kenya) joined together and signed a Memorandum of Understanding on 1st August, 2012. The main objective was to strengthen partnerships between the five State oversight institutions in the handling, management and disposals of complaints/reports received from the public and provide feedback to complainants through the automated system branded “Sema! Piga Ripoti!”. To date, over 22,000 people have been sensitized on how to report corruption, human rights violations, maladministration, discrimination and hate speech through joint forums, including activations, by the six partner agencies countrywide.

(b) Observations on the implementation of the article

Some government agencies have set up online complaints reporting mechanisms to facilitate participation of citizens in reporting of complaints. These include the Integrated Public Complaints Referral Mechanism, which is an online reporting and referral mechanism that brings together independent commissions with the mandate to receive and investigate complaints reported by members of the public and institutions responsible for awareness raising. The EACC has also established an online anonymous public reporting or monitoring system for reporting complaints from the public. The EACC has further been engaging Integrity Assurance Officers to help in reporting incidences of corruption that arise within respective organizations. In addition, most public bodies have offices in different administrative regions in Kenya to promote citizens reporting. Most of these offices have websites and hotlines through which citizens can lodge complaints, such as the National Police Service, Ethics and Anti-Corruption Commission. During the country visit, reviewers were further informed that some civil society organizations have concluded memoranda of understanding with governmental entities, such as the police, for civic engagements in the context of corruption preventive measures or awareness raising.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Set up better mechanisms to promote reporting of complaints or incidents

- Put in place proper mechanisms to protect whistle-blowers
- Enhance institutional collaborations to ensure effective responses
- Sensitization of the public on mandates and reporting mechanisms for the bodies
- Develop mechanisms that will guarantee meaningful participation by citizens

(e) Technical assistance needs

Implementation of access to information laws.

Article 14. Measures to prevent money laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has a well-established legal regime for regulation of financial institutions and for fighting the crime of money laundering. The principal ones are the following:

Legislative framework

· Establishment of the Central Bank of Kenya:

The Central Bank of Kenya Act provides a framework to establish the Central Bank of Kenya (CBK) which provides an oversight role over the operations of financial institutions. Section 33D and 33F provides for revocation or suspension of licences as well as inspection for dealers who do not meet the requirement by the Central Bank. Authorized dealers include an authorized bank, authorized bureau, authorized mortgaged finance company, an authorized money remittance provider or an authorized microfinance bank.

The CBK is empowered under Section 33H to monitor Payments between Residents and Non-residents in the country with an aim of monitoring transactions of persons entering and leaving the country with amounts above USD 5,000.00. Section 33L of the Act provides a general penalty for offences for non-compliance with the Act. Section 43 provides a framework for CBK to be furnished with information by Specified Banks.

Part 6(A) of the CBK Act governs regulation and oversight of foreign exchange dealers.

The Central Bank Act (Cap 491, Laws of Kenya) provides in section 4A that the Central Bank shall formulate and implement such policies that promote the regulation and supervision of efficient and effective payment, clearing and settlement systems. In particular, the Central Bank Prudential Guidelines 2013 contains very detailed requirements for customer and beneficial owner identification.

CBK prudential guidelines 2013 CBK/PG/08 deals with proceeds of crime and money laundering (prevention) and combating the financing of terrorism. They provide for customer identification, detailed requirements for record keeping whereby financial institutions are required to maintain and keep records of all transactions for a minimum period of seven years. The prudential guidelines also advocate for reporting of Suspicious Transaction Reports.

The National Payment Systems Act, 2011 Provides for the regulation and supervision of payment systems and payment service providers. A payment system is a system or arrangement that enables payments to be executed between a payer and a beneficiary, or facilitates the circulation of money, and includes any instruments and procedures that relate to the system

The Money Remittance Regulations, 2013 govern the operations of money remittance operators. The Regulations provide a regulatory framework for money remittance business including licensing and oversight of money remittance operators. Under the regulations, a money remittance business is one where a service for the transmission of money or any representation of monetary value without any payment accounts being created in the name of the payer or the payee, where either (a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service operator acting on behalf of the payee; or, (b) funds are received on behalf of, and made available to the payee. A total of 17 Money Remittance Providers have been licensed to operate in the country.

Kenya Electronic Payment and Electronic Systems (KEPPS). The KEPPS is a System that transfers funds between banks in Kenya on a gross basis in real-time with finality and irrevocability using settlement accounts of banks and other authorised participants. The KEPPS Rules and Procedures provide a framework for governing settlement of funds between the participants.

· **Enactment of the Proceeds of Crime and Anti-Money Laundering Act, 2009**

The law provides for the offence of money laundering and introduces a comprehensive legal and regulatory regime for combating the offence which include; identification, tracing, freezing, seizure and confiscation of the proceeds of crime. Under the Act (POCAMLA), a reporting institution is defined as meaning a financial institution or a designated non-financial business and profession.

The definition of a financial institution under Section 2 of POCAMLA is quite wide and includes any person transferring funds of value by any means including both formal and informal channel.

The obligations of reporting institutions are set out in Part IV of POCAMLA and include, Obligation to monitor and report suspected money laundering activity; Obligation to verify customer identity; Obligation to establish and maintain customer records; Obligation to establish and maintain internal reporting procedures; The Act also stipulates when the reporting obligations shall apply to Accountants.

In terms of AML/CFT supervision, Section 36 A(a) of POCAMLA gives the Financial Reporting Centre powers to supervise financial reporting institutions regarding application of the Act. Under that provision, each supervisory body is responsible for supervising and enforcing compliance of all reporting institutions regulated or supervised by it and to whom the provision of the Act apply. The second schedule of POCAMLA sets out the list of functionaries or institutions which have been

designated as supervisory bodies. The Supervisory bodies include, Central Bank of Kenya; Insurance Regulatory Authority; Betting and Licensing Control Board; Capital Markets Authority; Institute of Certified Public Accountants of Kenya; Real Estate Agents Registration Board; Non-Governmental Organizations Co-ordination Board and the Retirement Benefits Authority. The Cabinet Secretary of the National Treasury has the powers to designate additional functionaries or institutions as supervisory bodies. For the DNFBPs sector which does not have a regulator or SRO, the FRC will oversee AML/CFT implementation in those sectors.

· Development of the Proceeds of Crime and Anti-Money Laundering Act, 2009 Regulations, 2013:

The Regulations require financial institutions and, non-designated and designated non-financial businesses and professions (DNFBPs) to undertake due diligence to identify their customers and ultimate beneficiaries. Part IV of the Regulations set out the Customer Due Diligence Requirements with under Regulation 12 (b) and 19 requiring reporting institutions to and take reasonable measures to verify the identity of the beneficial owner so as to satisfy that the institution knows who the beneficial owners and ultimate beneficiaries are and understands the ownership and control structure of the customer in case of legal persons and arrangements.

Regulation 26 provides for money or value transfer services and regulation 27 for wire transfers.

26. Money or value transfer services

A reporting institution that offers money or value transfer services as a product shall ensure that the provider of such services:

- (a) is licensed or registered;*
- (b) has anti-money laundering programmes in place; and*
- (c) is subject to an effective system for monitoring and ensuring compliance with anti-money laundering measures and that such systems are regularly monitored for compliance.*

27. Wire transfers

(1) A reporting institution undertaking a wire transfer shall ensure that information accompanying domestic or cross-border wire transfers always have the following information:

- (a) the name of the originator;*
- (b) the originator account number where such an account is used to process the transaction;*
- (c) the originator's address, or national identity number, or passport number or date and place of birth;*
- (d) the name of the beneficiary; and*
- (e) the beneficiary account number where such an account is used to process the transaction;*
- (f) in the absence of an account number, a unique transaction reference number shall be included which makes it possible to trace the transaction.*

(2) The requirements under sub regulation (1) apply to reporting institutions in circumstances where the institution is acting as:

- (a) the ordering financial institution;*
- (b) the beneficiary financial institution; or*
- (c) the intermediary financial institution.*

(3) Wire transfers to and from persons or entities that are designated under the United Nations Security Council Resolution 1267 (1999) and other United Nations resolutions relating to the prevention of terrorism and terrorist financing are prohibited.

Regulation 36 requires financial institutions and, non-designated businesses and professions to ensure that they maintain and keeps records of all transactions for a minimum period of seven years from the date the relevant business or transaction was completed or following the termination of an

account or business relationship. In addition, the entities are also obligated to keep all records obtained through customer due diligence measures.

· **The Banking Act:**

The Act consolidates the law regulating the business of banking in Kenya and provides measures for prevention of corruption. Part V of the Act requires audit of accounts and Part VI imposes an obligation on Banks to furnish information to the Central Bank of Kenya on their daily transactions.

The Act consolidates the law regulating the business of banking in Kenya and provides measures for prevention of corruption. Part V of the Act requires audit of accounts and Part VI imposes an obligation on Banks to furnish information to the Central Bank of Kenya at such time and in such manner as CBK may direct as the Central Bank may reasonably require for the proper discharge of its functions. Part VII of the Act provides for inspection and control of institutions with section 32 giving the CBK power to inspect banks. It provides as follows:

32. (1) The Central Bank may, at any time and from time to time and shall, if so directed by the Minister, cause an inspection to be made by any person authorized by it, in writing, of any institution and its agencies and of their books, accounts and records.

(2) When an inspection is made under subsection (1), the institution concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the institution and such correspondence, statements and information relating to the institution, its business and the conduct thereof as the person making the inspection may require and within seven days or such longer time as he may direct in writing and any failure to produce any books, accounts, records, documents, correspondence, statements or information within the period specified in the relevant direction shall constitute a contravention of the provisions of this Act for the purposes of section 49, provided that:

(a) the books, accounts and other documents required to be produced shall not, in the course of the inspection, be removed from the premises of the institution or other premises at which they are produced;

(b) the person making the inspection may make copies of any books, accounts and other documents required for the purposes of his report; and

(c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act and of the Central Bank of Kenya Act

(3) The person making the inspection shall submit his report to the Central Bank; and the report shall draw attention to any breach or non-observance of the requirements of this Act and any regulations made thereunder, any irregularity in the manner of conduct of the business of the institution inspected, any apparent mismanaging of the business or lack of management skills in that institution and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

(4) The Central Bank may assist investigative agencies or other authorities in matters related to suspected fraud or malfeasance in institutions by identifying such matters for referral to or at the request of, such agencies or authorities.

(5) For purposes of this Act, the Central Bank shall be the coordinator of the consolidated supervision of groups, and as such may appoint a competent authority from:

(a) amongst the bodies set out in the Third Schedule, or

(b) any other entity or entities with expertise in the relevant field to carry out an inspection of the operations of the associate, holding or subsidiary company of an institution, or of any person who exercises control of an institution, in order to satisfy itself that the operations of such associate, company or other person are not detrimental to the safety and soundness of the institution concerned.

Institutional frameworks

· Establishment of the Financial Reporting Centre under S 21 of POCAMLA:

The main objective of the FRC is to assist in the identification of the proceeds of crime and the combating of money laundering and the financing of terrorism. The FRC's other objectives are to:

- a. make information collected by it available to investigating authorities, supervisory bodies and any other bodies relevant to facilitate the administration and enforcement of the laws of Kenya;
- b. exchange information with similar bodies in other countries regarding money laundering activities and related offences; and
- c. ensure compliance with international standards and best practice in anti-money laundering measures.

The Centre is also empowered to:

- a. receive, analyse and interpret reports of unusual or suspicious transactions made by reporting institutions; information on conveyance of monetary instruments to/from Kenya; information disclosed to it pursuant to the Prevention of Terrorism Act, 2012; and any additional or other information disclosed to it and obtained by it;
- b. send information it receives (disseminate) to the appropriate authorities, law enforcement any intelligence agency, or any other appropriate supervisory body for further handling if, the Director-General has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or financing of terrorism;
- c. cause an inspection of any reporting institution;
- d. send to the appropriate law enforcement authorities, intelligence supervisory agency, or body any information derived from an inspection if there are reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or the financing of terrorism;
- e. instruct any reporting institution to provide it with such other or additional information or documents to enable the Centre to properly undertake its functions or take such steps as may be appropriate to facilitate any investigation undertaken or to be undertaken by the Centre including providing documents and other relevant information;
- f. compile statistics and records, disseminate information within Kenya or elsewhere, and make recommendations arising out of any information received, issue guidelines to reporting institution and advise the Minister;
- g. design training requirements and provide such training for any reporting institution in respect of transactions, record-keeping and reporting obligations in accordance with the provisions of POCAMLA;
- h. consult with any relevant person, institution or organization for the purpose of exercising the powers or duties under the POCAMLA;
- i. publish in the Gazette such information as may be prescribed by the Minister;
- j. create and maintain a database of all reports of suspicious transactions, related Government information and such other materials as the Director-General may from time to time determine to be relevant to the work of the Centre;

- k. provide information relating to the commission of an offence to any foreign financial intelligence unit or appropriate foreign law enforcement authority, subject to any conditions as may be considered appropriate by the Director-General;
- l. on the basis of mutual agreement and reciprocity, enter into any agreement or arrangement, in writing, with a foreign financial intelligence unit which the Director-General considers necessary or desirable for the discharge or performance of the functions of the Centre;
- m. draft the regulations required by POCAMLA in consultation with the Anti-Money Laundering Advisory Board (AMLAB);
- n. set anti-money laundering policies in consultation with the AMLAB;
- o. maintain proper books of accounts;
- p. compel the production of, or to obtain access to all records, documents or relevant to information monitoring compliance outside the scope of onsite inspection
- q. engage in any lawful activity, whether alone or together with any other organization in Kenya or elsewhere, aimed at promoting its objectives;
- r. perform such other functions in relation to money laundering as the Minister may direct;
- s. request any supervisory body, monetary authority, financial regulatory authority, fiscal or tax agency, or fraud investigations agency to provide it with information where such information is reasonably required for the proper discharge of the functions of the Centre under or for purposes of achieving the objectives of the Act; and
- t. have all the powers necessary or expedient for the proper performance of its functions.

The Centre monitors application of the POCAMLA by reporting institutions by amongst others, undertaking inspections of reporting institutions, either on its own, or in collaboration with the other supervisory bodies or by the supervisory body on its own but with the concurrence of the FRC.

At the end of each calendar year, reporting institutions are required to submit to the Centre by the 31st of January of the following calendar year or as may be required by the Centre, from time to time, a compliance report detailing the institution's compliance with the POCAMLA and the POCAMLA Regulations and the institution's internal anti-money laundering rules.

· **Establishment of the Assets Recovery Agency:**

Section 53 and 54 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 establishes the Asset Recovery Agency whose principle mandate is to identify, trace, freeze, seize and confiscate proceeds of crime with a view to combat money laundering.

The POCAMLA provides for two modes of recovery which are; Criminal Forfeiture (conviction based) provided under Part VII and Civil Forfeiture (Non-conviction based forfeiture) provided under Part VIII of POCAMLA.

· **Establishment of the Directorate of Criminal Investigation:**

The Directorate is established under Section 28 of the National Police Service Act whose core mandate is detection, prevention and investigation of crime including money laundering.

- **Establishment of Anti Banking Fraud Unit:** The Unit is established within the Directorate of Criminal Investigation (DCI) which focuses on monitoring, prevention and investigation of fraudulent banking transactions.

- **Financial Investigation Unit**

The unit investigates all cases that concern financial institutions. The offences covered include money laundering, economic crimes, fraud cases, among others.

- **Establishment of the Economic and Commercial Crime Unit:**

The Unit is under within the Directorate of Criminal Investigation (DCI) and focuses on monitoring, prevention and investigation of Economic and Commercial Crimes which include money laundering.

- **Establishment of the Anti-Corruption and Economic Crimes Division in the ODPP**

The Office of the Director of the Public Prosecutions has created an anti-corruption and economic crimes unit of dedicated prosecutors to handle corruption and economic crimes.

- **Establishment of an Anti-Corruption and Economics Crime High Court Division under the Judiciary and Issuance of Practice Directions:**

The Kenya Judiciary established an anti-corruption and economic crimes High Court division fully dedicated to address corruption cases with designated magistrates to deal with corruption related cases and economic crimes. The Court became fully functional through the development of Practice Directions for the Court in 2016.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The following are examples of the implementation of the measures undertaken in Kenya:

- A total of 30 investigations have been conducted on money laundering cases. (Data from the Assets Recovery Agency)
- The total amount of preserved assets by relevant public agencies is estimated at approximately worth 500 Million Kenyan shillings. (Data from the Assets Recovery Agency)
- The last five years the FRC has received 4574 suspicious transaction reports, out of which 442 have been disseminated. See table below for detailed breakdown.

Year	Number of STRs	Total accumulation
2012	34	34
2013	110	144
2014	201	345
2015	725	1070
2016	1328	2398
2017	2176 as at 22-9-2017	4574

A total of 289 reporting institutions have so far registered with the Centre and they all file the Annual Compliance Report with the FRC.

- The Office of the Director of Public Prosecutions prepares an *Annual Anti-Corruption Report in Respect of Prosecution of Anti-Corruption and Economic Crime Related Cases Pursuant to the Provisions of Section 37 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 (ACECA)*. The report includes a summary of the steps taken by the DPP in respect to each matter forwarded to him by EACC and the Status of each case dealt with during that period. Further, the report shall indicate if any recommendation of the Commission to prosecute a person for Corruption or Economic Crime was not accepted and shall set out succinctly the reasons for not accepting the recommendation. The report for the period 1st January 2016 to 31st December 2016 indicates that the OPDPP reviewed one hundred and twenty-eight (128) corruption cases inquiry files submitted by EACC.

- The following select cases have been prosecuted in Kenyan courts on money laundering activities (Data provided by the Anti-Corruption and Economic division):

Republic v Judicial Commission of Inquiry into the Goldenberg Affair & 3 others Ex Parte Mwalulu & 8 others [2004.]

Republic vs Director of Public Prosecution and Others JR. Civil Application no. 102 of 2016. The Court ruled that the offence of money laundering is a standalone offence which can be charged without a predicate offence.

Mape Building & General Engineering v Attorney General & 3 others [2016] eKLR. The Court ruled that the fact of freezing the Petitioner's bank account amounts does not amount to a violation of Petitioners rights and freedom under the Constitution of Kenya.

Brown Field Developers Limited v Banking Fraud Investigations Unit & 4 others [2016] eKLR. The Court rules that public agencies responsible for freezing assets are justified in obtaining freezing orders and causing accounts to be frozen. The Court affirmed that there was no violation of Article 47 of the Constitution on fair administrative action by freezing of assets.

The Central Bank of Kenya regularly undertakes inspection of banks and non-bank financial institutions. The on-site inspections include both stand-alone AML-CFT (targeted) inspections as well as prudential inspections also covering AML-CFT. CBK in consultation with the FRC has undertaken remedial action against the institutions for infringements (including AML/CFT violations) identified in the inspection reports. The actions taken vary and have included administrative action and imposition of monetary penalties for the violations.

In addition, the FRC has entered into MOUs with the CBK, CMA and IRA for the regulation and supervision of the reporting entities regulated by them. The FRC and the said Supervisory bodies share supervisory information. Members of the FRC have also undertaken joint inspections with the CBK. At the end of each calendar year, all reporting institutions registered with the FRC provide the FRC with a compliance report indicating how the institution has complied with the POCAMLA and the POCAMLA Regulations the previous year.

The POCAMLA applies to designated non-financial businesses or professions (DNFBPs).

The DNFBPs have been defined in section 2 of the Act to include/mean

- (a) casinos (including internet casinos);
- (b) real estate agencies;
- (c) dealing in precious metals;
- (d) dealing in precious stones;
- (e) accountants, who are sole practitioners or are partners in their professional firms;
- (f) non-governmental organizations;
- (g) such other business or profession in which the risk of money laundering exists as the Minister may, on the advice of the Centre, declare.

The POCAMLA is currently being amended to include lawyers and Trust and Company Service Providers as part of DNFBPs. The amendment is contained in the Statute Laws (Miscellaneous Amendment) Bill, 2018 which is currently pending before Parliament.

(b) Observations on the implementation of the article

The Kenyan AML legal regime consists principally of the Proceeds of Crime and Anti-Money Laundering Act of 2009 (POCAMLA) and its implementing Regulations (2013), the Central Bank of Kenya (CBK) Act, as well as rules, circulars and guidelines issued by CBK, including the CBK Prudential Guidelines of 2013. POCAMLA designates a list of institutions as AML supervisory bodies. Those include: CBK; Insurance Regulatory Authority; Betting and Licensing Control Board; Capital Markets Authority; Institute of Certified Public Accountants of Kenya; Real Estate Agents Registration Board; Non-Governmental Organizations Co-ordination Board and the Retirement Benefits Authority. The Cabinet Secretary of the National Treasury has the powers to designate additional institutions as supervisory bodies. For the Designated non-financial businesses and professions (DNFBPs) which do not have a regulator or SRO, the AML supervisory body is the Financial Reporting Centre (FRC).

Lawyers, notaries and other independent legal professions are not covered by the POCAMLA as reporting institutions.

To comply with the AML requirements, all financial institutions and DNFBPs must have in place internal AML systems which cover Customer Due Diligence (CDD) requirements including "Know Your Customer" (KYC) standards and identification of beneficial owners, ongoing monitoring of transactions, record keeping, enhanced due diligence in higher risk situations and reporting of suspicious (see art. 52).

During the Country visit, the reviewers were informed that, over the last two or three years, Kenya has been trying to institute a specialised AML supervision unit. The current team is stretched in terms of capacity and personnel however they are one part of a larger team and will generally focus on targeted inspection.

