

**AN APPRAISAL OF UNCAC REVIEW REPORT OF KENYA:  
KEY HIGHLIGHTS, IMPLEMENTATION, TECHNICAL  
ASSISTANCE AND LESSONS LEARNT**

By

**John Kithome TUTA**

Director, Legal Affairs

Office of the Attorney-General and Department of Justice,  
Republic of Kenya

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*AUSTRIA.*

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# OUTLINE

- **(I) Introduction**
- **(II) Background**
- **(III) Kenya UNCAC Review Report  
Implementation Process**
- **(IV) Key Challenges and TA needs**
- **(V) Lessons Learnt from the Review - Key  
Success Factors**
- **VI) Conclusion and the Way Forward**

## II). BACKGROUND

- Kenya is