The reviewers encourage Kenya to designate lawyers, notaries and other independent legal professions as reporting institutions under the POCAMLA.

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Establishment of the Financial Reporting Centre under S 21 of POCAMLA:

Its main objective is to assist in the identification of the proceeds of crime and the combating of money laundering and the financing of terrorism.

Section 23 (2)(a) of POCAMLA mandates the FRC to make information related to money laundering available to all relevant investigating authorities to facilitate the administration and enforcement of the laws of Kenya.

Section 23(2)(b) mandates the Centre to exchange information regarding money laundering with similar bodies in other countries. Section 24 (b) and (d) authorizes the centre to send reports to appropriate law enforcement agencies, supervisory bodies for further handling. The information derived under section 24 (d) is derived from an inspection and is shared if there are reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or the financing of terrorism.

Under section 23 (2) (b) of that Act, one of the objectives of the FRC is to exchange information with similar bodies in other countries regarding money laundering activities and related offences.

Section 24 (k) of the POCAMLA allows the Director General of the FRC to provide information relating to the commission of an offence to any foreign financial intelligence unit or appropriate foreign law enforcement authority, subject to any conditions as may be considered appropriate by the Director-General.

Under section 24 (r), the FRC may (r) request any supervisory body, monetary authority, financial regulatory authority, fiscal or tax agency, or fraud investigations agency to provide it with information where such information is reasonably required for the proper discharge of the functions of the Centre under or for purposes of achieving the objectives of the POCAMLA;

Under section 24 (l), the Centre on the basis of mutual agreement and reciprocity enter into agreement with a foreign intelligence financial unit for the discharge and performance of the FRC functions.

The Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) Regulations 2013, Regulation 40 allows sharing of information where the Financial Reporting Centre (FRC) may make information collected by it available to any financial regulatory authority or supervisory body.

Mutual Legal Assistance Act of 2011 allows mutual legal assistance to be given and received in the investigations and prosecution of criminal matters including money laundering.

Under Part XII of POCAMLA the Attorney General can request or provide international assistance in proceeding.

- **Formation of the Multi-Agency Team (MAT) Approach:** The platform is a multi-agency forum constituted of all law enforcement agencies for collaboration, co-ordination and cooperation in crime intelligence, investigation, asset recovery and prosecution of corruption and economic crimes.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Joint investigations and operations undertaken

- Sharing of information and intelligence on real time basis
- Simultaneous actions e.g., prosecution, civil proceedings, administrative action, asset recovery, protection & freezing, and confiscation of suspect assets/property
- Frozen assets earmarked for recovery valued at over Kshs. 1.6 billion (2016)
- Replication of the collaboration in the Counties
- The FRC has signed 6 MOUs with domestic agencies to facilitate the exchange of information and 10 MOUs with foreign intelligence financial units.
- The table below highlights the requests received / made by the FRC over the last five years.

		Request to FRC					Requests from/by FRC			
		2013	2014	2015	2016	2017	2013	2014	2015	2016
1	Domestic LE agencies	2	18	33	55	79	0	0	2	0
2	Domestic Regulatory Bodies	3	0	1	0	1	0	1	0	0
3	Foreign FIUs	3	2	3	0	3	0	0	0	0

- The FRC is empowered to and does provide (share) information to both domestic and foreign law enforcement agencies and foreign FIUs even in the absence of an MOU. The FRC regularly shares information with other law enforcement agencies and supervisory bodies outside the

scope of MAT. MAT is an additional forum for collaboration, sharing of information and undertaking of joint activities.

- The FRC has spontaneously disseminated reports to domestic LEAs as well as to foreign FIUs. The bulk of the disseminations made by the FRC to local LEAs is on the basis of spontaneous information. FRC has also provided and continues to provide information to the LEAs upon request. The FRC has over the last year or so witnessed an increase in the requests for information.
- The FRC has powers to request for information from other agencies. The requests made by the FRC are dependent upon the information needs of the FRC.
- The FRC is currently not a member of Egmont. It has however applied for Egmont membership. Its sponsors to the Egmont are the Financial Intelligence Centre of South Africa and the Financial Intelligence Unit of Mauritius. The FRC anticipates to be considered for Egmont membership in the June 2019 plenary session.

(b) Observations on the implementation of the article

AML supervisory and regulatory authorities and law enforcement cooperate and exchange information, both domestically and internationally.

The FRC (Kenya's FIU) was established in 2009 and became fully operational in April 2012. The FRC receives, analyzes and disseminates suspicious transactions reports, and directs other AML-related activities. It has applied for the Egmont Group membership. The FRC can share information to both domestic and foreign law enforcement agencies and foreign FIUs, spontaneously and upon request, even in the absence of an MOU (see art. 58).

POCAMLA also establishes the Asset Recovery Agency whose principle mandate is to identify, trace, freeze, seize and confiscate proceeds of crime with a view to combat money laundering.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is

planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The CBK is empowered under Section 33H to monitor Payments between Residents and Non-residents in the country with an aim of monitoring transactions of persons entering and leaving the country with amounts above USD 5,000.00. Section 12 of POCAMLA requires any person intending to convey monetary instruments in excess of USD 10,000 to get a clearance from a customs officer.

The Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) Regulations 2013 provides for cross border conveyance and monetary instruments as follows:

Regulation 8 (1-6): provides for cross border conveyance and monetary instruments as follows Any person intending to convey into or out of Kenya monetary instruments equivalent to or exceeding US\$10,000 or its equivalent in Kenya shillings or any other currency, shall before doing so declare the particulars of those monetary instruments to a customs officer at the port of entry or exit in the form prescribed in the Schedule.

Customs officer are required to submit the completed declaration forms to the Director of the Financial Reporting Centre. Where the customs officer has reason to suspect that the person has not made a true declaration or has failed to declare the monetary instruments, the customs officer shall require that person to produce and show to the customs officer all the monetary instruments in his possession. Any temporary seizure done in accordance with section 12(4) of the Act, the customs officer shall acknowledge receipt of the monetary instrument by way of issuing an official receipt in a prescribed form. The customs officer is given powers to search and arrest under the East African Community Customs Management Act, 2004. Where the customs officer has made a seizure pursuant to these Regulations, he shall immediately but not later than five days, report the details of the seizure and surrender the seized monetary instruments to the Director of the Financial Reporting Centre.

“monetary instruments” means:

- (a) coins and paper currency designated as legal tender of Kenya or of a foreign country and which is customarily used and accepted as a medium of exchange in Kenya or the country of issue;*
- (b) travellers' cheques, personal cheques, bank cheques, money orders or securities;*
- (c) any other negotiable instrument which is in bearer form, or other form through which title passes upon delivery;*

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In 2016, the FRC received 303 Cross Border Monetary Instruments Declarations from the Kenya Revenue Authority (Customs Department).

The same Monetary Instrument Declaration Form is used for both incoming and departing passengers. The Customs Officer receiving the form indicates the flight number and destination of the particular flight. Not all customs officers however provide this information so in some instances it is not possible to determine whether the form was from a departing or incoming passenger.

(b) Observations on the implementation of the article

The POCAMLA establishes a cross-border declaration system of cash, monetary and bearer negotiable instruments upon entry into or departure from the country if the value is equivalent or exceeds ten thousand USD or its equivalent. The Acts also provides penalties for non-declaration or false declaration, including fines and imprisonment.

It was noted, during the onsite visit, that the declaration form may need to be amended to make the distinction between inward and outward movements. The reviewers were also informed that the forms were not consistently issued, and that there was a need to implement the requirement to make declarations at different border points (e.g. Kenya Ports Authority).

Action has been taken against passengers for non-declaration twice. First in 2014/15 and a second in 2016, and the relevant instruments were seized.

It is recommended that Kenya enhance the enforcement of the cross-border declaration system of cash, monetary and bearer negotiable instruments.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*
- (b) To maintain such information throughout the payment chain; and*
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Legislative Framework

· **The Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) Regulations 2013 provides:**

Regulation 12 (1): provides for requirements for customer due diligence measures are to be undertaken by a reporting institution to enable it to achieve the following objectives:

- (a)** Identify the customer and verify that customer's identity using reliable, independent source documents, data or information;
- (b)** identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner, such that the reporting institution is satisfied that it knows who the beneficial

owners is and it understands the ownership and control structure of the customer in case of legal persons and arrangements;

(c) Understand and, as appropriate, obtain information on the purpose and nature of the business relationship; and

(d) conduct on going due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting institution's knowledge of the customer, their business and risk profile, including where necessary the source of funds.

Regulation 12 (2) A reporting institution is required to take measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record for the purposes of establishing the true identity of the applicant and for the purpose of verifying that identity.

Regulation 12 (3): Every reporting institution shall establish and verify the following particulars regarding the applicant for business:

- (a) his identity;
- (b) the purpose and nature of his business or principal activity;
- (c) his financial status; and
- (d) the capacity in which he is entering into the business relationship with the reporting institution.

Regulation 12 (4): A reporting institution is required to take measures to satisfy itself as to the true identity of any applicant;

- (a) When establishing initial business relations;
- (b) When undertaking occasional or one-off transactions;
- (c) When there is cause to be suspicious; and
- (d) When there is doubt about veracity or adequacy of previously obtained customer information.

Regulation 27: Provides for wire transfers where a reporting institution undertaking a wire transfer shall ensure that information accompanying domestic or cross-border wire transfers always have the following information, the name of the originator; the originator account number where such an account is used to process the transaction; the originator's address, or national identity number, or passport number or date and place of birth; the name of the beneficiary; and the beneficiary account number where such an account is used to process the transaction; and in the absence of an account number, a unique transaction reference number shall be included which makes it possible to trace the transaction.

Wire transfers

(1) A reporting institution undertaking a wire transfer shall ensure that information accompanying domestic or cross-border wire transfers always have the following information:

- (a) the name of the originator;

- (b) the originator account number where such an account is used to process the transaction;
 - (c) the originator's address, or national identity number, or passport number or date and place of birth;
 - (d) the name of the beneficiary; and
 - (e) the beneficiary account number where such an account is used to process the transaction;
 - (f) in the absence of an account number, a unique transaction reference number shall be included which makes it possible to trace the transaction.
- (2) The requirements under sub regulation (1) apply to reporting institutions in circumstances where the institution is acting as:
- (a) the ordering financial institution;
 - (b) the beneficiary financial institution; or
 - (c) the intermediary financial institution.

(1) Wire transfers to and from persons or entities that are designated under the United Nations Security Council Resolution 1267 (1999) and other United Nations resolutions relating to the prevention of terrorism and terrorist financing are prohibited.

(2) For purposes of this Regulation-

- (a) "beneficiary" means a person or legal arrangement identified by the originator as the receiver of the requested wire transfer;
- (b) "beneficiary financial institution" means a financial institution which receives the wire transfer from the ordering financial institution directly or through an intermediary financial institution and makes the funds available to the beneficiary;
- (c) "cross-border wire transfer" includes any wire transfer where either the ordering financial institution or the beneficiary financial institution is located outside Kenya and any chain of wire transfer in which at least one of the financial institutions involved is located outside Kenya;
- (d) "domestic wire transfer" includes any wire transfer where the ordering financial institution and beneficiary financial institution are located in Kenya, and any chain of wire transfer that takes place entirely within the country, even though the system used to transfer the payment message may be located in another country;
- (e) "intermediary financial institution" means a financial institution in a serial or cover payment chain that receives and transmits a wire transfer on behalf of the ordering financial institution and the beneficiary financial institution, or another intermediary financial institution;
- (f) "ordering financial institution" means a financial institution which initiates the wire transfer and transfers the funds upon receiving the request for a wire transfer on behalf of the originator; and
- (g) "originator" means an account holder who allows the wire transfer from that account, or where there is no account, the person that places the order with the ordering financial institution to perform the wire transfer.

Regulation 36 of the POCAMLA Regulations 2013: Regulation 36 provides for a reporting requirement by financial institutions and, non-designated businesses and professions to ensure that

it maintains and keeps records of all transactions for a minimum period of seven years from the date the relevant business or transaction was completed or following the termination of an account or business relationship. In addition, the entities are also obligated to keep all records obtained through customer due diligence measures.

Regulation 31 (1), (2) of the POCAMLA Regulations 2013: The Regulation provides for requirements to show legitimacy of source funds which require reporting institutions for purposes of determining the legitimacy of funds and transactions, consider the following information:

- (a) For large, frequent or unusual cash deposits or withdrawals, written statement from the customer confirming that the nature of his business activities normally and reasonably generates substantial amounts of cash;
- (b) For large, frequent or unusual currency exchanges, written statement from the customer confirming the reason and need for acquired currencies;
- (c) For multiple or nominee accounts, or similar or related transactions, written statement from the customer confirming the reason and need for multiple or nominee accounts, or similar or related transactions;
- (d) For large, frequent or unusual transfers or payments of funds, appropriate documentation as to the identity of the recipient or sender of the transferred or paid funds, and the reason for the transfer or payment;
- (e) for large or unusual investments or requests for advice or services, written statement from the customer confirming that the investments or advice or services being requested are bona fide and consistent with the objectives of the customer's reasonable and normal business activities;
- (f) For large or unusual foreign transactions, written confirmation from the customer indicating the nature, reason and appropriate details of the foreign transactions sufficient to determine the legitimacy of such transactions.

A reporting institution shall, in consultation with its regulatory body, set up policies setting out limits on the maximum cash transaction amounts non-customers can undertake with it. **Kenya Electronic and Payment Settlement Systems Rules and Procedures by the Central Bank of Kenya provide a framework for transfer of funds between participating institutions.**

Section 5.6.8 of the Central Bank of Kenya Prudential Guideline on Anti-Money Laundering (CBK/PG/08) on Wire Transfers provides as follows:

5.6.8.1 Institutions should ensure that information accompanying both domestic and cross-border wire transfers should always contain the following information:

- a) the name of the originator;
- b) the originator account number where such an account is used to process the transaction;
- c) the originator's address, or national identity number, or date and place of birth;
- d) the name of the beneficiary; and
- e) the beneficiary account number where such an account is used to process the transaction.
- f) In the absence of an account number, a unique transaction reference number should be included which makes it possible to trace the transaction.

Policy framework

· **Additional Guidelines on large cash transactions (Circular No. 1 of 2016):** The Guidelines were developed in conformity with Regulation 31 (3), of the POCAMLA Regulations 2013, provides for development of guidelines or directions setting out limits on the maximum cash transaction amounts non-customers can undertake with it. The guidelines require anyone withdrawing or depositing more than a Sh1 million (or \$10,000) to fill in a special form stating where the money is from or is going, who they are paying or receiving the money from and for what purpose.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Financial Investigation Unit has conducted investigations into suspected money laundering cases. Some of the files have been forwarded to the ODPP for further action.

The Office of the Director of Public Prosecutions prepares an Annual Anti-Corruption Report in Respect of Prosecution of Anti-Corruption and Economic Crime Related Cases Pursuant to the Provisions of Section 37 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 (ACECA)". The report includes a summary of the steps taken by the DPP in respect to each matter forwarded to him by EACC and the Status of each case dealt with during that period. Further, the report shall indicate if any recommendation of the Commission to prosecute a person for Corruption or Economic Crime was not accepted and shall set out succinctly the reasons for not accepting the recommendation. The report for the period 1st January 2016 to 31st December 2016 indicates that the OPDPP reviewed one hundred and twenty-eight (128) corruption cases inquiry files submitted by EACC

(b) Observations on the implementation of the article

POCAMLA Regulation 27 covers the electronic transfers requirements in line with the Convention.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

To be compliant with the FATF standards, Kenya enacted the POCAMLA, the Prevention of Terrorism Act (POTA) as well as promulgated the POCAMLA Regulations, 2013 and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2013 amongst others.

The establishment of the FRC (Kenya's FIU) is another example of the FATF Recommendations influencing policy as the FATF Recommendations (R.29) requires countries to have a Financial Intelligence Unit (FIU).

The FATF requirement for supervisors to have adequate powers to supervise and monitor and ensure compliance by financial institutions with requirements to combat money laundering and terrorism financing (FATF Rec. 27) led to the amendment of the POCAMLA in 2012 and again in 2015 to introduce section 36A which provides for the responsibility for supervisors for supervision of reporting institutions.

The need to ensure that there is a range of effective, proportionate and dissuasive sanctions in line with FATF Rec. 30 led to the amendment of POCAMLA in 2017 to introduce sections 24A and 24C which cloth the FRC with powers to levy monetary penalties and take administrative action. These areas had been highlighted by ESAAMLG as being deficient.

Kenya as a member of ESAAMLG is subject to ESAAMLG's peer review process. Following Kenya's evaluation by ESAAMLG in 2010, Kenya developed a Post Evaluation Implementation (PEIP) to address the identified deficiencies. This PEIP is regularly monitored by ESAAMLG and Kenya provides an update on implementation of the PEIP every year. To address some of the identified deficiencies, Kenya has undertaken several amendments to the POCAMLA in 2012, 2013, 2015, 2017 and the 2018.

The amendment contained in the Statute Laws (Miscellaneous Amendment) Bill, 2018 to include lawyers and Trust and Company Service Providers as part of reporting regime under POCAMLA is an example of the latest initiative of ESAAMLG and the FATF Recommendations influencing policy.

Kenya is a member of the Asset Recovery Inter-Agency Network for Eastern Africa (ARINEA) which was established with the principle objective of exchanging information on individuals, companies, and assets at the international level with the intention of facilitating the pursuit and recovery of proceeds of unlawful activities and to deprive criminals of their illicit profits.

Kenya is also a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).

COMESA Regional Maritime Security (MASE) program is designed to address maritime security by targeting the financial aspects such as money laundering to fight piracy. It is implemented in 10 countries in Eastern and Southern Africa with the support of the African Union.

The Kenya Police is a member of Interpol.

Eastern African Police Chiefs Cooperation Organizations

The main objective is to fight transnational and organized crime.

Kenya is a member of the International Association of Prosecutors

Kenya is a member of the IAP (put in full) an organization comprised of 171 countries formed to address the rapid growth on transnational crimes and assist prosecutors internationally in the fight against organized crime including fraud and money laundering. The Association promotes speedy and efficient international cooperation and gathering evidence in tracking, seizing and forfeiture the

proceeds of serious crimes and in the prosecution of fugitives. It does so through the facilitation of exchange of information, expertise and experience.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- There are joint police operations of member countries.
- Regular review of Kenya by ESAAMLG. Kenya's AML/CFT regime and its compliance with the FATF Recommendations was undertaken by ESAAMLG in 2010. ESAAMLG annually reviews the extent to which Kenya is implementing the deficiencies identified in its Mutual Evaluation Report.

(b) Observations on the implementation of the article

Since the adoption of its MER in 2011, Kenya has addressed many deficiencies identified in the MER.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The following are measures taken by Kenya to promote cooperation to combat money-laundering:

- **Cooperation through participation in the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG):**

The purpose of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) is to combat money laundering by implementing the FATF Recommendations. This effort includes co-ordinating with other international organizations concerned with combating money laundering, studying emerging regional typologies, developing institutional and human resource capacities to deal with these issues, and co-ordinating technical assistance where necessary. ESAAMLG enables regional factors to be taken into account in the implementation of anti-money laundering measures. The members include, Angola, Botswana, Ethiopia, Kenya, Lesotho, Madagascar, Malawi,

Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

- **East African Association of Anti-Corruption Authorities:** The Association was formed on 28th September 2007 in Kampala, Uganda when the heads of Kenya Anti-Corruption Commission of Kenya (now Ethics and Anti-Corruption Commission), Prevention and Combating of Corruption Bureau of United Republic of Tanzania and Inspectorate of Government of Uganda, signed the Kampala Declaration of East African Association of Anti-Corruption Authorities (EAAACA). The Association was thereafter, launched in Nairobi, Kenya on 9th November 2007 when the EAAACA Constitution was signed. (www.eaaaca.org).

- **Assets Recovery Interagency Network for Eastern Africa (ARINEA):**

Kenya is a member of ARINEA which was established with the principle objective of exchanging information on individuals, companies, and assets at the international level with the intention of facilitating the pursuit and recovery of proceeds of unlawful activities and to deprive criminals of their illicit profits.

- **East Africa Magistrates and Judges Associations**

It was founded in 2000. It brings together judges, magistrates from the Eastern Africa region. It seeks to develop, promote, and protect the highest standard of integrity and ethical cohesion among judicial officers. It also harmonizes judicial practice in East Africa and protect the independence of the judiciary.

- **Commonwealth Magistrates and Judges Association**

The Association was founded in 1970. It brings together all judicial officers (judges and magistrates) in the common wealth. It seeks to advance the administration of law and promotes the independence of the judiciary. It further advances education in law, administration of justice and the rule of law. Further it seeks to disseminate information on the legal matters and the legal process within the commonwealth. (www.cmja.biz)

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Republic v Director of Public Prosecutions & another Ex parte Patrick Ogola Onyango & 8 others [2016] The Court stated that the criminal origins of the proceeds may be proved in the same way as any other elements of an offence can be proved. The offence of money laundering must be deemed as ‘stand-alone’ offence. In proving that the proceeds or property are proceeds of crime even circumstantial evidence will be crucial.

(b) Observations on the implementation of the article

Kenya contributes to the development and strengthening of regional and international cooperation on the fight against money laundering, particularly through its participation in the ESAAMLG and ARINEA.

(c) Technical assistance needs

- Assistance to create a regional database of information for purposes of reference, investigation, prosecution and asset recovery.
- Facilitation of international cooperation with other countries.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Kenya has an ongoing technical assistance with the International Monetary Fund (IMF) whose objective is to enhance FRC operations and procedures to fill in gaps in the legal and regulatory framework and to help financial sectors regulators to introduce risk-based AML/CFT supervision in their respective sectors.

UNODC

V. Asset recovery

Article 51. General provision

Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

Kenya has complied with this provision by having a legal framework that allows Kenya to afford other State the widest measure of cooperation and assistance in regard to the return of assets.

The legal framework includes:

Mutual Legal Assistance Act 2011;

Section 6 provides that the Central Authority shall transmit and receive legal requests. Further Section 6(2) lists the types of request that can be transmitted to the Central Authority. Section 6(2)(i) provides for the identification, freezing and tracing of proceeds of crime while Sec 6(2)(m) provides for the recovery and disposal of assets

The Act further in Part V provides for the recovery, freezing, confiscation and disposal of assets.

6. Functions of central authority

(1) The functions of the Central Authority shall include-

(a) transmitting and receiving requests for legal assistance and executing or arranging for the execution of such requests;

- (b) ensuring that requests for legal assistance conform to the requirements of law and Kenya's international obligations;
 - (c) where necessary, certifying or authenticating, or arranging for the certification and authentication of, any documents or other material supplied in response to a request for legal assistance;
 - (d) taking practical measures to facilitate the orderly and rapid disposition of requests for legal assistance;
 - (e) negotiating and agreeing on conditions related to requests for legal assistance, as well as to ensuring compliance with those conditions;
 - (f) making any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to a request for legal assistance to a requesting State or to authorize any other authority to do so;
 - (g) carrying out such other tasks as provided for by this Act or which may be necessary for effective legal assistance to be provided or received.
- (2) For the purposes of this Act, legal assistance means mutual legal assistance in criminal matters and includes, but is not limited to-
- (a) identifying and locating of persons for evidential purposes;
 - (b) examining witnesses;
 - (c) effecting service of judicial documents;
 - (d) executing searches and seizures; (e) examining objects and sites;
 - (f) providing, including formal production where necessary, originals or certified copies of relevant documents and records, including but not limited to government, bank, financial, corporate or business records;
 - (g) providing information, evidentiary items and expert evaluations;
 - (h) facilitating the voluntary attendance of witnesses or potential witnesses in a requesting state;
 - (i) facilitating the taking of evidence through video conference;
 - (j) effecting a temporary transfer of persons in custody to appear as a witness;
 - (k) interception of items during the course of carriage by a public postal service;
 - (l) identifying, freezing and tracing proceeds of crime;
 - (m) the recovery and disposal of assets; (n) preserving communications data; (o) interception of telecommunications;
 - (p) conducting covert electronic surveillance;
 - (q) any other type of legal assistance or evidence gathering that is not contrary to Kenyan law.

The Proceeds of Crime and Anti-Money Laundering Act

Section 53 and 54 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 establishes the Asset Recovery Agency whose principle mandate is to identify, trace, freeze, seize and confiscate proceeds of crime with a view to combat money laundering.

The POCAMLA provides for two modes of recovery which are; Criminal Forfeiture (conviction based) provided under Part VII and Civil Forfeiture (Non-conviction based forfeiture) provided under Part VIII of POCAMLA.

Further, POCAMLA provides for the enforcement of orders.

120. Requests to Kenya for the enforcement of certain orders

(1) Where-

(a) a court or tribunal of another country issues a restraint order or confiscation order, (whether based upon criminal or in rem or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(b) that country requests assistance from Kenya in enforcing those orders against property believed to be located in Kenya, the Attorney-General may apply to the High Court for the registration of the order.

(2) Where the Attorney-General applies to the High Court for the registration of an order pursuant to subsection (1) the High Court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the High Court is satisfied that-

(a) the order is final, not subject to appeal, and a certified copy of such order bearing the seal or the signature of the court has been submitted;

(b) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of Kenya and had an opportunity to defend his interest in the property; and

(c) enforcement of the order would not be contrary to the interests of justice.

(4) To preserve the availability of property in Kenya that is subject to confiscation proceedings that have been or are likely to be instituted in another country, the Attorney-General may apply to the court to issue an order of restraint of the said property.

(5) In issuing the order of restraint the court may rely on information set forth in the request from the other country describing the nature of the pending investigations or proceedings and setting forth a reasonable basis to believe that the said property will be named in a confiscation order at the conclusion of the proceedings.

(6) A copy of the application to register and enforce orders from another country shall be provided to any person who appears to own or control or otherwise have a legal interest in the property in the manner prescribed in section 79.

(7) A person entitled to notice pursuant to subsection (6) shall have thirty days from the date of such receipt of notice or publication, whichever is later, to file an objection contesting the enforcement of the order from another country.

(8) Unless a person contesting enforcement of an order from another country is able to establish one of the conditions of section 93(1) the court may enter such orders as may be necessary to give effect to the orders of a court or tribunal of the other country and the court shall be bound by the findings of fact to the extent that they are stated in the foreign order.

(9) Where an amount of money is to be paid under an order from another country is expressed in a currency other than that of Kenya, the amount shall be converted into the currency of Kenya on the basis of the official exchange rate prevailing as of the date of the registration of the order.

(10) Where the Attorney-General considers it appropriate either because an international arrangement so requires or because it is permits or in the public interest, the Attorney-General may order that the whole or any part of any property forfeited pursuant subsection (7) or the value thereof be returned or remitted to the requesting state

109) Establishment of Criminal Assets Recovery Fund

There is established a fund to be known as the Criminal Assets Recovery Fund.

110. Finances of the Fund

The Fund shall consist of-

- (a) all moneys derived from the fulfilment of confiscation and forfeiture orders stipulated in Part VII to X;
- (b) all property derived from the fulfilment of forfeiture orders as stipulated in section 100;
- (c) the balance of all moneys derived from the execution of foreign confiscation orders after payments have been made to requesting countries under this Act;
- (d) any moneys appropriated by Parliament, or paid into, or allocated to, the Fund under the provisions of any other Act;
- (e) domestic and foreign grants;
- (f) any money or property recovered under the Anti-Corruption and Economic Crimes Act, 2003 (Cap. 65), or under any other Act other than money or property recovered on behalf of any public body or person;
- (g) any property or amount of money received or acquired from any other legal sources; and
- (h) all property or moneys transferred to the Fund pursuant to the provisions of this Act.

In practice, the law enforcement agencies collaborate and exchange information on a real time basis through the Multi-Agency Team Framework. The investigations are prosecution led, resources are pooled and there are consecutive actions taking place to ensure a corrupt suspect is dealt with by various agencies in whichever mandate they have.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for the recovery of assets to Kenya by any other State. Consequently, no opportunity has arisen to implement this measure.

(b) Observations on the implementation of the article

The asset recovery legal framework in Kenya consists mainly of the Proceeds of Crime and Anti-Money Laundering Act (2009) (POCAMLA), the Anti-Corruption and Economic Crimes Act (2003), the Ethics and Anti-Corruption Commission Act (2011), the Penal Code (1948), the Criminal Procedure Code, the Leadership Act and the Mutual Legal Assistance Act. These allow

for criminal, civil and non-conviction-based forfeiture. While the Convention can be directly applied in Kenya pursuant to Article 2(5) and (6) of the Constitution.

Several law enforcement, financial and judicial institutions play a role in the asset recovery process. These include the DCI, EACC, FRC, ARA and ODPP. In doing so, they follow the generic provisions of other laws (ACECA, S. 23, 26 to 30 and 55; CPC, S. 118; and Evidence Act, S. 180), rather than the streamlined and simplified provisions of POCAMLA which are applied by the ARA under Parts VII to XII. In practice, the DCI or EACC conduct investigations and trace assets, and the EACC or State prosecutors request measures for their freezing, seizing and confiscation before the courts. ARA has instituted cases for asset recovery, however, most are still pending in court. There is no single national institution specialised in the management of assets, including those stemming from corruption. Those assets are currently managed by the different institutions such as ODPP, EACC and the ARA.

It is recommended that Kenya take steps to clarify institutional roles of the ARA, EACC and other institutions in the asset recovery process relating to corruption, given the overlapping mandates, and continue efforts to establish a specialised in the management of assets, including those stemming from corruption.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Strengthening the Central Authority to be able to successfully negotiate and enter into bilateral and multilateral agreements on asset tracing and return of assets.

Maintaining competent institutions to ensure successful implementation of the asset tracing and return of assets requests when forwarded to Kenya.

Strengthen effective and practical cooperation with the regional and international bodies on asset tracing to which they are members.

(d) Technical assistance needs

- Capacity development in asset tracing and recovery;
- Digitisation of records (court records, asset disclosures, etc.);
- Development of policies and procedures for management of confiscated and recovered assets;
- Development of legal, policy and governance instruments to underpin the collaboration, coordination and cooperation mechanisms among law enforcement, investigative and prosecution authorities;
- Development of software based real time record keeping systems and procedures;
- Development and use of software on info graphics to present cases in court, especially those emanating from complex financial investigations.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 44 of POCAMLA provides on **Monitoring and Report by institutions**

(1) A reporting institution shall monitor on an ongoing basis all complex, unusual, suspicious, large or such other transactions as may be specified in the regulations, whether completed or not, and shall pay attention to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions which have no apparent economic or lawful purpose as stipulated in the regulations.

(2) Upon suspicion that any of the transactions or activities described in subsection (1) or any other transaction or activity could constitute or be related to money laundering or to the proceeds of crime, a reporting institution shall report the suspicious or unusual transaction or activity to the Centre in the prescribed form immediately and, in any event, within seven days of the date the transaction or activity that is considered to be suspicious occurred.

(3) Notwithstanding subsections (1) and (2), a reporting institution shall report all suspicious transactions, including attempted transactions to the Centre.

(4) A financial institution shall as far as possible examine the background and purpose of the transactions referred in subsections (1) and (2) and shall set out its findings in writing.

(5) A reporting institution shall retain its findings under subsection (4) for at least seven years from the date of the making thereof, and shall make them available to the Centre, and to its supervisory body or auditors.

(6) Despite the provisions of this section, a reporting institution shall file reports on all cash transactions equivalent to or exceeding the amount prescribed in the Fourth Schedule, whether they appear to be suspicious or not.

(7) A report under subsections (2) and (3) shall be accompanied by copies of all documentation directly relevant to the suspicion and the grounds on which it is based.

(8) The Centre may, in writing, require the person making the report under subsection (2) or (3) to provide the Centre with particulars or further particulars of any matter concerning the suspicion to which the report relates and the grounds upon which it is based; and copies of all available documents concerning such particulars or further particulars

(9) When a person receives a request under subsection (8), that person shall furnish the Centre with the required particulars or further particulars and copies of documents to the extent that such particulars or documents are available to that person within a reasonable time, but in any case not later than thirty days from the date of the receipt of the request:

Provided that the Centre may, upon written application by the person responding to a request and with the approval of the Director-General, grant the person an extension of the time within which to respond.

(10) A person who is a party to, or is acting on behalf of, a person who is engaged in a transaction in respect of which he forms a suspicion which, in his opinion, should be reported under subsections (2) or (3), may continue with and complete that transaction and shall ensure that all records relating to that transaction are kept, and that all reasonable steps are taken to discharge the obligation under this section.

Section 45 Regulation

45 Obligation to verify customer identity

(1) A reporting institution shall take reasonable measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, such as-

(a) in the case of an individual

(i) a birth certificate;

(ii) a national identity card;

(iii) a driver's licence;

(iv) a passport; or

(v) any other official means of identification as may be prescribed; and

(b) in the case of a body corporate-

(i) evidence of registration or incorporation;

(ii) the Act establishing the body corporate;

(iii) a corporate resolution authorising a person to act on behalf of the body corporate together with a copy of the latest annual return submitted in respect of the body corporate in accordance with the law under which it is established; and

(iv) or any other item as may be prescribed;

(c) in the case of a government department, a letter from the accounting officer.

(2) Upon the coming into force of this Act, a reporting institution shall undertake customer due diligence on the existing customers or clients.

(3) Where an applicant requests a reporting institution to enter into-

(a) a continuing business relationship; or

(b) in the absence of such a relationship, any transaction,

The reporting institution shall take reasonable measures to establish whether the person is acting on behalf of another person.

(4) If it appears to a reporting institution that an applicant requesting to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the reporting institution shall take reasonable measures to establish the true identity of a person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.

(5) In determining what constitutes reasonable measures for the purposes of subsection (1) or (3), regard shall be given to all the circumstances of the case, and in particular to-

(i) whether the applicant is a person based or incorporated in a country in which there are in force applicable provisions to prevent the use of the financial system for the purpose of money laundering; and

(ii) any custom or practice as may, from time to time, be current in the relevant field of business.

(6) The Minister may, by notice in the Gazette, list the countries to which subsection (5)(i) applies.

(7) Nothing in this section shall require the production of any evidence of identity where there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Section 46 of Proceeds of Crime and Anti-Money Laundering Act provides as follows;

46. Obligation to establish and maintain customer records

(1) Subject to subsection (4), a reporting institution shall establish and maintain-

(a) records of all transactions, in accordance with the requirements of subsection (3); and (b) where evidence of a person's identity is obtained in accordance with section 45, a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained.

(2) A reporting institution shall ensure that its customer accounts are kept in the correct name of the account holder.

(3) Records required under subsection (1) (a) shall contain particulars sufficient to identify:

(a) the name, physical and postal address and occupation (or where appropriate business or principal activity) of each person:

(i) conducting the transaction; or

(ii) on whose behalf the transaction is being conducted, as well as the method used by the reporting institution to verify the identity of that person;

(b) the nature, time and date of the transaction;

(c) the type and amount of currency involved;

(d) the type and identifying number of any account with the reporting institution involved in the transaction;

(e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee

(if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;

(f) the name and address of the reporting institution and of the officer, employee or agent of the reporting institution who prepared the record.

(4) The records required under subsection (1) shall be kept by the reporting institution for a period of at least seven years or such longer period as the Centre may in writing require, from the date the relevant business or transaction was completed or following the termination of an account or business relationship, without prejudice to any other records required to be kept by or under any other written law, and shall be made available on a timely basis to competent authorities.

Proceeds of Crime and Anti-Money Laundering Regulations 2013 provides for measures of identification of persons.

PART IV - DUE DILIGENCE REQUIREMENTS

12. Customer Due Diligence

(1) Customer due diligence measures are to be undertaken by a reporting institution to enable it achieve the following objectives:

(a) identify the customer and verify that customer's identity using reliable, independent source documents, data or information;

(b) identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner, such that the reporting institution is satisfied that it knows who the beneficial owners are, and it understands the ownership and control structure of the customer in case of legal persons and arrangements;

(c) understand and, as appropriate, obtain information on the purpose and nature of the business relationship; and

(d) conduct on going due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting institution's knowledge of the customer, their business and risk profile, including where necessary the source of funds.

(2) A reporting institution shall take measures to satisfy itself as to the true identity of any applicant seeking to enter into a business relationship with it, or to carry out a transaction or series of transactions with it, by requiring the applicant to produce an official record for the purposes of establishing the true identity of the applicant and for the purpose of verifying that identity.

(3) Every reporting institution shall, in the circumstances set out in sub regulation (2), establish and verify in accordance with these Regulations, the following particulars regarding the applicant for business:

(a) his identity;

(b) the purpose and nature of his business or principal activity;

(c) his financial status; and

(d) the capacity in which he is entering into the business relationship with the reporting institution.

(4) The circumstances under sub regulation (2) shall be carried out-

- (a) when establishing initial business relations;
- (b) when undertaking occasional or one-off transactions;
- (c) when there is cause to be suspicious; and
- (d) when there is doubt about veracity or adequacy of previously obtained customer information.

13. Information on natural persons

(1) For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to establish the identity of a natural person, it shall in addition to the requirements set out in section 45(1)(a) of the Act, request the following in relation to such person-

- (a) full names of the person; and
 - (b) such other particulars as the Centre may prescribe.
- (2) Additional measures that may be used to identify and verify the identity of the customer include:
- (a) postal address;
 - (b) current physical or residential address;
 - (d) utility bill including among others an electricity or a water bill;
 - (d) occupation or employment details;
 - (e) source of income;
 - (f) nature and location of business activity;
 - (g) income tax personal identification number (PIN) issued by Kenya Revenue Authority if such a number has been issued to the customer;
 - (h) where applicable, written references from acknowledged persons attesting to the customer's identity; and
 - (i) for accounts with more than one party and where one of the parties has identified the others, written confirmation shall be obtained to the effect that the first party has known the other(s) personally for at least twelve months.

14. Information on legal persons

(1) For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to establish the identity of a legal person or other body corporate, it shall in addition to the requirements set out in section 45(1)(b) of the Act, request the following in relation to such person-

- (a) its registered name;
- (b) evidence of registration or incorporation such as a certified copy of Certificate of Registration or Certificate of Incorporation, or Memorandum and Articles of Association or other similar documentation evidencing the legal status of the legal person or body corporate;
- (c) certified copy of board resolution stating authority to open an account or transact business with the reporting institution, and designating persons having signatory authority thereof;
- (b) the full names, date of birth, identity or passport number and address of the natural persons managing, controlling or owning the body corporate or legal entity;
- (c) for corporate bodies, audited financial statements for the last full year;

(d) for sole traders, un-audited financial statements for the last full year:

Provided that an exemption may be considered by a reporting institution for a new sole proprietorship business in the production of audited accounts or un-audited accounts if there exist practical difficulties in obtaining financial statements from it;

(e) personal identification number; or

(f) where applicable, written confirmation from the customer's prior bank, if any, attesting to customer's identity and history of account relationship.

15. Information on partnership

(1) For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to establish the identity of partnerships, it shall obtain the following particulars:

- a. the name of the partnership or where applicable its registered name;
- b. the Partnership Deed;
- c. its registered address or principal place of business or office;
- d. its registration number;
- e. the full names, date of birth, identity card number or passport number and address of every partner;
- f. the person who exercises executive control over the partnership;
- g. the name and particulars of each natural person who purports to be authorized to establish a business relationship or to enter into a transaction with the reporting institution on behalf of the partnership; or
- h. un-audited financial statements for the last full year.

16. Information on trusts

For the purposes of complying with the Act and these Regulations, where a reporting institution seeks to establish the identity of trust it shall obtain the following particulars:

- (a) its registered name, if any;
- (b) its registration number, if any;
- (c) evidence of registration or incorporation such as a Certificate of Incorporation or registration;
- (d) trust deed;
- (e) formative document such as partnership agreement, memorandum and articles of association;
- (f) official returns showing registered office and if different the principal place of business;
- (g) full names and details of the management company of the trust or legal arrangement, if any;
- (h) names of the relevant persons having senior management position in the legal person or trustees of the legal arrangement;
- (i) full names of the trustee, beneficiaries or any other natural person exercising ultimate effective control over the trust;
- (j) full names of the founder of the trust;

- (k) any other documentation from a reliable independent source proving the name, form and current existence of the customer; and
- (l) such other document or particulars as the Centre may prescribe.

17. Establishment of ultimate beneficiaries

- (1) A reporting institution shall ensure that it is able to identify and verify the natural persons behind a legal person and arrangement.
- (2) In addition, a reporting institution will be required to ensure that it understands the nature of business, ownership and control structure when performing customer due diligence measures in relation to a customer that is a legal person or legal arrangement.
- (3) The objective of undertaking the functions in sub regulations (1) and (2) is to identify the natural person exercising control and ownership in the legal person or arrangement through the following:
 - (a) details of Incorporation;
 - (b) partnership agreement;
 - (c) deed of trust;
 - (d) particulars of directors and shareholders;
 - (e) names of the relevant persons having senior management position in the legal person or trustees of the legal arrangement;
 - (f) names of the trustees, beneficiaries or any other natural person exercising ultimate effective control over the trust;
 - (g) any other documentation obtained from a reliable independent source proving the name, form and current existence of the customer.
- (4) The relevant identification data in sub regulation (3) may be obtained from a public register the customer or other reliable sources.
- (5) Where a person is purporting to act on behalf of another person, the reporting institution shall ensure that it is able to identify and verify that person.

22. Politically exposed persons

- (1) A reporting institution shall have appropriate risk management systems to determine whether the customer or beneficial owner is a politically exposed person.
- (2) A reporting institution will be required to take the following measures where a customer or beneficial owner is a politically exposed person-
 - (a) obtain approval from senior management to transact or establish the relationship with that person;
 - (b) take adequate measures to establish the source of wealth and the source of funds which are involved in the proposed business relationship or transaction; (c) obtain information on the immediate family members or close associates of the person who may be having transaction authority over the account;
 - (d) determine the purpose of the transaction or account and the expected volume and nature of account activity;

- (e) review public sources of information on the politically exposed person; and
- (f) once the account has been established, conduct enhanced on-going monitoring of the relationship.

(3) In these Regulations, a politically exposed person means a person who has been entrusted with a prominent public function in a country or jurisdiction including-

- (a) members of Cabinet;
- (e) senior executives of State-owned corporations;
- (f) important political party officials;
- (g) senior military officials and other members of the disciplined forces;
- (h) members of the Judiciary;
- (i) senior State Officers;
- (j) senior Public Officers;
- (k) senior Official of an International Organisation;
- (l) any immediate family member or close business associate of a person referred to under this sub regulation; and
- (m) any other category of persons as the Centre may determine.

18. Enhanced due diligence measures

Enhanced due diligence measures shall be applied to persons and entities that present a higher risk to the reporting institution through the following measures:

- (a) obtaining further information that may assist in establishing the customer's identity;
- (b) applying extra measures to verify the documents supplied;
- (c) obtaining senior management approval for the new business relationship or transaction;
- (d) establishing the person's or entity's source of funds; and
- (e) carrying out on going monitoring of the business relationship.

Section 2 of Companies (Amendment) Act No. 28 of 2017 provides for the definition of beneficial ownership. Section 8(a) of the Companies (Amendment) Act No. 28 of 2017 amends section 93 of the Companies Act, 2015 by deleting subsection (1) and substituting it with new subsection that requires every company to keep a register of its members which shall include information relating to beneficial owners of a company.

Section 8 (b) of the Companies (Amendment) Act No. 28 of 2017 provides a new paragraph (d) immediately after paragraph (c) to provide for the name and address of the beneficial owners.

Proceeds of Crime and Anti-Money laundering regulation 2013 also provide for beneficial ownership. It defines a "beneficial owner" meaning a person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted, and any person who ultimately exercises effective control over a legal person or arrangement; and further provides as follows:

19. Establishment of ultimate beneficiaries

(1) A reporting institution shall ensure that it is able to identify and verify the natural persons behind a legal person and arrangement.

(2) In addition, a reporting institution will be required to ensure that it understands the nature of business, ownership and control structure when performing customer due diligence measures in relation to a customer that is a legal person or legal arrangement.

(3) The objective of undertaking the functions in sub regulations (1) and (2) is to identify the natural person exercising control and ownership in the legal person or arrangement through the following:

(a) details of Incorporation;

(b) partnership agreement;

(c) deed of trust;

(d) particulars of directors and shareholders;

(e) names of the relevant persons having senior management position in the legal person or trustees of the legal arrangement;

(f) names of the trustees, beneficiaries or any other natural person exercising ultimate effective control over the trust;

(g) any other documentation obtained from a reliable independent source proving the name, form and current existence of the customer.

(4) The relevant identification data in sub regulation (3) may be obtained from a public register the customer or other reliable sources.

(5) Where a person is purporting to act on behalf of another person, the reporting institution shall ensure that it is able to identify and verify that person.

The Central Bank Prudential Guidelines, 2013

“Know your customer” requirements consist of obtaining full particulars of the customer’s identity (which may need to be verified in certain circumstances) and a sound knowledge of the purpose for which the customer is seeking to establish a business relationship with an institution. This knowledge needs to be applied to all dealings initiated by the customer. The extent to which such dealings appear not to ‘fit’ this knowledge base will become the basis of an institution’s suspicion about the customer which should then be reported to the Central Bank in accordance with the provisions of the Guideline.

5.14 Transparency and Beneficial Ownership of Legal Persons and Arrangements

5.14.1 Institutions should ensure that they are able to identify, verify the natural persons behind legal persons and arrangements. In addition, institutions are required to understand the nature of business, ownership and control structure when performing CDD measures in relation to customers that are legal persons or legal arrangements. The objective of undertaking this function would be to identify the natural persons exercising control and ownership in the legal person or arrangement.

The Capital Markets Authority Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets.

These regulations extensively cover the aspects of beneficial ownership. Section 6 (9) (15) and (19) - Customer Due Diligence; Section 18 - Combating the financing of terrorism.

Guideline 5 on customer identification including requirements to obtain satisfactory evidence of the identity and legal existence of the persons applying to do business in the intermediary.

Guideline 6 provides for customer due diligence on the customer of the market intermediary.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Family Bank and NYS cases - Euro Bank Case

(b) Observations on the implementation of the article

Financial institutions are subject to the AML requirements, in accordance with the POCAMLA (arts. 44-48) and its Regulations. These requirements cover of customer due diligence (CDD) requirements, including “Know Your Customer” (KYC), beneficial owner identification, ongoing monitoring of transactions, periodic and continuous updating of data, record keeping, and reporting of suspicious transactions. The requirements also include assessing the risks of money laundering and taking appropriate measures to manage those risks, applying enhanced due diligence on high risk customers, accounts and transactions, including accounts of domestic and foreign politically exposed persons (PEPs), their family members and close associates.

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is

planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

a) The Financial Reporting Centre (FRC) was established under section 21 of Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009.

b) Section 44(2) POCAMLA provides that upon suspicion that any of the transactions or activities or any other transaction or activity could constitute or be related to money laundering or to the proceeds of crime, a reporting institution shall report the suspicious or unusual transaction or activity to the Centre in the prescribed form immediately and, in any event, within seven days of the date the transaction or activity that is considered to be suspicious occurred.

c) FRC came up with a Guidance to Reporting Institutions on Suspicious Transactions and Activity Reporting in May 2017. This Guidance provides the basis on which financial institutions will be expected to apply enhanced scrutiny of accounts and transactions which appear to be suspicious.

d) The Proceeds of Crime and Anti-Money Laundering Act, 2009 provides under section 44(3) that:

“...a reporting institution shall file reports on all cash transactions equivalent to or exceeding the amount prescribed in the Fourth Schedule, whether they appear to be suspicious or not.” Pursuant to this provision, FRC has come up with a Cash Transaction Report (CTR) Template which explains the procedure to be followed by a reporting institution duly registered with the Financial Reporting Centre (FRC) in submitting a Cash Transaction Report (CTR).

e) Regulation 38 of the Proceeds of Crime and Anti-Money Laundering Regulations, 2013 provided for the Annual Compliance Reporting Template for reporting institutions.

The types of natural or legal person whose accounts the financial institutions under its jurisdiction will have to monitor:

Regulation 9 of the POCAMLA Regulations provide for Internal Controls. It provides as follows:

9. (1) A reporting institution shall formulate, adopt and implement internal control measures and other procedures to combat money laundering and these measures include:

(a) programmes for assessing risks relating to money laundering;

(b) the formulation of a control policy that will cover issues of timing, degree of control, areas to be controlled, responsibilities and follow-up;

(c) monitoring programmes in relation to complex, unusual or large transactions or suspicious activities;

(d) enhanced due diligence procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place to combat money laundering;

(e) providing employees, including the Money Laundering Reporting Officer, from time to time, with training to facilitate recognition and handling of suspicious transactions;

(f) making employees aware of the procedures under the Act, these Regulations or directives, codes and guidelines issued thereunder or and any other relevant policies that is adopted by the reporting institution;

(g) establishing and maintaining a manual of compliance procedures in relation to anti-money laundering;

- (h) providing for the necessary processes and working methods to ensure compliance with the Act, these Regulations and the internal rules; and
- (i) provide for the responsibility of the management of the reporting institution in respect of compliance with the Act, these Regulations and the internal rules.

Regulation 18 of the POCAMLA Regulations further provides for Enhanced Due Diligence measures. It provides as follows:

18. Enhanced due diligence measures shall be applied to persons and entities that present a higher risk to the reporting institution

through the following measures:

- (a) obtaining further information that may assist in establishing the customer's identity;
- (b) applying extra measures to verify the documents supplied;
- (c) obtaining senior management approval for the new business relationship or transaction;
- (d) establishing the person's or entity's source of funds; and
- (e) carrying out on going monitoring of the business relationship.

In issuing the Regulations, Kenya has provided an advisory to reporting institutions on the persons and entities where enhanced due diligence is required. The measures to be applied are set out in Regulation 18. In short, a reporting institution will apply a risk-based approach to understand the persons, products or sectors requiring enhanced scrutiny and will accordingly apply EDD measures.

(b) Observations on the implementation of the article

The FRC has issued and circulated in May 2017 a "Guidance to Reporting Institutions on Suspicious Transaction and Activity Reporting". The CBK has also issued "Prudential guidelines" in January 2013 with a dedicated chapter on AML. Likewise, the Insurance Regulatory Authority (IRA) has issued in June 2011 "Guidelines to the Insurance Industry on the implementation of the POCAMLA". The CMA has in turn issued in 2015 "Guidelines on the prevention of money laundering and terrorism financing in the capital markets". The guides cover a number of provisions including the procedures to classify the customers based on risks (country risk, products/service risk, and customers/entities risk) in addition to examples of red flags and high-risk customers (i.e. customers from high risk jurisdictions, customers of non-face-to-face transactions, PEPs).

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied by enacting the relevant legal framework for such assistance.

Section 48 of MLA Act provides that Subject to any written law and without prejudice to its own investigations, prosecutions or judicial proceedings, Kenya shall take measures to permit it to forward information on proceeds of criminal offences to a requesting State without prior request, where it considers that:

- (a) the disclosure of such information might assist a requesting State in initiating or carrying out investigations, prosecutions or judicial proceedings; or
- (b) it might lead to a request by a requesting State under this Act.

(b) Observations on the implementation of the article

It does not appear that there is a legal impediment to the Kenyan authorities, to notify, where appropriate, financial institutions within their jurisdiction, at the request of another State Party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has enacted legislation to provide the legal framework that addresses the above;

The Proceeds of Crime and Anti-Money Laundering Regulations, 2013 provide that; Section 19.

(1) A reporting institution shall ensure that it is able to identify and verify the natural persons behind a legal person and arrangement. Establishment of ultimate beneficiaries.

(2) In addition, a reporting institution will be required to ensure that it understands the nature of business, ownership and control structure when performing customer due diligence measures in relation to a customer that is a legal person or legal arrangement.

(3) The objective of undertaking the functions in sub regulations (1) and (2) is to identify the natural person exercising control and ownership in the legal person or arrangement through the following-

(a) details of Incorporation;

(b) partnership agreement;

(c) deed of trust;

(d) particulars of directors and shareholders;

(e) names of the relevant persons having senior management position in the legal person or trustees of the legal arrangement;

(f) names of the trustees, beneficiaries or any other natural person exercising ultimate effective control over the trust;

(g) any other documentation obtained from a reliable independent source proving the name, form and current existence of the customer.

(4) The relevant identification data in sub regulation (3) may be obtained from a public register the customer or other reliable sources.

(5) Where a person is purporting to act on behalf of another person, the reporting institution shall ensure that it is able to identify and verify that person.

Section 46 of Proceeds of Crime and Anti-Money Laundering Act provides as follows;

46. Obligation to establish and maintain customer records

(1) Subject to subsection (4), a reporting institution shall establish and maintain-

(a) records of all transactions, in accordance with the requirements of subsection (3); and (b) where evidence of a person's identity is obtained in accordance with section 45, a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained.

(2) A reporting institution shall ensure that its customer accounts are kept in the correct name of the account holder.

(3) Records required under subsection (1)(a) shall contain particulars sufficient to identify:

(a) the name, physical and postal address and occupation (or where appropriate business or principal activity) of each person:

(i) conducting the transaction; or

(ii) on whose behalf the transaction is being conducted, as well as the method used by the reporting institution to verify the identity of that person;

(b) the nature, time and date of the transaction; (c) the type and amount of currency involved;

(d) the type and identifying number of any account with the reporting institution involved in the transaction;

(e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;

(f) the name and address of the reporting institution and of the officer, employee or agent of the reporting institution who prepared the record.

(1) The records required under subsection (1) shall be kept by the reporting institution for a period of at least seven years or such longer period as the Centre may in writing require, from the date the relevant business or transaction was completed or following the termination of an account or business relationship, without prejudice to any other records required to be kept by or under any other written law, and shall be made available on a timely basis to competent authorities.

(2) Sec 45 of POCMLA requires reporting institutions to identify and verify the particulars of their customers. The information obtained for purposes of identification and verification shall be kept in accordance to Section 46 of POCMLA.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The Office of the Director of Public Prosecutions prepares an *Annual Anti-Corruption Report in Respect of Prosecution of Anti- Corruption and Economic Crime Related Cases Pursuant to the Provisions of Section 37 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 (ACECA)*". The report includes a summary of the steps taken by the DPP in respect to each matter forwarded to him by EACC and the Status of each case dealt with during that period. Further, the report shall indicate if any recommendation of the Commission to prosecute a person for Corruption or Economic Crime was not accepted and shall set out succinctly the reasons for not accepting the recommendation. The report for the period 1st January 2016 to 31st December 2016 indicates that the OPDPP reviewed one hundred and twenty-eight (128) corruption cases inquiry files submitted by EACC.

(b) Observations on the implementation of the article

Kenya is in compliance with the provision under review.

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Licensing and Oversight Mechanisms of the Central Bank under the Banking Act are robust such that no shell bank can be allowed to operate in Kenya and licensed bank in Kenya cannot have correspondent relationship with shell banks outside the country.

CBK Prudential Guideline 1

“Prohibition of shell banks: CBK shall not license shell banks.”

POCAMLA, Regulation 25 prohibit a reporting institution from opening foreign accounts with Shell banks.

25. Prohibition on dealings with shell banks (1) A reporting institution shall not:

- (a) open a foreign account with a shell bank;
- (b) permit its accounts to be used by a shell bank; or
- (c) enter into or continue a correspondent financial relationship with:
 - (i) a shell bank; or
 - (ii) a respondent financial institution that permits its account to be used by a shell bank.

(b) Observations on the implementation of the article

The licensing procedures for banks stipulated in the banking Act and the CBK Prudential Guideline 1 prevent the establishment of shell banks. Moreover, POCAMLA Regulation 25 prohibits financial institutions from entering or continuing a correspondent relationship with a shell bank or with a bank that provides correspondent services to a shell bank.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has enacted legislations for effective financial disclosure for State and public officers namely;

a) The Constitution

Chapter 6 on Leadership and Integrity of State and Public officers

Financial probity of State officers.

Article 76. (1) A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament.

(2) A State officer shall not:

- (a) Maintain a bank account outside Kenya except in accordance with an Act of Parliament or
- (b) seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer.

The Leadership and Integrity Act, 2012 (LIA)

This Act was enacted to give effect to the provision of the Chapter six of the Constitution in matters of integrity. In particular, section 19 of LIA provides to it;

19. Bank accounts outside Kenya

- (1) Subject to Article 76(2) of the Constitution or any other written law, a State officer shall not open or continue to operate a bank account outside Kenya without the approval of the Commission.
- (2) A State officer who has reasonable grounds for opening or operating a bank account outside Kenya shall apply to the Commission for approval to open or operate a bank account.
- (3) A State officer who operates or controls the operation of a bank account outside Kenya shall submit statements of the account annually to the Commission and shall authorize the Commission

to verify the statements and any other relevant information from the foreign financial institution in which the account is held.

(4) Subject to subsections (1) and (2), upon the commencement of this Act, a serving State officer who operates a bank account outside Kenya shall close the account within six months or such other period as the Commission may, by notice in the Gazette, prescribe.

(5) This section shall apply to:

(a) a State officer; and

(b) a Public officer.

(6) Without prejudice to the foregoing provisions of this section, a State officer who fails to declare operation or control of a bank account outside Kenya commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or a fine not exceeding five million shillings, or both.

Public Officers Ethics Act, 2003

Part IV- Declaration of Income, Assets and Liabilities

26. (1) Every public officer shall, once every two years prescribed by section 27, submit to the responsible Commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years.

(2) The declaration shall be in the form set out in the Schedule and shall include the information required by the form.

27. (1) The declaration shall be submitted in the December of every second year.

(2) The statement date of a declaration under subsection (1) shall be the first day of November of the year in which the declaration is required.

(3) Within thirty days after becoming a public officer, the public officer shall submit an initial declaration.

(4) The statement date of an initial declaration under subsection (3) shall be the date the public officer became a public officer.

(5) Within thirty days after ceasing to be a public officer, the former public officer shall submit a final declaration.

(6) The statement date of a final declaration under subsection (5) shall be the date the public officer ceased to be a public officer.

(7) The following shall apply with respect to a person who is a public officer on the day the administrative procedures relevant to that public officer are first published under section 33:

(a) the public officer shall submit an initial declaration within sixty days after the administrative procedures are published; and

(b) the statement date of an initial declaration under paragraph (a) shall be the date the administrative procedures are published.

28. (1) A person who has submitted a declaration to a Commission shall provide, without undue delay, any clarification requested by the Commission if the request is in writing and is made within six months after the declaration was submitted to the Commission.

(2) Without limiting what a request for clarification may include, such a request may include:

(a) a request that any information that may have been omitted be provided; or

(b) a request that any discrepancy or inconsistency, including a discrepancy or inconsistency arising because of information other than information included on the declaration, be explained or corrected.

29. A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct, to the best of his knowledge.

30. (1) The contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of this Act, in such declaration or clarification: Provided that prior to the responsible Commission making an affirmative decision under this section, it shall grant the opportunity to the affected party to make representations on the matter.

(2) No information obtained pursuant to subsection (1) shall be published or in any way made public except with prior written authority of the responsible Commission.

(3) Any person who:

(a) publishes or in any way makes public any information obtained under the foregoing sections without prior permission of the responsible Commission;

(b) knowingly republishes or otherwise disseminates or discloses to another person information to which this section relates where:

(i) such information was disclosed to himself or to some other person; or

(ii) such information was obtained in contravention of this Act, shall be guilty of an offence and liable on conviction to imprisonment for five years or to a fine not exceeding five hundred thousand shillings, or to both.

31. A Commission shall keep information collected under this Part concerning a person for at least five years after the person ceased to be a public officer.

32. A person who fails to submit a declaration or clarification as required under this Part or who submits, in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

33. (1) Each Commission shall establish procedures for the administration of this Part with respect to the public officers for which it is the responsible Commission.

(2) The administrative procedures shall be established and published in the Gazette within ninety days after the commencement of this Act.

(3) In relation to a Commission that is prescribed by regulation under section 3(10) to be a responsible Commission, subsection (2) shall apply as though the reference in that subsection to the commencement of this Act were a reference to the commencement of the regulation.

(4) Nothing in section 27 requires a public officer to submit a declaration before publication, under this section, of the relevant administrative procedures by the responsible Commission.

34. (1) Subject to subsection (2), the Minister may, by notice in the Gazette, amend the Schedule to this Act.

(2) The Minister may not amend the Schedule to this Act unless a draft of the amendment has been laid before, and has been approved by resolution of, the National Assembly.

Section 48 of Mutual Legal Assistance Act (MLA)

Provides that Subject to any written law and without prejudice to its own investigations, prosecutions or judicial proceedings, Kenya shall take measures to permit it to forward information on proceeds of criminal offences to a requesting State without prior request, where it considers that:

(a) the disclosure of such information might assist a requesting State in initiating or carrying out investigations, prosecutions or judicial proceedings; or

(b) it might lead to a request by a requesting State under this Act.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The Department of Ethics Monitoring and Compliance (under Ethics and Anti-Corruption Commission-EACC) instituted investigations against 27 State officers for failure to submit their Declarations of Income, Assets and Liabilities in 2015.

Several other allegations of a similar nature were received against several public officers however the Department did not commence investigations.

They experienced a challenge caused by section 33(4) of POEA which provides that nothing in section 27 requires a public officer to submit a declaration before publication, under this section, of the relevant administrative procedures by the responsible Commission.

This provision of the law posed a challenge since majority of the public institutions did not have the requisite administrative procedures.

The Public Service Commission (PSC) administers financial disclosures for all public organisations not excluded under Article 234(3) of the Constitution and this includes: 48 Ministries and State Departments, 247 State Corporations, 11 Constitutional Commissions and Offices and is also the residual commission for all the other entities for whom no responsible commission is prescribed.

(3) Clauses (1) and (2) shall not apply to any of the following offices in the public service

(a) State offices;

- (b) an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic;*
- (c) an office or position subject to:*
 - (i) the Parliamentary Service Commission;*
 - (ii) the Judicial Service Commission;*
 - (iii) the Teachers Service Commission;*
 - (iv) the National Police Service Commission; or*
 - (d) an office in the service of a county government, except as contemplated in clause (2)(i).*

The target group includes all public officers irrespective of rank or grade. The scope of responsibility spans over three hundred public entities and affects over three hundred thousand (300,000) public officers. The declaration of incomes assets and liabilities is a tool for management of conflict of interest and for promoting transparency and accountability in the management of public affairs.

The definition of a Public Officer is made under the Constitution of Kenya and POEA (interpretation section).

Every Public Officer as defined by the Laws above is bound by FRC reporting regulations.

Some of the responsible commissions have already automated the declarations for example the Teachers Service Commission. The EACC is also at an advanced stage of automating the declarations process.

(b) Observations on the implementation of the article

The Public Officers Ethics Act (POEA) of 2003 has established a financial disclosure system which requires State and public officers to submit financial disclosures periodically (every two years) and at the beginning and end of their service. The disclosure should cover the income, assets and liabilities of the public officer, his spouse or spouses and his dependent children under the age of 18 years. The contents of a declaration are accessible to any person, with legitimate interest and good cause, upon application to the responsible Commission. Prior to making an affirmative decision, the responsible Commission should grant the opportunity to the affected party to make representations on the matter. Subsequently, domestic and foreign competent authorities can access to asset declaration information, but the public official should be informed and given the opportunity to object within 14 days.

The POEA also provides penalties for non-declaration or false declaration, including fines and imprisonment.

The POEA establishes twelve Responsible Commissions for purposes of overseeing and enforcing the requirements of the Act over various cadres of public service, including the administration of financial declarations. The Public Service Commission (PSC) administers financial disclosures for all public organisations not excluded under Article 234(3) of the Constitution and is also the residual commission for all the other entities for whom no responsible commission is prescribed.

The scope of the Act is very broad, applying to all public officials, elected or appointed regardless of rank / seniority (including judiciary). As a result, there are about 750,000 declarations every two years, as well as declarations on entering or exiting a job.

The manual nature of the system means there is little or no ability to verify the accuracy of information submitted in the declarations. In fact, there are checks to ensure that information has been provided but verification of informational accuracy is only likely to take place if an issue arises, such as suspicion of wrongdoing (review for completeness and not verification).

For example, the reviewers were informed during the country visit that Public Service Commission has only about six people dealing with almost 300,000 regular declarations, with maybe as many as 100,000 more for entrance and exit declarations. The reviewers also heard that, while a process for automation is underway, there is still a lot of work to be done. It was also not clear exactly which agency had responsibility for leading any automation work.

The reviewers also note that, of the 3,000 officials that did not comply with declarations, it is estimated only 25 percent were sanctioned.

It is recommended that Kenya review the financial disclosure systems in line with international good practices; for example, the adoption of an electronic filing system could simplify verifications. It is also recommended that Kenya review its legislation to permit its competent authorities to share asset disclosure information with domestic and foreign competent authorities for investigation purposes without informing the official in question (art. 52).

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has enacted legislation to provide the legal framework that addresses the above;

The Constitution

Chapter 6 on Leadership and Integrity of State and Public officers

Financial probity of State officers.

76. (1) A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament.

(2) A State officer shall not:

(a) maintain a bank account outside Kenya except in accordance with an Act of Parliament or

(b) seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer.

The Leadership and Integrity Act, 2012 (LIA) Section 19 of LIA provides to it:

19. Bank accounts outside Kenya

(1) Subject to Article 76(2) of the Constitution or any other written law, a State officer shall not open or continue to operate a bank account outside Kenya without the approval of the Commission.

(2) A State officer who has reasonable grounds for opening or operating a bank account outside Kenya shall apply to the Commission for approval to open or operate a bank account.

(3) A State officer who operates or controls the operation of a bank account outside Kenya shall submit statements of the account annually to the Commission and shall authorize the Commission to verify the statements and any other relevant information from the foreign financial institution in which the account is held.

(4) Subject to subsections (1) and (2), upon the commencement of this Act, a serving State officer who operates a bank account outside Kenya shall close the account within six months or such other period as the Commission may, by notice in the Gazette, prescribe.

(5) This section shall apply to-

(a) a State officer; and

(b) a Public officer.

(6) Without prejudice to the foregoing provisions of this section, a State officer who fails to declare operation or control of a bank account outside Kenya commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or a fine not exceeding five million shillings, or both.

The Leadership and Integrity Regulations, 2015 mandates the Ethics and Anti-Corruption Commission to maintain a register of all bank accounts operated by State and public officers.

In particular, section 21 thereof provides to it;

21. (1) The Commission shall open and maintain a register of all State officers and public officers operating bank accounts outside Kenya.

(2) The Register under paragraph (1) shall contain the following information:

(a) the name, personal file (PF) or identity card (ID) number and address of the officer;

a) the bank name, address, and country in which the account is held:

b) the account name, and the bank code:

c) the name in which the account is being operated, if not that of the officer;

d) the purpose for operating the account;

e) the name of the institution to which monies will be transferred where the account is being operated for educational, medical or other purpose;

f) the duration of approval for operating the account;

- g) name of the officer's spouse, child or beneficiary, if the account is operated for the benefit of one of such persons; and
- h) any other relevant information.

Upon commencement of the LIA Regulations 2015, circulars were issued to 132 public entities notifying them of the commencement of the LIA Regulations and their obligations under those regulations.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the 2015-2016 financial year total of 186 applications to operate foreign accounts were received by Kenya. Of which 152 were approved and 34 were rejected.

(b) Observations on the implementation of the article

The Constitution (art. 76) and the Leadership and Integrity Act (LIA) of 2012 prohibit State officers from opening, operating or controlling a foreign bank account without the approval of the Ethics and Anti-Corruption Commission (EACC).

(c) Technical assistance needs

Development and implementation of financial disclosure system that allows, inter-alia, software-based declarations and targeted verifications.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Implementing Provisions

1. Section 57 of the Civil Procedure Act
2. Section 23 of the Mutual Legal Assistance Act

Section 57 of the Civil Procedure Act

The section provides as follows-

57(1) A foreign State may sue in any court of Kenya, provided that State has been recognized by Kenya, and provided the object of the suit is to enforce a private right vested in the head of that State or in any officer of that State in his public capacity.

57(2) Every court shall take judicial notice of the fact that a foreign State has or has not been recognized by Kenya.

Section 23 of the Mutual Legal Assistance Act

Section 23 of MLA provides that Kenya shall assist in proceedings involving the identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime under its laws or any other arrangement to which Kenya may be bound in relation to a requesting state.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Somalia Republic Case

HCCC No. 1618 of 1995 (Musa Hersi Fahiye & 5 Others vs Suleiman Rahemtula Omar & Another)

Civil Appeal No. 245 of 2011

Somalia Ambassador's residence in Nairobi had been illegally sold to a Nairobi couple.

In a suit filed by former Embassy officials from the Republic of Somalia in conjunction with the Republic of Somalia, Kenyan Court of Appeal upheld the High Court's decision to revoke the title and declared the sale of the land as fraudulent

(b) Observations on the implementation of the article

Foreign States are expressly entitled to initiate civil action to request compensation or establish ownership in line with the Convention (Civil Procedure Act, art. 57; MLA Act, S. 26; ACECA, S. 51).

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Relevant Legislation

Section 26 of the Mutual Legal Assistance Act

The section provides that before returning any confiscated assets to the requesting state, Kenya will consider the need for compensation to the victims of the crime in a requesting state.

26. Return and disposal of assets

(1) Subject to the rights of third parties and in accordance with this Act or any other written law or any other arrangements to which Kenya is bound, property confiscated under the provisions of this Act shall be disposed of, including return to a requesting state, upon request.

(2) Before the return of the property confiscated to a requesting State under subsection (1) and as a basis of return, Kenya shall-

- (a) reasonably establish prior ownership of such property by a requesting state; or
- (b) consider damage likely to be caused to a requesting State if the property is not returned; or
- (c) consider the need for compensation to the victims of the crime in a requesting state.

(3) Where appropriate, unless parties decide otherwise, Kenya may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property under this section.

In addition, Section 51 of the Anti-Corruption and Economic Crimes Act, 2003 provides that-

Section 51: Liability for Compensation

A person who does anything that constitutes corruption or economic crime is liable to anyone who suffers a loss as a result for an amount that would be full compensation for the loss suffered.

It therefore follows that where a foreign State is a party to a proceeding arising from an offence established in accordance with the Convention, it can seek compensation under this Section.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Kenya has not dealt with a case where a foreign State has sought compensation under this section.

(b) Observations on the implementation of the article

Foreign States are expressly entitled to initiate civil action to request compensation or establish ownership in line with the Convention (Civil Procedure Act, art. 57; MLA Act, S. 26; ACECA, S. 51).

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This requirement is addressed under Section 26(2) of the Mutual Legal Assistance Act which provides that on return and disposal of assets and before returning any confiscated assets to the requesting state, Kenya will consider prior ownership of such property by a requesting state.

26. Return and disposal of assets

(1) Subject to the rights of third parties and in accordance with this Act or any other written law or any other arrangements to which Kenya is bound, property confiscated under the provisions of this Act shall be disposed of, including return to a requesting state, upon request.

(2) Before the return of the property confiscated to a requesting State under subsection (1) and as a basis of return, Kenya shall-

- (a) *reasonably establish prior ownership of such property by a requesting state; or*
- (b) *consider damage likely to be caused to a requesting State if the property is not returned; or*
- (c) *consider the need for compensation to the victims of the crime in a requesting state.*

Please provide examples of the implementation of those measures, including related court or

other cases, statistics etc.

Cases that may be considered-

1. Request by United Kingdom for return of high-end motor vehicles stolen from UK and their movement traced to Kenya (*DCI and KRA to provide information*)
2. Request by Government of South Sudan for seizure of prime plots purchased in Nairobi and its environs by South Sudan officials suspected to be proceeds of corruption.

(b) Observations on the implementation of the article

Kenya is in compliance with the provision under review (Section 26(2) of the Mutual Legal Assistance Act).

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied by enacting appropriate subsidiary legislation under the Mutual Legal Assistance Act 2011 which permits the competent authorities to give effect to an order of confiscation issued by a court of another State Party under section 24(a).

This provision has no precondition of a criminal conviction before confiscation.

24. Measures for asset recovery through international co-operation

When providing legal assistance under section 23 with respect to proceeds and instrumentalities of crime, Kenya shall take such measures, in accordance with the provisions of this Act or any other relevant law, as may be necessary to-

- (a) permit a requesting State to give effect to an order of confiscation issued by its competent court or authority;
- (b) permit competent authorities of a requesting state, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under Kenyan law;
- (c) allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
- (d) permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;
- (f) recognize a requesting state's claim as a legitimate owner of property acquired through the commission of a criminal offence;
- (g) consider taking any additional measures as to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Kenya has complied by enacting the Proceeds of Crime and Anti Money Laundering Act (POCAMLA) 2009 Part XII which provides for request to Kenya for the enforcement of orders under Section 120:

The process entails an application by the Attorney-General to the High Court for registration of the order upon satisfying certain conditions.

After registration, the order becomes enforceable as if it was granted by the domestic court.

120. Requests to Kenya for the enforcement of certain orders

(1) Where-

(a) a court or tribunal of another country issues a restraint order or confiscation order, (whether based upon criminal or in rem or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(b) that country requests assistance from Kenya in enforcing those orders against property believed to be located in Kenya, the Attorney-General may apply to the High Court for the registration of the order.

(2) Where the Attorney-General applies to the High Court for the registration of an order pursuant to subsection (1) the High Court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the High Court is satisfied that-

- (a) the order is final, not subject to appeal, and a certified copy of such order bearing the seal or the signature of the court has been submitted;
- (b) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of Kenya and had an opportunity to defend his interest in the property; and
- (c) enforcement of the order would not be contrary to the interests of justice.
- (4) To preserve the availability of property in Kenya that is subject to confiscation proceedings that have been or are likely to be instituted in another country, the Attorney-General may apply to the court to issue an order of restraint of the said property.
- (5) In issuing the order of restraint the court may rely on information set forth in the request from the other country describing the nature of the pending investigations or proceedings and setting forth a reasonable basis to believe that the said property will be named in a confiscation order at the conclusion of the proceedings.
- (6) A copy of the application to register and enforce orders from another country shall be provided to any person who appears to own or control or otherwise have a legal interest in the property in the manner prescribed in section 79.
- (7) A person entitled to notice pursuant to subsection (6) shall have thirty days from the date of such receipt of notice or publication, whichever is later, to file an objection contesting the enforcement of the order from another country.
- (8) Unless a person contesting enforcement of an order from another country is able to establish one of the conditions of section 93(1) the court may enter such orders as may be necessary to give effect to the orders of a court or tribunal of the other country and the court shall be bound by the findings of fact to the extent that they are stated in the foreign order.
- (9) Where an amount of money is to be paid under an order from another country is expressed in a currency other than that of Kenya, the amount shall be converted into the currency of Kenya on the basis of the official exchange rate prevailing as of the date of the registration of the order.
- (10) Where the Attorney-General considers it appropriate either because an international arrangement so requires or because it is permits or in the public interest, the Attorney-General may order that the whole or any part of any property forfeited pursuant subsection (7) or the value thereof be returned or remitted to the requesting state

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Kenya has not dealt with a case for the enforcement of a confiscation order issued by a Court of another State.

(b) Observations on the implementation of the article

POCAMLA provides for the enforcement of a foreign restraint order or confiscation order related to money-laundering, whether based upon criminal or *in rem* or other non-conviction based proceedings (S. 120(1)). The MLA Act (S. 24) also requires Kenya to “take such measures” to “permit a requesting State to give effect to an order of confiscation issued by its competent court or authority”.

It is recommended that Kenya review the MLA Act, including the provisions related to the enforcement of foreign confiscation orders, to adapt it with its domestic legislation.

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya relies on provisions for Confiscation orders upon conviction for money-laundering or other offences as set out under section 61 of Proceeds of Crime and Anti Money Laundering Act (POCAMLA) 2009.

The basis for confiscation could be the offence of money-laundering as well as the predicate offence.

61. Confiscation orders

(1) Whenever a defendant is convicted of an offence, the court convicting the defendant shall, on the application of the Attorney-General, the Agency Director or of its own motion, inquire into any benefit which the defendant may have derived from-

(a) that offence;

(b) any other offence of which the defendant has been convicted at the same trial; and

(c) any criminal activity which the court finds to be sufficiently related to that offence, and, if the court finds that the defendant has so benefited, the court shall, in addition to any punishment which it may impose, make an order against the defendant for the payment to the Government of any amount it considers appropriate and the court may make any further orders as it may deem fit to ensure the effectiveness and fairness of that order.

(2) The amount which a court may order the defendant to pay to the Government under subsection

(1)-

(a) shall not exceed the value of the defendant's proceeds of the offences or related criminal activities referred to in that subsection, as determined by the court in accordance with the provisions of this Part; or

(b) if the court is satisfied that the amount which is just as contemplated in section 63(1) is less than the value referred to in paragraph (a), the amount payable shall not exceed an amount which, in the opinion of the court might be so realized.

(3) A court convicting a defendant may, when passing sentence, indicate that it will hold an inquiry as contemplated in subsection (1) at a later stage if-

(a) it is satisfied that inquiry would unreasonably delay the sentencing of the defendant; or

(b) the Attorney-General applies to the court to first sentence the defendant and the court is satisfied that it is reasonable and justifiable to do so in the circumstances.

(4) If the judge or magistrate who convicted the defendant is absent or for any other reason not available, any judge or magistrate of the same court shall consider an application referred to in subsection (1) and hold the inquiry referred to in that subsection and that person may, in the proceedings, take such steps as the judge or magistrate who is absent or not available could lawfully have taken.

(5) A court before which proceedings under this section are pending, may, in considering an application under subsection (1)-

(i) refer to the evidence and proceedings at the trial;

(ii) hear further oral evidence or take documentary evidence as the court may deem fit; (iii) direct the Agency Director to tender to the court the affidavit referred to in section 64(1); and (iv) direct a defendant to tender to the court an affidavit referred to under section 64(5).

(6) The amount ordered to be paid under a confiscation order shall be paid on the making of the order: Provided that if the defendant indicates to the court that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.

(b) Observations on the implementation of the article

POCAML

2. Interpretation

“offence” in this Act, means an offence against a provision of any law in Kenya, or an offence against a provision of any law in a foreign State for conduct which, if it occurred in Kenya, would constitute an offence against a provision of any law in Kenya;

“proceeds of crime” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed;

3. Money laundering

A person who knows or who ought reasonably to have known that property is or forms part of the proceeds of crime and [...]

POCAMLA allows Kenyan courts to confiscate property of foreign origin located inside Kenya through a local court decision on a money laundering offence (S. 61 read in conjunction with Ss. 2 and 3).

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Mutual Legal Assistance Act 2011 provides under section 24 for confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

24. Measures for asset recovery through international co-operation

When providing legal assistance under section 23 with respect to proceeds and instrumentalities of crime, Kenya shall take such measures, in accordance with the provisions of this Act or any other relevant law, as may be necessary to-

(a) permit a requesting State to give effect to an order of confiscation issued by its competent court or authority;

(b) permit competent authorities of a requesting state, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under Kenyan law;

- (c) allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
- (d) permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;
- (e) permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;
- (f) recognize a requesting state's claim as a legitimate owner of property acquired through the commission of a criminal offence;
- (g) consider taking any additional measures as to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Kenya's **Civil Procedure Act** deems foreign judgments as conclusive regarding matters directly adjudicated upon between the same parties at **section 9**.

This implies that foreign decisions on forfeiture would be treated as conclusive

9. When foreign judgment not conclusive

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except-

- (a) where it has not been pronounced by a court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Kenya in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in Kenya.

- Part VIII of the Proceeds of Crime and Anti Money Laundering Act (POCAMLA) 2009 provides for non-conviction based civil forfeiture.
- The proceeds of crime may be in the direct or indirect possession of the defendant.

- This mode of forfeiture is useful when the suspect is under investigation, the offender has died, fled from the court's jurisdiction; the property may be taken away from court's jurisdiction or spent.
- An application for preservation of the asset is made which requires sufficient evidence that the asset targeted is a proceeds of crime. -section 82.
- The Assets Recovery Agency is required to gazette the preservation orders within 21 days to notify any party who has an interest in the property.-Section 83
- Section 90 of POCAMLA empowers the Assets Recovery Agency to apply to the High court for orders of forfeiture to the Government of all or any of the property that is subject to the preservation order.
- The court can order the forfeiture of the property subject to preservation orders, if it finds on a balance of probabilities that the property is a proceed of crime or has been used in the commission of an offence- Section 92 of POCAMLA

PART VIII - CIVIL FORFEITURE

Recovery and Preservation of Property

81. Nature of proceedings

- (1) All proceedings under this Part shall be civil proceedings.
- (2) The rules of evidence applicable in civil proceedings shall apply to proceedings under this Part.

82. Preservation orders

- (1) The Agency Director may, by way of an *ex parte* application apply to the court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.
- (2) The court shall make an order under subsection (1) if there are reasonable grounds to believe that the property concerned-
 - (a) has been used or is intended for use in the commission of an offence; or
 - (b) is proceeds of crime.
- (3) A court making a preservation order shall at the same time make an order authorising the seizure of the property concerned by a police officer, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.
- (4) Property seized under subsection (3) shall be dealt with in accordance with the directions of the court that made the relevant preservation order.

83. Notice of preservation orders

- (1) If a court makes a preservation order, the Agency Director shall, within twenty-one days after the making of the order, give notice of the order to all persons known to the Agency Director to have an interest in property which is subject to the order; and publish a notice of the order in the Gazette.

(2) A notice under subsection (1) shall be served in accordance with the provisions of the Civil Procedure Act (Cap. 21).

(3) A person who has an interest in the property which is subject to a preservation order may give notice of his intention to oppose the making of a forfeiture order, or to apply for an order excluding his interest in the property concerned from the operation thereof.

(4) A notice under subsection (3) shall be served upon the Agency Director, in the case of-

(a) a person upon whom a notice has been served under subsection (1), within fourteen days after service; or

(b) any other person, within fourteen days after the date upon which a notice under subsection (1) is published in the Gazette.

(5) A notice served under subsections (3) or (4) shall contain full particulars of the address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating-

(a) full particulars of the identity of the person entering the appearance;

(b) the nature and extent of his interest in the property concerned; and

(c) the reasons which the person intends to rely on in opposing a forfeiture order or applying for the exclusion of his interest from the operation thereof.

84. Duration of preservation orders

A preservation order shall expire ninety days after the date on which notice of the making of the order is published in the Gazette, unless-

(a) there is an application for a forfeiture order pending before the court in respect of the property subject to the preservation order;

(b) there is an unsatisfied forfeiture order in force in relation to the property subject to the preservation order; or

(c) the order is rescinded before the expiry of that period.

85. Seizure of property subject to preservation orders

(1) In order to prevent property subject to a preservation order from being disposed of or removed contrary to that order, any police officer may seize any of that property if he has reasonable grounds to believe that the property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the court that made the relevant preservation order.

86. Appointment of manager in respect of property subject to preservation orders

(1) Where a court has made a preservation order, the court shall, if it deems it appropriate or at the request of the Agency Director, at the time of the making of the order or at a later time-

(a) appoint a manager to do, subject to the directions of that court or the Agency Director, any one or more of the following on behalf of the person against whom the preservation order has been made, namely-

(i) to assume control over the property;

(ii) to take care of the said property;

(iii) to administer the said property and to do any act necessary for that purpose;

(iv) where the said property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking; and

(v) in the case of property that is perishable, or liable to deterioration, decay or injury by being detained in custody to sell or otherwise dispose of the said property;

(b) order any person holding property subject to the preservation order to surrender forthwith, or within such period as that court may determine, any such property into the custody of the manager.

(2) The court that made an order under subsection (1) may make the order relating to the fees and expenditure of the receiver as it deems fit, including an order for the payment of the fees of the manager-

(a) from the forfeited property if a forfeiture order is made; or

(b) by the Government if no forfeiture order is made.

87. Orders in respect of immovable property subject to preservation order

(1) A court that has made a preservation order in respect of immovable property may at any time, with a view to ensuring the effective execution of a subsequent order, order the Registrar of Lands to place a restriction on the land register in respect of that immovable property.

(2) An order under subsection (1) may be made in respect of the following restrictions-

(a) that the immovable property shall not without the consent of the court be mortgaged or otherwise encumbered;

(b) that the immovable property shall not without the consent of the court, be attached or sold in execution; and

(c) that the immovable property shall not, without the consent of the court-

(i) vesting the Registrar of the High Court or Official Receiver concerned, as the case may be, when the estate of the owner of that immovable property is sequestrated;

(ii) where the owners of the immovable property is a company or other corporate body which is being wound up, form part of the assets of that company or corporate body.

(3) In order to give effect to subsection (1), the Registrar of Lands concerned shall-

(a) make the necessary entries in his registers and the necessary endorsement on the office copy of the title deed, and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property concerned;

(b) when the original of the title deed is produced to him, make the necessary endorsement thereon.

(4) Unless the court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2)(c) was endorsed shall, from the date on which-

- (a) the estate of the owner of the immovable property is sequestrated; or
 - (b) where the owner of the immovable property is a company or other corporate body, that company or corporate body is being wound up, vest in the person or persons in whom the said custody would have vested if such a restriction were not so endorsed.
- (5) Where the court granted its consent in respect of a restriction contemplated in subsection (2)(c) and endorsed on the title deed of immovable property, the immovable property shall be deemed, if the-
- (a) estate of the owner of the immovable property was sequestrated, to have vested in the Registrar of the High Court or Official Receiver concerned, as the case may be, as if such a restriction were not so endorsed; or
 - (b) owner of the immovable property is a company or other legal entity which is being wound up, to have formed part of the assets of such company or legal entity as if such a restriction were not so endorsed.
- (6) A person affected by an order contemplated in subsection (1) may at any time apply for the rescission of the order.

88. Provision for expenses

- (1) A preservation order may make such provision as the court deems fit for reasonable living expenses of a person holding an interest in property subject to a preservation order and his family or household.
- (2) A court shall not make provisions for any expenses under subsection (1) unless it is satisfied that-
- (a) the person cannot meet the expenses concerned out of his property which is not subject to the preservation order; and
 - (b) the person has disclosed under oath all his interest in the property and has submitted to that court an affidavit.

89. Variation and rescission of orders

- (1) A court which makes a preservation order-
- (a) may, on application by a person affected by that order, vary or rescind the preservation order or an order authorising the seizure of the property concerned or other ancillary order if it is satisfied-
 - (i) that the operation of the order concerned will deprive the applicant of the means to provide for his reasonable living expenses and cause undue hardship for the applicant; and
 - (ii) that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; and
 - (b) shall rescind the preservation order when the proceedings against the defendant concerned are concluded.
- (2) When a court orders the rescission of an order authorising the seizure of property under paragraph (a) of subsection (1), the court shall make such other order as it considers appropriate for the proper, fair and effective execution of the preservation order concerned.
- (3) A person affected by an order for the appointment of a manager may at any time, apply for the-

- (a) variation or rescission of the order;
 - (b) variation of the terms of the appointment of the manager concerned; or
 - (c) discharge of the manager.
- (4) The court that made an order for the appointment of a manager-
- (a) may, if it deems it necessary in the interests of justice, at any time-
 - (i) vary or rescind the order;
 - (ii) vary the terms of the appointment of the manager concerned; or
 - (iii) discharge that manager;
 - (b) shall rescind the order and discharge the manager concerned if the relevant preservation order is rescinded.
- (5) A person affected by an order in respect of immovable property may, at any time, apply for the rescission of the order.
- (6) The court that made an order in respect of immovable property-
- (i) may, if it deems it necessary in the interests of justice, at any time rescind the order; or
 - (ii) shall rescind the order if the relevant preservation order is rescinded.
- (7) If an order in respect of immovable property is rescinded, the court shall direct the Registrar of Lands concerned to lift any caveat entered by virtue of that order on the land registry in respect of that immovable property, and the Registrar shall give effect to such direction.

Forfeiture of Property

90. Application for forfeiture order

- (1) If a preservation order is in force, the Agency Director may apply to the High Court for an order forfeiting to the Government all or any of the property that is subject to the preservation order.
- (2) The Agency Director shall give fourteen days notice of an application under subsection (1) to every person who served notice in terms of section 83(3).
- (3) A notice under subsection (2) shall be served in accordance with the provisions of the Civil Procedure Act (Cap. 21).
- (4) A person who served notice under section 83(3) may appear at the hearing of the application under subsection (1) to-
 - (a) oppose the making of the order; or
 - (b) apply for an order-
 - (i) excluding his interest in that property from the operation of the order; or
 - (ii) varying the operation of the order in respect of that property, and may adduce evidence at the hearing of the application.

91. Late service of notice

(1) A person who, for any reason, does not serve notice in terms of section 83(3) may, within fourteen days of his becoming aware of the existence of a preservation order, apply to the court for leave to serve that notice out of time.

(2) An application under subsection (1) may be made before or after the date on which an application for a forfeiture order is made under section 90(1), but shall be made before judgment is given in respect of such an application for a forfeiture order.

(3) The court may grant an applicant referred to in subsection (1) leave to serve notice in terms of section 83(3) within the period which the court deems appropriate, if the court is satisfied on good cause shown that such applicant-

(a) has for sufficient reason failed to serve notice in terms of section 83(3); and

(b) has an interest in the property which is subject to the preservation order.

(4) When a court grants an applicant leave to serve notice out of time, the court-

(a) shall make any order as to costs against the applicant; and

(b) may make any order to regulate the further participation of the applicant in proceedings concerning an application for a forfeiture order, which it deems appropriate.

(5) A notice served after leave has been obtained under this section shall contain full particulars of the chosen address of the person who serves such notice for the delivery of documents concerning further proceedings under this part and shall be accompanied by the affidavit referred to in section 83(5).

92. Making of forfeiture order

(1) The High Court shall, subject to section 94, make an order applied for under section 90(1) if it finds on a balance of probabilities that the property concerned-

(a) has been used or is intended for use in the commission of an offence; or

(b) is proceeds of crime.

(2) The Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the Government of property forfeited to it under such an order.

(3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the Court from making the order.

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.

(5) The Registrar of the High Court making a forfeiture order shall publish a notice thereof in the Gazette as soon as practicable but not more than thirty days after the order is made.

(6) A forfeiture order shall not take effect-

(a) before the period allowed for an application under section 89 or an appeal under section 96 has expired; or

(b) before such an application or appeal has been disposed of.

93. Protection of third parties

(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the High Court, before the forfeiture order is made and the court, if satisfied on a balance of probabilities-

(a) that the person was not in any way involved in the commission of the offence; and

(b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest-

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, tainted property, the court shall make an order declaring the nature, extent and value (at the time the order was made) of the person's interest.

(2) Subject to subsection (3), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of twelve months commencing on the day on which the forfeiture order is made, apply under this subsection to the court for an order under subsection (1).

(3) A person who-

(a) had knowledge of the application for the forfeiture order before the order was made; or

(b) appeared at the hearing of that application, shall not be permitted to make an application under subsection (2), except with leave of the court.

(4) A person who makes an application under subsection (1) or (2) shall give not less than fourteen days written notice of the making of the application to the Agency Director who shall be a party to any proceedings in the application.

(5) An applicant or the Agency Director may in accordance with the High Court rules, appeal to the Court of Appeal against an order made under subsection (1).

(6) A person appointed by the court under this Act as a receiver or trustee shall, on application by any person who has obtained an order under subsection (1), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal against that order has been determined-

(a) direct that the property or Part thereof to which the interest of the applicant relates, be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

(7) The Court may-

(a) before making a confiscation order; or

(b) in the case of property in respect of which a restraining order was made, where that order was served in accordance with section 68, or in the case of property in respect of which a court order has been made authorizing the seizure of the property, set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for value to a person acting in good faith and without notice.

[Act No. 51 of 2012, s. 14.]

94. Exclusion of interests in property

(1) The High Court may, on application-

(a) under section 90(3); or

(b) by a person referred to in section 91(1), and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation thereof.

(2) The High Court may make an order under subsection (1) in relation to the forfeiture of the proceeds of crime if it finds, on a balance of probabilities, that the applicant for the order-

(a) has acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(b) where the applicant had acquired the interest concerned after the commencement of this Act, that such person neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of crime.

(3) The High Court may make an order under subsection (1), in relation to the forfeiture of property which has been used or is intended for use in the commission of an offence, if it finds, on a balance of probabilities, that the applicant for the order had acquired the interest concerned legally and-

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held has been used or is intended for use in the commission of an offence; or

(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned in connection with the commission of an offence.

(4) If an applicant for an order under subsection (1) adduces evidence to show that he did not know or did not have reasonable grounds to suspect that the property in which the interest is held is tainted property, the Agency Director may submit a return of the service on the applicant of a notice issued under section 90(3) in rebuttal of that evidence in respect of the period since the date of such service.

(5) Where the Agency Director submits a return of the service on the applicant under subsection (4), the applicant shall, in addition to the facts referred to in subsections (2)(a) and (b), also prove on a balance of probabilities that, since such service, he has taken all reasonable steps to prevent the further use of the property concerned in the commission of an offence.

(6) The High Court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the High Court deems appropriate, including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the High Court may determine, to prevent the future use of the property in connection with the commission of an offence.

95. Forfeiture order by default

(1) If the Agency Director applies for a forfeiture order by default and the High Court is satisfied that no person has appeared on the date upon which an application under section 91(1) is to be heard and, on the grounds of sufficient proof or otherwise, that all persons who served notices in terms of section 83(3) have knowledge of notices given under section 91(2), the High Court may-

(a) make any order by default which the High Court could have made under sections 88(1) and (2);

(b) make such order as the High Court may consider appropriate in the circumstances; or (c) make no order.

(2) The High Court may, before making an order in terms of subsection (1), call upon the Agency Director to adduce such further evidence, either in writing or orally, in support of his application as the High Court may consider necessary.

(3) A person whose interest in the property concerned is affected by the forfeiture order or other order made by the High Court under subsection (1) may, within twenty days after that person has acquired knowledge of such order or direction, set the matter down for variation or rescission by the High Court.

(4) The court may, upon good cause shown, vary or rescind the default order or give any other direction on such terms as it deems appropriate.

96. Exclusion of interests in forfeited property

(1) A person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 91(2), but did not receive such notice, may, within forty five days after the notice is published in the Gazette, apply to the High Court for an order excluding his interest in the property concerned from the operation of the order, or varying the operation of the order in respect of such property.

(2) The hearing of the application shall, to the extent practicable and consistent with the interests of justice be held within thirty days of the filing of the application.

(3) The High Court may make an order under subsection (1) if it finds on a balance of probabilities that the applicant for the order falls within the provisions of subsections (2) or (3) of section 91.

(4) The provisions of section 94(4) and (5) shall apply to any proceedings under this section.

97. Appeal against forfeiture order

Any preservation order and any order authorizing the seizure of the property concerned or other ancillary order which is in force at the time of any decision regarding the making of a forfeiture order under section 92(1) shall remain in force pending the outcome of any appeal against the decision concerned.

98. Effect of forfeiture order

(1) Where the High Court has made a forfeiture order and a manager has not been appointed in respect of any of the property concerned, the High Court may appoint a manager to perform any of the functions referred to in section 99 in respect of that property.

(2) On the date when a forfeiture order takes effect the property subject to the order shall be forfeited to the Government and vests in the manager on behalf of the Government.

(3) Upon a forfeiture order taking effect the manager may take possession of on the property subject to the order on behalf of the Government from any person in possession, or entitled to possession, of the property.

99. Fulfilment of forfeiture order

(1) The manager shall, subject to any order for the exclusion of interests in forfeited property under section 94(2)(a) or 96(3) and in accordance with the directions of the Agency Director- (a) deposit any moneys forfeited into the Fund; (b) deliver any property forfeited into the Fund; or (c) dispose

of property forfeited by sale or any other means and deposit the proceeds of the sale or disposition into the Fund.

(2) Any right or interest in forfeited property not exercisable by or transferable to the Government, shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the forfeiture order took effect.

(3) A person who has possession, or was entitled to possession, of forfeited property immediately before the forfeiture order took effect, or any person acting together with, or on behalf of that person, shall not be eligible to purchase forfeited property at any sale held by the manager.

(4) The expenses incurred in connection with the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and the High Court costs shall be defrayed out of the Fund.

The Criminal Procedure Code provides for the procedure on forfeiture of goods under Section 389A

389A. Procedure on forfeiture of goods (1) Where, by or under any written law section 29 of the Penal Code), any goods or things may be (but are not obliged to be) forfeited by a court, and that law does not provide the procedure by which to be effected, then, if it appears to the court that the goods or things should be served on the person believed to be their owner notice specified time and place, order the goods or things to be forfeited unless

the contrary is shown; and, at that time and place or on any adjournment, order the goods or things to be forfeited unless cause is shown by the owner person interested in the goods or things: Provided that, where the owner things is not known or cannot be found, the notice shall be advertised in newspaper and in such other manner (if any) as the court thinks fit. (2)

that the goods or things belong to some person who was innocent of the connexion with which they may or are to be forfeited and who neither knew nor had reason to believe that the goods or things were being or were to be used with that offence and exercised all reasonable diligence to prevent their seizure; and where it finds that such a person was interested in the goods and things it may order that they be forfeited and such person shall be paid a fair proportion of the proceeds of sale.

Foreign Judgments (Reciprocal Enforcement) Act provides for recognition of certain foreign judgments at section 18.

18. Recognition of certain foreign judgments

(1) Subject to this section, a judgment of a designated court shall be recognised in any court in Kenya as conclusive between the parties thereto, as to the matter adjudicated upon, in all proceedings (no matter by which of the parties in the designated court they are instituted) on the same cause of action and may be relied upon by way of defence or counterclaim in those proceedings.

(2) This section shall not apply in the case of a judgment which-

(a) has been registered and the registration thereof has been set aside on some ground other than-

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that, at the date of the application, the judgment could not be enforced by execution in the country of the original court; or

(b) has not been registered but it is shown that registration would have been set aside on an application for that purpose on some ground other than those specified paragraph (a).

(3) Nothing in this section shall be taken to prevent a court in Kenya recognizing a judgment as conclusive of any matter of law or fact decided therein under any other statutory provision in that regard or if that judgment would have been so recognised before the passing of this Act, but no such recognition shall be accorded, if it is sought in proceedings in respect of a different cause of action from that on which the judgment was given, until after the expiration of such period as appears to the court to be reasonably sufficient to enable any appeal in respect of the judgment to be instituted and disposed of by a competent tribunal; and the court may, on such terms as it thinks just, adjourn the proceedings until that time.

(4) For the purposes of this section “judgment” means-

(a) a judgment to which this Act applies whether or not it is registrable and, if registrable, whether or not it is registered; and

(b) any other judgment or order (by whatever name called) given in any civil proceedings which is final and conclusive between the parties, and the expression “final and conclusive” has the meaning assigned to it in section 3(2).

92. Making of forfeiture order

(1) The High Court shall, subject to section 94, make an order applied for under section 90(1) if it finds on a balance of probabilities that the property concerned-

(a) has been used or is intended for use in the commission of an offence; or

(b) is proceeds of crime.

(2) The Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the Government of property forfeited to it under such an order.

(3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the Court from making the order.

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.

(5) The Registrar of the High Court making a forfeiture order shall publish a notice thereof in the Gazette as soon as practicable but not more than thirty days after the order is made.

(6) A forfeiture order shall not take effect-

(a) before the period allowed for an application under section 89 or an appeal under section 96 has expired; or

(b) before such an application or appeal has been disposed of.

The Anti-corruption and Economic Crimes Act 2003 provides for Forfeiture of unexplained assets through civil proceedings in the High Court under section 55:

55. Forfeiture of unexplained assets

(1) In this section, “corrupt conduct” means-

- (a) conduct that constitutes corruption or economic crime; or
- (b) conduct that took place before this Act came into operation and which -
 - (i) at the time, constituted an offence; and
 - (ii) if it had taken place after this Act came into operation, would have constituted corruption or economic crime.

(2) The Commission may commence proceedings under this section against a person if-

- (a) after an investigation, the Commission is satisfied that the person has unexplained assets; and
- (b) the person has, in the course of the exercise by the Commission of its powers of investigation or otherwise, been afforded a reasonable opportunity to explain the disproportion between the assets concerned and his known legitimate sources of income and the Commission is not satisfied that an adequate explanation of that disproportion has been given.

(3) Proceedings under this section shall be commenced in the High Court by way of originating summons.

(4) In proceedings under this section-

- (a) the Commission shall adduce evidence that the person has unexplained assets; and
- (b) the person whose assets are in question shall be afforded the opportunity to cross-examine any witness called and to challenge any evidence adduced by the Commission and, subject to this section, shall have and may exercise the rights usually afforded to a defendant in civil proceedings.

(5) If after the Commission has adduced evidence that the person has unexplained assets the court is satisfied, on the balance of probabilities, and in light of the evidence so far adduced, that the person concerned does have unexplained assets, it may require the person, by such testimony and other evidence as the court deems sufficient, to satisfy the court that the assets were acquired otherwise than as the result of corrupt conduct.

(6) If, after such explanation, the court is not satisfied that all of the assets concerned were acquired otherwise than as the result of corrupt conduct, it may order the person to pay to the Government an amount equal to the value of the unexplained assets that the Court is not satisfied were acquired otherwise than as the result of corrupt conduct.

(7) For the purposes of proceedings under this section, the assets of the person whose assets are in question shall be deemed to include any assets of another person that the court finds-

- (a) are held in trust for the person whose assets are in question or otherwise on his behalf; or
- (b) were acquired from the person whose assets are in question as a gift or loan without adequate consideration.

(8) The record of proceedings under this section shall be admissible in evidence in any other proceedings, including any prosecution for corruption or economic crime.

(9) This section shall apply retroactively.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The Assets Recovery Agency has preserved assets worth approximately Kenya Shillings 500 million.

The Ethics and Anti-corruption Commission successfully instituted civil forfeiture proceedings in Mombasa High Court Civil Suit Number 93 of 2011 Kenya Anti-Corruption Commission -v- James Mwathethe Mulewa & Another. The court declared a number of assets in the possession of the 1st Defendant as unexplained and ordered their forfeiture to the Government of Kenya.

(b) Observations on the implementation of the article

POCAMLA provides for the enforcement of a foreign restraint order or confiscation order related to money-laundering, whether based upon criminal or *in rem* or other non-conviction based proceedings (S. 120(1)). The MLA Act (S. 24) also requires Kenya to “take such measures” to “allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases”.

It is recommended that Kenya review the MLA Act, including the provisions related to the enforcement of foreign confiscation orders, to adapt it with its domestic legislation.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Proceeds of Crime and Anti Money Laundering Act (POCAMLA) 2009 Part XII Section 119 and 120 provides for request to Kenya for the enforcement of orders.

119. Requests to Kenya for search warrants

(1) Where a country requests assistance from Kenya in obtaining and executing a search and seizure warrant for the purposes of an investigation or proceedings relating to the corresponding law of that country, the Attorney-General may apply to the High Court for the warrant requested.

(2) Where, on application, the High Court is satisfied that-

(a) a proceeding or investigation relating to a serious offence has commenced in the requesting country; and

(b) there are reasonable grounds for believing that evidence relevant to the investigation or proceedings is located in Kenya, it may issue a warrant under this section authorizing entry for the purpose of search for the thing and if found the thing shall be seized.

(3) Any written law with respect to the procedure for the making and disposal of an application for the execution of a search warrant shall apply, as if the application were for the issue of a warrant under the Criminal Procedure Code (Cap. 75).

120. Requests to Kenya for the enforcement of certain orders

(1) Where-

(a) a court or tribunal of another country issues a restraint order or confiscation order, (whether based upon criminal or in rem or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(b) that country requests assistance from Kenya in enforcing those orders against property believed to be located in Kenya, the Attorney-General may apply to the High Court for the registration of the order.

(2) Where the Attorney-General applies to the High Court for the registration of an order pursuant to subsection (1) the High Court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the High Court is satisfied that-

(a) the order is final, not subject to appeal, and a certified copy of such order bearing the seal or the signature of the court has been submitted;

(b) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of Kenya and had an opportunity to defend his interest in the property; and

(c) enforcement of the order would not be contrary to the interests of justice.

(4) To preserve the availability of property in Kenya that is subject to confiscation proceedings that have been or are likely to be instituted in another country, the Attorney-General may apply to the court to issue an order of restraint of the said property.

(5) In issuing the order of restraint the court may rely on information set forth in the request from the other country describing the nature of the pending investigations or proceedings and setting forth a reasonable basis to believe that the said property will be named in a confiscation order at the conclusion of the proceedings.

(6) A copy of the application to register and enforce orders from another country shall be provided to any person who appears to own or control or otherwise have a legal interest in the property in the manner prescribed in section 79.

(7) A person entitled to notice pursuant to subsection (6) shall have thirty days from the date of such receipt of notice or publication, whichever is later, to file an objection contesting the enforcement of the order from another country.

(8) Unless a person contesting enforcement of an order from another country is able to establish one of the conditions of section 93(1) the court may enter such orders as may be necessary to give effect to the orders of a court or tribunal of the other country and the court shall be bound by the findings of fact to the extent that they are stated in the foreign order.

(9) Where an amount of money is to be paid under an order from another country is expressed in a currency other than that of Kenya, the amount shall be converted into the currency of Kenya on the basis of the official exchange rate prevailing as of the date of the registration of the order.

(10) Where the Attorney-General considers it appropriate either because an international arrangement so requires or because it is permits or in the public interest, the Attorney-General may order that the whole or any part of any property forfeited pursuant subsection (7) or the value thereof be returned or remitted to the requesting state.

The Mutual Legal Assistance Act also provides for the freezing of assets in Section 18 and Part V of the Act.

18. Search and seizure

(1) A request under this Act may seek assistance in the search and seizure of property in Kenya.

(2) The request made under subsection (1) shall specify the property to be searched and seized and shall contain, so far as is reasonably practicable, all information available to a requesting State which may be required to be adduced in an application under Kenyan law for any necessary warrant or authorization to effect the search and seizure.

(3) Subject to the relevant law, the Competent Authority shall provide such certification as may be required by a requesting State concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property seized.

PART V - RECOVERY, FREEZING, CONFISCATION AND DISPOSAL OF ASSETS

23. Identification, tracing etc.

(1) Kenya shall assist in proceedings involving the identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime under its laws or any other arrangement to which Kenya may be bound in relation to a requesting state.

(2) A request for legal assistance under this section shall include-

- (a) details of the property in relation to which co-operation is sought;
- (b) the connection, if any, between the property and the offences in respect of which the request is made;
- (c) where known, details of any third-party interests in the property; and
- (d) a certified copy of the freezing or seizing decision or final decision of confiscation made by a court.

(3) Nothing in this section shall prejudice the rights of bona fide third parties.

24. Measures for asset recovery through international co-operation

When providing legal assistance under section 23 with respect to proceeds and instrumentalities of crime, Kenya shall take such measures, in accordance with the provisions of this Act or any other relevant law, as may be necessary to-

- (a) permit a requesting State to give effect to an order of confiscation issued by its competent court or authority;
- (b) permit competent authorities of a requesting state, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under Kenyan law;
- (c) allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
- (d) permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;
- (e) permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;
- (f) recognize a requesting state's claim as a legitimate owner of property acquired through the commission of a criminal offence;
- (g) consider taking any additional measures as to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Foreign Judgments (Reciprocal Enforcement) Act provides for the recognition of foreign judgments including orders

18. Recognition of certain foreign judgments

- (1) Subject to this section, a judgment of a designated court shall be recognised in any court in Kenya as conclusive between the parties thereto, as the matter adjudicated upon, in all proceedings (no matter by which of the parties in the designated court they are instituted) on the same cause of action and may be relied upon by way of defence or counterclaim in those proceedings.
- (2) This section shall not apply in the case of a judgment which-
 - (a) has been registered and the registration thereof has been set aside on some ground other than-
 - (i) that a sum of money was not payable under the judgment; or
 - (ii) that the judgment had been wholly or partly satisfied; or
 - (iii) that, at the date of the application, the judgment could not be enforced by execution in the country of the original court; or
 - (b) has not been registered but it is shown that registration would have been set aside on an application for that purpose on some ground other than those specified paragraph (a).
- (3) Nothing in this section shall be taken to prevent a court in Kenya recognizing a judgment as conclusive of any matter of law or fact decided therein under any other statutory provision in that

regard or if that judgment would have been so recognised before the passing of this Act, but no such recognition shall be accorded, if it is sought in proceedings in respect of a different cause of action from that on which the judgment was given, until after the expiration of such period as appears to the court to be reasonably sufficient to enable any appeal in respect of the judgment to be instituted and disposed of by a competent tribunal; and the court may, on such terms as it thinks just, adjourn the proceedings until that time.

(4) For the purposes of this section “judgment” means-

(a) a judgment to which this Act applies whether or not it is registrable and, if registrable, whether or not it is registered; and

(b) any other judgment or order (by whatever name called) given in any civil proceedings which is final and conclusive between the parties, and the expression “final and conclusive” has the meaning assigned to it in section 3(2).

(b) Observations on the implementation of the article

POCAMLA provides for the enforcement of a foreign restraint order or confiscation order related to money-laundering, whether based upon criminal or *in rem* or other non-conviction based proceedings (S. 120(1)). The MLA Act (S. 24) also requires Kenya to “take such measures” to “permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State”.

It is recommended that Kenya review the MLA Act, including the provisions related to the enforcement of foreign freezing and seizure orders, to adapt it with its domestic legislation.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 119 of the Proceeds of Crime and Anti Money Laundering Act (POCAMLA) 2009 provides for requests to Kenya for search and seizure warrants

119. Requests to Kenya for search warrants

(1) Where a country requests assistance from Kenya in obtaining and executing a search and seizure warrant for the purposes of an investigation or proceedings relating to the corresponding law of that country, the Attorney-General may apply to the High Court for the warrant requested.

(2) Where, on application, the High Court is satisfied that-

(a) a proceeding or investigation relating to a serious offence has commenced in the requesting country; and

(b) there are reasonable grounds for believing that evidence relevant to the investigation or proceedings is located in Kenya, it may issue a warrant under this section authorizing entry for the purpose of search for the thing and if found the thing shall be seized.

(3) Any written law with respect to the procedure for the making and disposal of an application for the execution of a search warrant shall apply, as if the application were for the issue of a warrant under the Criminal Procedure Code (Cap. 75).

The MLA provides for a requesting State to seek assistance on the search, seizure and freezing of property in Kenya. This is found under Section 18 and Part V (Section 23 and 24)

18. Search and seizure

(1) A request under this Act may seek assistance in the search and seizure of property in Kenya.

(2) The request made under subsection (1) shall specify the property to be searched and seized and shall contain, so far as is reasonably practicable, all information available to a requesting State which may be required to be adduced in an application under Kenyan law for any necessary warrant or authorization to effect the search and seizure.

(3) Subject to the relevant law, the Competent Authority shall provide such certification as may be required by a requesting State concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property seized.

3. Identification, tracing etc. (1) Kenya shall assist in proceedings involving the tracing, freezing, seizure and confiscation of the proceeds and instruments laws or any other arrangement to which Kenya may be bound in relation to state. (2) A request for legal assistance under this section shall include- (a) property in relation to which co-operation is sought; (b) the connection, if property and the offences in respect of which the request is made; (c) where of any third-party interests in the property; and (d) a certified copy of the freez decision or final decision of confiscation made by a court. (3) Nothing in this prejudice the rights of *bona fide* third parties.

24. Measures for asset recovery through international co-operation When providing legal assistance under section 23 with respect to proceeds and instrumentalities of crime, Kenya shall take such measures, in accordance with the provisions of this Act or any other relevant law, as may be necessary to-

(a) permit a requesting State to give effect to an order of confiscation issued by its competent court or authority;

(b) permit competent authorities of a requesting State; where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering

or such other offence as may be within its jurisdiction or by other procedures authorized under Kenyan law;

(c) allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(d) permit competent authorities of Kenya to freeze or seize property up on a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;

(e) permit competent authorities of Kenya to freeze or seize property up on a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;

(f) recognize a requesting state's claim as a legitimate owner of property acquired through the commission of a criminal offence;

(g) consider taking any additional measures as to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

<http://www.kenyalaw.org/lex/actview.xql?actid=No.%2036%20of%202011>

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Kenya has not dealt with a case on the freezing and seizure of property upon a request by another State

(b) Observations on the implementation of the article

POCAMLA (S. 119) and the MLA Act (S. 18) allow competent authorities in Kenya to freeze or seize property upon a foreign request.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Mutual Legal Assistance Act 2011 permits the competent authorities to give effect to an order of confiscation issued by a court of another State Party under section 24(g).

24. Measures for asset recovery through international co-operation

When providing legal assistance under section 23 with respect to proceeds and instrumentalities of crime, Kenya shall take such measures, in accordance with the provisions of this Act or any other relevant law, as may be necessary to-

- (a) permit a requesting State to give effect to an order of confiscation issued by its competent court or authority;
- (b) permit competent authorities of a requesting state, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under Kenyan law;
- (c) allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
- (d) permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;
- (e) permit competent authorities of Kenya to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;
- (f) recognize a requesting state's claim as a legitimate owner of property acquired through the commission of a criminal offence;
- (g) consider taking any additional measures as to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Proceeds of Crime and Anti Money Laundering Act (POCAMLA) 2009 Part XII 120(4) provides for request to Kenya for the enforcement of orders.

120. Requests to Kenya for the enforcement of certain orders

- (1) Where-

(a) a court or tribunal of another country issues a restraint order or confiscation order, (whether based upon criminal or in rem or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(b) that country requests assistance from Kenya in enforcing those orders against property believed to be located in Kenya, the Attorney-General may apply to the High Court for the registration of the order.

(2) Where the Attorney-General applies to the High Court for the registration of an order pursuant to subsection (1) the High Court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the High Court is satisfied that-

(a) the order is final, not subject to appeal, and a certified copy of such order bearing the seal or the signature of the court has been submitted;

(b) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of Kenya and had an opportunity to defend his interest in the property; and

(c) enforcement of the order would not be contrary to the interests of justice.

(4) To preserve the availability of property in Kenya that is subject to confiscation proceedings that have been or are likely to be instituted in another country, the Attorney-General may apply to the court to issue an order of restraint of the said property.

(5) In issuing the order of restraint the court may rely on information set forth in the request from the other country describing the nature of the pending investigations or proceedings and setting forth a reasonable basis to believe that the said property will be named in a confiscation order at the conclusion of the proceedings.

(6) A copy of the application to register and enforce orders from another country shall be provided to any person who appears to own or control or otherwise have a legal interest in the property in the manner prescribed in section 79.

(7) A person entitled to notice pursuant to subsection (6) shall have thirty days from the date of such receipt of notice or publication, whichever is later, to file an objection contesting the enforcement of the order from another country.

(8) Unless a person contesting enforcement of an order from another country is able to establish one of the conditions of section 93(1) the court may enter such orders as may be necessary to give effect to the orders of a court or tribunal of the other country and the court shall be bound by the findings of fact to the extent that they are stated in the foreign order.

(9) Where an amount of money is to be paid under an order from another country is expressed in a currency other than that of Kenya, the amount shall be converted into the currency of Kenya on the basis of the official exchange rate prevailing as of the date of the registration of the order.

(10) Where the Attorney-General considers it appropriate either because an international arrangement so requires or because it is permits or in the public interest, the Attorney-General may order that the whole or any part of any property forfeited pursuant subsection (7) or the value thereof be returned or remitted to the requesting state.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The Office of the Director of Public Prosecutions prepares an *Annual Anti-Corruption Report in Respect of Prosecution of Anti-Corruption and Economic Crime Related Cases Pursuant to the Provisions of Section 37 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 (ACECA)*". The report includes a summary of the steps taken by the DPP in respect to each matter forwarded to him by EACC and the Status of each case dealt with during that period. Further, the report shall indicate if any recommendation of the Commission to prosecute a person for Corruption or Economic Crime was not accepted and shall set out succinctly the reasons for not accepting the recommendation. The report for the period 1st January 2016 to 31st December 2016 indicates that the OPDPP reviewed one hundred and twenty-eight (128) corruption cases inquiry files submitted by EACC

(b) Observations on the implementation of the article

To preserve property that is subject to confiscation proceedings that have been or are likely to be instituted in another country, the Attorney-General may apply to the court to issue an order of restraint of the said property (POCAMLA, S. 120(4)).

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this Article by enacting the Proceeds of Crime and Anti-money Laundering Act 2009(POCAMLA) and the Mutual Legal Assistance Act 2011.

The Proceeds of Crime and Anti-money Laundering Act Part XII Section 120 of POCAMLA provides for request to Kenya for the enforcement of confiscation orders. The section provides as follows;

(1) Where-

(a) a court or tribunal of another country issues a restraint order or confiscation order, (whether based upon criminal or *in rem* or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(b) that country requests assistance from Kenya in enforcing those orders against property believed to be located in Kenya, the Attorney-General may apply to the High Court for the registration of the order.

(2) Where the Attorney-General applies to the High Court for the registration of an order pursuant to subsection (1) the High Court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the High Court is satisfied that-

(a) the order is final, not subject to appeal, and a certified copy of such order bearing the seal or the signature of the court has been submitted;

(b) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of Kenya and had an opportunity to defend his interest in the property; and

(c) enforcement of the order would not be contrary to the interests of justice.

The Mutual legal Assistance Act Part III provides for the procedure of making and execution of legal assistance requests. Section 8 provides for the procedure of executing incoming request from other states for legal assistance. The section provides;

(1) A request from a requesting State shall be made in writing to the Central Authority.

(2) Upon receipt of the request under subsection (1), the Central Authority shall as soon as is reasonably practicable acknowledge receipt of such request and forth with transmit the same to the relevant competent authority.

(3) For the purpose of subsection (1), "in writing" includes e-mail, facsimile or other agreed forms of electronic transmission provided that appropriate levels of security and authentication are put in place. (4) Subject to the provisions of this Act, the Competent Authority shall grant the legal assistance requested in subsection (1) as expeditiously as practicable.

(5) The Competent Authority may seek additional information from a requesting State if it considers necessary.

(6) If the Competent Authority considers that-

(a) the request does not comply with the provisions of this Act; or

(b) in accordance with the provisions of this Act, the request for legal assistance is to be refused in whole or in part; or

- (c) the request cannot be complied with, in whole or in part; or
- (d) there are circumstances which are likely to cause a significant delay in complying with the request, it shall promptly inform a requesting state, giving reasons.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Kenya has not dealt with a request for recovery of proceed of crime by any other state. Consequently, no opportunity has arisen to implement this measure

(b) Observations on the implementation of the article

Kenyan authorities may obtain a domestic order of confiscation on the basis of a foreign request (MLA Act, S. 8).

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this Article by enacting the Mutual Legal Assistance Act 2011 and the Proceeds of Crime and Anti-money laundering Act 2009

Section 23 of Mutual Legal Assistance Act provides on identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime. The section provides that;

Kenya shall assist in proceedings involving the identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime under its laws or any other arrangement to which Kenya may be bound in relation to a requesting state.

Section 24(e) of MLA empowers competent authorities in Kenya to freeze or seize property upon receiving a freezing or seizure order issued by a competent authority of a requesting state;

Kenya permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or a competent authority of such a requesting State that provides a reasonable basis for a requesting State to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph (a) of this section;

The Proceeds of Crime and Anti-money Laundering Act section 119 provides for request for search warrants and seizure. The section provides;

(1) Where a country requests assistance from Kenya in obtaining and executing a search and seizure warrant for the purposes of an investigation or proceedings relating to the corresponding law of that country, the Attorney-General may apply to the High Court for the warrant requested.

(2) Where, on application, the High Court is satisfied that-

(a) a proceeding or investigation relating to a serious offence has commenced in the requesting country; and

(b) there are reasonable grounds for believing that evidence relevant to the investigation or proceedings is located in Kenya, it may issue a warrant under this section authorizing entry for the purpose of search for the thing and if found the thing shall be seized.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for recovery of proceeds of crime from Kenya by any other state. Consequently, no opportunity has arisen to implement this measure

((b) Observations on the implementation of the article

Measures regarding the identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime that Kenyan authorities can take in the context of domestic proceedings can also be taken on the basis of a foreign request (MLA Act, Ss. 6(2) and 8; POCAMLA, S. 119).

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate

notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this Article by enacting the Mutual Legal Assistance Act 2011. Section 18 provides that a request must have the description of the property. The section provides;

(1) A request under this Act may seek assistance in the search and seizure of property in Kenya.

(2) The request made under subsection (1) shall specify the property to be

Searched and seized and shall contain, so far as is reasonably practicable, all

Information available to a requesting State which may be required to be adduced in an application under Kenyan law for any necessary warrant or authorization to effect the search and seizure.

(3) Subject to the relevant law, the Competent Authority shall provide such Certification as may be required by a requesting State concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of The property seized.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for recovery of proceed of crime from Kenya by any other state. Consequently, no opportunity has arisen to implement this measure

(b) Observations on the implementation of the article

Kenya is in compliance with the provision under review (Section 18 of the Mutual Legal Assistance Act 2011).

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this Article by enacting the Mutual Legal Assistance Act 2011.

Section 3 of MLA provides for rendering of legal assistance to a requesting State or international entity on the basis of a legal assistance agreement

This Act shall-

(a) apply to requests for legal assistance from any requesting State or international entity to which Kenya is obligated on the basis of a legal assistance agreement or not;

(b) regulate the rendering of legal assistance to any requesting state, unless otherwise regulated by agreement.

Section 4 of the Mutual Legal Assistance Act provides for Limitations with respect to scope of application of section 3

“Notwithstanding the provisions of section 3 of this Act nothing shall be construed to preclude Kenya from-

(a) an agreement, arrangement or practice respecting co-operation between Kenya and a requesting State or international entity or organization;

(b) rendering of a broader range of legal assistance to another State under this Act than may be provided for in an agreement.”

Section 30 of MLA provides for Bilateral or multilateral arrangements. The section provides that;

“Nothing in this Part shall preclude any bilateral or multilateral arrangements for the purpose of facilitating the exploitation of present and future technical Possibilities regarding the lawful interception of telecommunications.”

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Kenya has signed the following bilateral agreements to ensure full compliance with this provision of the Convention:

Legal Instruments

1. Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Kenya and The People's Republic of China.

2. Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Kenya and Italy.
3. Memorandum of Understanding between the Government of the Republic of Kenya and the Swiss Federal Council on Mutual Legal Assistance and Criminal Matters
4. Memorandum of Understanding between Financial Reporting Center and Seychelles

(b) Observations on the implementation of the article

Kenya has implemented this article by adopting the Mutual Legal Assistance Act 2011, specifically in its Articles 3, 4 and 30.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

Yes

(b) Observations on the implementation of the article

Kenya has furnished copies of its laws during the course of the review.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this Article through the constitution of Kenya Article 2(6) which provides that any treaty or convention ratified by Kenya forms part of Kenya law.

Kenya has ratified UNCAC therefore the Convention forms part of Kenyan Law subject to Article 2(6).

Mutual Legal Assistance can be granted on a case-by-case basis on principles of reciprocity and comity, subject to the Constitution and laws of Kenya.

Section 4 of the MLA

4. Limitations with respect to scope of application Notwithstanding the provisions of section 3 of this Act nothing shall be construed to preclude Kenya from-

(a) an agreement, arrangement or practice respecting co-operation between Kenya and a requesting State or international entity or organization;

(b) rendering of a broader range of legal assistance to another State under this Act than may be provided for in an agreement

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

1) Between 2014-2017 Kenya has made three requests for mutual legal assistance to the Republic of South Africa in relation to investigations into allegations of corruption and economic crime. The requests were made to gather evidence in furtherance of investigations into fraudulent schemes in public procurement.

2) Kenya has received and executed requests for mutual legal assistance from Japan, Switzerland and Finland. Kenya gathered the evidence requested and transmitted it to the requesting states on the basis of article 55 paragraph 6

(b) Observations on the implementation of the article

Kenya does not make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this Article by enacting the Mutual Legal Assistance Act 2011

Section 11 of MLA provides for grounds for refusal for cooperation and states as follows;

A request for legal assistance under this Act shall be refused if, in the opinion of the Competent Authority-

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Kenya would not have constituted an offence under Kenyan law;

(b) the request relates to the prosecution or punishment of a person in respect of an act or omission where, if it had occurred in Kenya at the same time and had constituted an offence against Kenyan law, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

(c) the request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent tribunal or authority in a requesting state, or has the request relates to the prosecution or punishment of a person in respect of an act or omission that if it had occurred in Kenya would have constituted an offence under the Kenyan law but the circumstances in which it is alleged to have been committed or was committed is an offence of a political character;

(e) there are substantial grounds for believing that the request is made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions;

(f) the granting of the request would prejudice the sovereignty, security or any other national interest of Kenya;

(g) the provision of the legal assistance could prejudice an investigation or proceedings in relation to a criminal matter in Kenya;

(h) the provision of the legal assistance would or is likely to prejudice the safety of any person, whether in or outside Kenya.

Section 25 of MLA provides on grounds for refusal for cooperation and states as follows;

In addition to the grounds of refusal set out in this Act, Co-operation may be refused if a requesting State does not provide sufficient and timely evidence or if the property is of an insignificant value.

8. Incoming requests for legal assistance

(5) The Competent Authority may seek additional information from a requesting State if it considers necessary.

(6) If the Competent Authority considers that:

(a) the request does not comply with the provisions of this Act; or

(b) in accordance with the provisions of this Act, the request for legal assistance is to be refused in whole or in part; or

(c) the request cannot be complied with, in whole or in part; or (d) there are circumstances which are likely to cause a significant delay in complying with the request, it shall promptly inform a requesting state, giving reasons.

25. Refusal of co-operation

In addition to the grounds of refusal set out in this Act, co-operation under this Part may be refused if a requesting state does not provide sufficient and timely evidence or if the property is of an insignificant value.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There been no case where there has been refusal for cooperation in this respect.

(b) Observations on the implementation of the article

The competent authority may seek additional information from a requesting State if it considers necessary. In addition, cooperation may be refused if a requesting State does not provide sufficient and timely evidence or if the property is of an insignificant value (MLA Act, Ss. 8 and 25).

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

No

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The above provision is not supported by any legal framework in Kenya. Recommendation to amend the Mutual legal Assistance Act to incorporate this provision will be made.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

(b) Observations on the implementation of the article

Nothing in the law requires Kenyan authorities, before lifting any provisional measure, to give the requesting State an opportunity to present its reasons in favour of continuing the measure.

It is recommended that Kenya ensure that, before lifting any provisional measure and whenever possible, the requesting State is given an opportunity to present its reasons in favour of continuing the measure.

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this Article by enacting the Mutual Legal Assistance Act 2011 section 23(3) and 47(1)(b) provides for the protection of the rights of bonafide third parties.

Section 23(3) of MLA Act provides as follows;

(1) Kenya shall assist in proceedings involving the identification, tracing, freezing, seizure and confiscation of the proceeds and instruments of crime under its laws or any other arrangement to which Kenya may be bound in relation to a requesting state.

(2) A request for legal assistance under this section shall include-(a) details of the property in relation to which co-operation is sought;

(b) the connection, if any, between the property and the offences in respect of which the request is made;

(c) where known, details of any third-party interests in the property; and

(d) a certified copy of the freezing or seizing decision or final decision of confiscation made by a court.

Nothing in this section shall prejudice the rights of bona fide third parties.

Section 47(1) (b) of MLA Act provides for as follows;

(1) Where compliance with a request under this Act would involve the transmission of any document, record or property, Kenya may-(a) postpone the transmission of the material if it is required in connection with proceedings in that state, and in such a case require a requesting State to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for recovery of proceeds of crime from Kenya by any other state. Consequently, no opportunity has arisen to implement this measure

(b) Observations on the implementation of the article

Kenya provides for the protection of *bona fide* third parties (POCAMLTA, S. 93 and 94; MLA Act, S. 23(3)).

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Relevant Legislation

Section 48 of the Mutual Legal Assistance Act provides that Kenya shall take measures to permit it to forward information on proceeds of criminal offences to a requesting State without prior request, where it considers that the disclosure of such information might assist a requesting State in initiating or carrying out investigations, prosecutions or judicial proceedings; or it might lead to a request by a requesting state.

Section 48. Special cooperation

Subject to any written law and without prejudice to its own investigations, prosecutions or judicial proceedings, Kenya shall take measures to permit it to forward information on proceeds of criminal offences to a requesting State without prior request, where it considers that-

- (a) the disclosure of such information might assist a requesting State in initiating or carrying out investigations, prosecutions or judicial proceedings; or
- (b) it might lead to a request by a requesting State under this Act.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

a) Special Cooperation under the framework of the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO) of which Kenya is a member.

Kenya is a member of EAPCCO whose objectives are to-

- Foster cooperation to combat transnational organized crimes in the region.
- Cooperation and collaborative engagement to pursue collective security,
- Joint training,
- Timely exchange of information to understand the security situation in the region, among others

Regional police chiefs meet over cross-border crimes

<http://www.newtimes.co.rw/section/read/208318/> A meeting of the Eastern Chiefs Cooperation Organisation (EAPCCO) started yesterday in Kigali with criminal investigations, counter-terrorism, gender and legal departments

to foster cooperation to combat transnational organised crimes in the region two-day meeting of the 34th Permanent Coordinating Committee of the member bloc, experts in various policing and security fields will deliberate small arms and light weapons, challenges posed by foreign fighters and retur importance of including women in policing; combating drug trafficking and among others. According to Ndegwa Muhoro (Director of CID Kenya), the

of the Permanent Coordinating Committee, over the last two years, simultane operations were conducted in EAPCCO and The Southern African Regional operation Organisation (SARPCO) member countries which led to the seizure products. At least 4, 500 people, according to the Director, were arrested codenamed 'Usalama III' in the two regions over crimes related to human, trafficking, people smuggling, terrorism, motor-vehicle theft, and environmen Through searches conducted in Interpol databases by member countries, vehicles were recovered over the last two years, and victims of human traffick rescued in Namibia, Rwanda and Uganda. About 12 of the vehicles were Kenya and Tanzania. "Illicit goods including drugs, guns, ammunitions, and gold, in excess of \$2.043 million were seized," said Muhoro. Meanwhile, the Chiefs of Police adopted various resolutions, some of which are yet to be member states. These include establishing the 'population and search of extension of I-24/7 communication tool beyond National Central Bureaus, legal agreements and operationalization of centers of excellence, among

b) Regional police chiefs have called for co-operation to effectively deal with security threats in the region. The link is <http://www.theeastafrican.co.ke/rwanda/News/Regional-police-chiefs->

c) Special Cooperation under the framework of the East African Association of Eastern African Anti-Corruption Authorities (EAAACA)

Kenya, through the Ethics and Anti-Corruption Commission, is a member of EAAACA. The objectives of EAAACA are set out in Article 6 the constitutive

constitution of the association and include but not limited to affording one another mutual legal assistance regarding detection, investigations, prosecutions, identification, tracing, freezing, seizure, confiscation and repatriation of property, instruments or proceeds obtained or derived from corruption and to assist in extradition of any person charged with or convicted of offences of corruption and other related offences, carried out in the territory of an East African Community Partner State and whose extradition is requested by that Partner State Party, in conformity with their domestic laws, any applicable extradition treaties, or extradition agreements or arrangements between or among the Partner States, or Memorandum of Understanding and Bilateral Agreements between the Anti-Corruption Authorities.

Further work of EAAACA can be found at www.eaaca.org

(b) Observations on the implementation of the article

Kenyan legislation provides for the spontaneous transmission of information (MLA Act, S. 48). In practice information is spontaneously exchanged through Interpol and the Asset Recovery Inter-Agency Networks of Eastern and Southern Africa, although statistics are not available.

It is recommended that Kenya continue efforts to strengthen international cooperation for the return of assets, as well as to improve record keeping, case information, and statistics on spontaneous assistance.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has fully complied with this requirement by having legislative framework in place. The following are the relevant statutes and provisions of the law:

The Mutual Legal Assistance Act, 2011 (MLA) at section 26 requires identification of prior legitimate owners as a condition for return and disposal of assets. Section 26 provides as follows:

“26. Return and disposal of assets

(1) Subject to the rights of third parties and in accordance with this Act or any other written law or any other arrangements to which Kenya is a bound, property confiscated under the provisions of this Act shall be disposed of, including return to a requesting state, upon request.

(2) Before the return of the property confiscated to a requesting State under subsection (1) and as a basis of return, Kenya shall-

- (a) reasonably establish prior ownership of such property by a requesting state; or
- (b) consider damage likely to be caused to a requesting State if the property is not returned; or
- (c) consider the need for compensation to the victims of the crime in a requesting state.

(3) Where appropriate, unless parties decide otherwise, Kenya may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property under this section.”

Proceeds of Crime and Anti-Money Laundering Act Section 120(10) provides for the return and disposal of assets.

120. Requests to Kenya for the enforcement of certain orders

(1) Where-

(a) a court or tribunal of another country issues a restraint order or confiscation order, (whether based upon criminal or in rem or other non-conviction based proceedings), in respect of an offence against the corresponding law of that country; and

(b) that country requests assistance from Kenya in enforcing those orders against property believed to be located in Kenya, the Attorney-General may apply to the High Court for the registration of the order.

(2) Where the Attorney-General applies to the High Court for the registration of an order pursuant to subsection (1) the High Court shall register the order.

(3) An order registered in accordance with this section shall have effect and shall be enforced, as if it were an order made under this Act or forfeiture orders, as the case may be where the High Court is satisfied that-

(a) the order is final, not subject to appeal, and a certified copy of such order bearing the seal or the signature of the court has been submitted;

(b) the person against whom, or in relation to whose property the order has been made, received notice of the proceedings outside of Kenya and had an opportunity to defend his interest in the property; and

(c) enforcement of the order would not be contrary to the interests of justice.

(4) To preserve the availability of property in Kenya that is subject to confiscation proceedings that have been or are likely to be instituted in another country, the Attorney-General may apply to the court to issue an order of restraint of the said property.

(5) In issuing the order of restraint the court may rely on information set forth in the request from the other country describing the nature of the pending investigations or proceedings and setting forth a reasonable basis to believe that the said property will be named in a confiscation order at the conclusion of the proceedings.

(6) A copy of the application to register and enforce orders from another country shall be provided to any person who appears to own or control or otherwise have a legal interest in the property in the manner prescribed in section 79.

(7) A person entitled to notice pursuant to subsection (6) shall have thirty days from the date of such receipt of notice or publication, whichever is later, to file an objection contesting the enforcement of the order from another country.

(8) Unless a person contesting enforcement of an order from another country is able to establish one of the conditions of section 93(1) the court may enter such orders as may be necessary to give effect to the orders of a court or tribunal of the other country and the court shall be bound by the findings of fact to the extent that they are stated in the foreign order.

(9) Where an amount of money is to be paid under an order from another country is expressed in a currency other than that of Kenya, the amount shall be converted into the currency of Kenya on the basis of the official exchange rate prevailing as of the date of the registration of the order.

(10) Where the Attorney-General considers it appropriate either because an international arrangement so requires or because it is permits or in the public interest, the Attorney-General may order that the whole or any part of any property forfeited pursuant subsection (7) or the value thereof be returned or remitted to the requesting state

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for recovery of proceeds of crime from Kenya by any other state. Consequently, no opportunity has arisen to implement this measure.

(b) Observations on the implementation of the article

Kenya provides for the disposal of confiscated assets, including by return to prior legitimate owners (MLA Act, S. 26). However, limited information, including statistics of actual recoveries, as compared to actual corruption cases, was provided. Further, during the country visit, examples were noted of international cases involving asset recovery with Kenya, which were met with cooperation challenges.

It is recommended that Kenya continue efforts to strengthen international cooperation for the return of assets, as well as to improve record keeping, case information, and statistics on asset recovery.

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has fully complied with this requirement by having the requisite legislative framework in place. The Mutual Legal Assistance Act, 2011 (MLA) at section 26 (1) makes any confiscation subject to the rights of third parties. Section 26 (1) provides as follows:

“S. 26. Return and disposal of assets.

(1) Subject to the rights of third parties and in accordance with this Act or any other written law or any other arrangements to which Kenya is a bound, property confiscated under the provisions of this Act shall be disposed of, including return to a requesting state, upon request.

In addition, section 47 of MLA Act requires a requesting State to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.

Section 47 of the MLA Act provides as follows:

47. Transmission and return of material

(1) Where compliance with a request under this Act would involve the transmission of any document, record or property, Kenya may-

(a) postpone the transmission of the material if it is required in connection with proceedings in that state, and in such a case

(b) require a requesting State to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for confiscation of property from Kenya by any other State. Consequently, no opportunity has arisen to implement this measure.

(b) Observations on the implementation of the article

Kenya is in compliance with the provision under review.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article

55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In compliance with this requirement, Kenya has put in place the requisite legislative. The following are the relevant statutes and provisions of the law:

The Proceeds of Crime and Anti-Money Laundering Act, 2009 which at section 120 (10) provides for the return of assets confiscated pursuant to orders issued by foreign courts. The said section provides as follows:

(10) “Where the Attorney-General considers it appropriate either because an international arrangement so requires or because it is permits or in the public interest, the Attorney-General may order that the whole or any part of any property forfeited pursuant subsection (7) or the value thereof be returned or remitted to the requesting state.”

The Mutual Legal Assistance Act, 2011 (MLA) at section 26 requires identification of prior legitimate owners as a condition for return and disposal of assets. Section 26 provides as follows:

“26. Return and disposal of assets

(1) Subject to the rights of third parties and in accordance with this Act or any other written law or any other arrangements to which Kenya is a bound, property confiscated under the provisions of this Act shall be disposed of, including return to a requesting state, upon request.

(2) Before the return of the property confiscated to a requesting State under subsection (1) and as a basis of return, Kenya shall-

(a) reasonably establish prior ownership of such property by a requesting state; or

(b) consider damage likely to be caused to a requesting State if the property is not returned; or

(c) consider the need for compensation to the victims of the crime in a requesting state.

(3) Where appropriate, unless parties decide otherwise, Kenya may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property under this section.”

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for recovery of proceeds of crime from Kenya by any other state. Consequently, no opportunity has arisen to implement this measure.

(b) Observations on the implementation of the article

It is noted that Kenya legislation does not provide for the unconditional return of assets stemming from embezzlement of public funds.

Accordingly, it is recommended that Kenya take measures to ensure the unconditional return of assets stemming from embezzlement of public funds or laundering of embezzled public funds.

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In compliance with this requirement, Kenya has put in place the requisite legislative.

The following are the relevant statutes and provisions of the law:

The Proceeds of Crime and Anti-Money Laundering Act, 2009 which at section 120 (10) provides for the return of assets confiscated pursuant to orders issued by foreign courts. The said section provides as follows:

(10) “Where the Attorney-General considers it appropriate either because an international arrangement so requires or because it is permits or in the public interest, the Attorney-General may order that the whole or any part of any property forfeited pursuant subsection (7) or the value thereof be returned or remitted to the requesting state.”

The Mutual Legal Assistance Act, 2011 (MLA) at section 26 requires identification of prior legitimate owners as a condition for return and disposal of assets. Section 26 provides as follows:

“26. Return and disposal of assets

(1) Subject to the rights of third parties and in accordance with this Act or any other written law or any other arrangements to which Kenya is a bound, property confiscated under the provisions of this Act shall be disposed of, including return to a requesting state, upon request.

(2) Before the return of the property confiscated to a requesting State under subsection (1) and as a basis of return, Kenya shall-

(a) reasonably establish prior ownership of such property by a requesting state; or

(b) consider damage likely to be caused to a requesting State if the property is not returned; or

(c) consider the need for compensation to the victims of the crime in a requesting state.

(3) Where appropriate, unless parties decide otherwise, Kenya may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property under this section.”

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for recovery of proceeds of crime from Kenya by any other state. Consequently, no opportunity has arisen to implement this measure.

(b) Observations on the implementation of the article

Kenya is in compliance with the provision under review (Article 26 of the Mutual Legal Assistance Act 2011).

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has fully complied with this requirement by having legislative framework in place. The Mutual Legal Assistance Act, 2011 (MLA) at section 26 requires identification of prior legitimate owners as well as need to compensate victims as preconditions for return and disposal of assets. Section 26 provides as follows:

“S. 26. Return and disposal of assets.

(1) Subject to the rights of third parties and in accordance with this Act or any other written law or any other arrangements to which Kenya is bound, property confiscated under the provisions of this Act shall be disposed of, including return to a requesting state, upon request.

(2) Before the return of the property confiscated to a requesting State under subsection (1) and as a basis of return, Kenya shall-

(a) reasonably establish prior ownership of such property by a requesting state; or

(b) consider damage likely to be caused to a requesting State if the property is not returned; or

(c) consider the need for compensation to the victims of the crime in a requesting state.”

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for recovery of proceeds of crime from Kenya by any other state. Consequently, no opportunity has arisen to implement this measure.

(b) Observations on the implementation of the article

Kenya provides for the disposal of confiscated assets, including by return to requesting States, to prior legitimate owners or by compensating the victims (MLA Act, S. 26).

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this requirement by having legislative framework in place. Section 26(3) of the Mutual Legal Assistance Act, 2011 (MLA) provides as follows:

“26. Return and disposal of assets

(1)...

(2)...

(3) Where appropriate, unless parties decide otherwise, Kenya may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property under this section.”

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has been no request for confiscation of property from Kenya by any other State. Consequently, no opportunity has arisen to implement this measure.

(b) Observations on the implementation of the article

Kenya is in compliance with the provision under review (Article 26 (3) of the Mutual Legal Assistance Act 2011).

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this requirement in that she has negotiated and signed 2 treaties on Mutual Legal Assistance and one which make provision for negotiations on mutually acceptable arrangements on final disposal of confiscated property. The particulars of the treaties are as follows:

1. Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Kenya and The People's Republic of China.

2. Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Kenya and Italy.

3. Memorandum of Understanding between the Government of the Republic of Kenya and the Swiss Federal Council on Mutual Legal Assistance and Criminal Matters

Kenya has also negotiated a “Framework for Return of Assets from Corruption in Kenya” with United Kingdom, Jersey and Switzerland. These agreements are at an advanced stage of being concluded.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

On the understanding of the yet to be concluded agreement for return of assets, Kenya has received confiscated financial assets from the Government of the United Kingdom and the Bailiwick of Jersey. Based on the same framework for return of assets, the real victims of the crimes were identified as ordinary Kenyan tax payers. Accordingly, the funds were invested in mutually agreed projects with direct benefits to ordinary citizens as follows:

- In respect of Smith and Ouzman Case (UK)-Purchase of seven ambulances distributed in needy Counties in various parts of Kenya.
- In respect of Jersey, an agreement has been reached for the returned funds to be invested in solar lighting of off-grid primary schools in poor rural areas.

(b) Observations on the implementation of the article

There have not yet been any requests for the return of assets from Kenya.

Kenya has also concluded agreements on the final disposal of confiscated assets.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

- Negotiate and conclude more treaties on mutual legal assistance with emphasis on information exchange, confiscation and return of assets.
- Strengthen regional cooperation

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this provision by enacting the Proceeds of Crime and Anti-money Laundering Act which establishes the Kenyan FIU known as the Financial Reporting Centre under section 21 which states as follows;

“There is established a centre to be known as the Financial Reporting Centre, (hereinafter referred to as the “Centre”) which shall be a body corporate, with perpetual succession and a common seal and shall be capable, in its corporate name, of-(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding or disposing of movable and immovable property;

(c) entering into contracts;

(d) doing or performing such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.”

Section 23 of POCAMLA provides that the principal objective of the Financial Reporting Center is to assist in the identification of the proceeds of crime and the combating of money laundering and financing of terrorism.

The key functions of the Financial Reporting Center as provided under section 24 of POCAMLA include to receive, analyse and interpret, reports of unusual or suspicious transactions made by reporting institutions and where there are reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or financing of terrorism and disseminate the information to the law enforcement authorities, any intelligence agency, or any other appropriate supervisory body for further handling if, having considered the reports,

Section 24 provided as follows;

“The Centre

(a) shall receive, analyse and interpret -

(i) reports of usual or suspicious transactions made by reporting institutions pursuant to section 12;

- (ii) all reports made pursuant to section 44;
 - (iii) information disclosed to it pursuant to section 42 of the Prevention of Terrorism Act, 2012; and
 - (iv) any additional or other information disclosed to it and obtained by it in terms of this Act.
- (b) shall send information received under this Act to the appropriate law enforcement authorities, any intelligence agency, or any other appropriate supervisory body for further handling if, having considered the reports, the Director has reasonable grounds to suspect that a transaction or activity involves proceeds of crime, money laundering or financing of terrorism”

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Year	Number of STRs	Total Accumulation
2012	34	34
2013	110	144
2014	201	345
2015	725	1070
2016	1328	2398
2017	2176	4574

(b) Observations on the implementation of the article

The FRC (the Kenyan FIU) was established under section 21 of POCAMLA and started its operations in 2012. It receives and analyses suspicious transaction reports and transmits the results of its analysis to the appropriate law enforcement authorities. The FRC has applied for the EGMONT Group membership.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

There is an ongoing technical assistance programme with International Monetary Fund whose objective is to enhance FRC operations and procedures to fill in gaps in the legal and regulatory framework and to help financial sectors regulators to introduce risk based AML/CFT supervision in their respective sectors.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Kenya has complied with this provision by having a legal framework that allows Kenya to conclude bilateral and multilateral agreements to enhance effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

The legal framework is the **Mutual Legal Assistance Act 2011**;

Section 3 that provides for rendering of legal assistance to any requesting State or international entity on the basis of a legal assistance agreement.

3. Scope of application

This Act shall-

- (a) apply to requests for legal assistance from any requesting State or international entity to which Kenya is obligated on the basis of a legal assistance agreement or not;
- (b) regulate the rendering of legal assistance to any requesting state, unless otherwise regulated by agreement.

Section 4 that provides that nothing shall preclude Kenya from entering into an an agreement on legal assistance with a requesting State or an international entity.

4. Limitations with respect to scope of application

Notwithstanding the provisions of section 3 of this Act nothing shall be construed to preclude Kenya from-

- (a) an agreement, arrangement or practice respecting cooperation between Kenya and a requesting State or international entity or organization;
- (b) rendering of a broader range of legal assistance to another State under this Act than may be provided for in an agreement.

Section 30 provides for the conclusion of bilateral or multilateral arrangements for the purpose of facilitating the exploitation of present and future technical possibilities regarding the lawful interception of telecommunications.

30. Bilateral or multilateral arrangements

Nothing in this Part shall preclude any bilateral or multilateral arrangements for the purpose of facilitating the exploitation of present and future technical possibilities regarding the lawful interception of telecommunications.

Kenya is also a member to a number of regional and international organizations that seek to enhance effectiveness of international cooperation undertaken pursuant to this chapter of the Convention. This organizations include the East Africa Association of Anti-Corruption Authorities (EAAACA), Asset Recovery Inter-Agency Network for Eastern Africa (ARINEA), Eastern Africa Police Chiefs Cooperation Organization (EAPCO) and International Association of Prosecutors.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

a) Kenya has currently signed the following bilateral agreements to ensure full compliance with this provision of the Convention

b) Legal Instruments

1. Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Kenya and The People's Republic of China.
2. Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Kenya and Italy.
3. Memorandum of Understanding between the Government of the Republic of Kenya and the Swiss Federal Council on Mutual Legal Assistance and Criminal Matters
4. Memorandum of Understanding between Financial Reporting Center and Seychelles

c) Kenya is a member of the following regional and international organizations that enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention

1. East Africa Association of Anti-Corruption Authorities (EAAACA)

The Kenyan Ethics and Anti-Corruption agency (EACC) has concluded a number of M OUs with its counterparts in the East African Community. Kenya is also a member of Asset Recovery Inter-Agency Network for Eastern Africa (ARINEA) under the EAAACA umbrella.

2. Eastern Africa Police Chiefs Cooperation Organization (EAPCO)

The Kenya Police Service also has a number of MOUs on police to police cooperation.

3. Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG)
4. INTERPOL. International Police Association (Director of CID is a member of the executive council Interpol)
5. ODPP is a member of the African Association of Prosecutors; International Association of Prosecutors; Commonwealth Regional Programme for DPPs; East African Association of Prosecutors (Where the Director of Public Prosecution is the President)

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

(b) Observations on the implementation of the article

Although Kenya can provide MLA in the absence of a treaty (MLA Act, S. 3), in practice an agreement is required. Kenya has concluded two bilateral treaties (with China and Italy) and one MOU (with the Swiss Federal Council) on MLA. The FRC has concluded 11 MOUs with its counterparts.

It is recommended that Kenya consider concluding further agreements or arrangements to enhance the effectiveness of international cooperation for asset recovery.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Strengthening the Central Authority to be able to successfully negotiate and enter into more Mutual legal Assistance bilateral and multilateral agreements.

Strengthen competent institutions to ensure successful implementation of the ratified bilateral and multilateral agreements and further effective and practical cooperation with the regional and international bodies to which they are members.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Developing the Mutual Legal Assistance guidelines by the British High Commission

Developing the Mutual Legal Assistance Writers Tool by UNODC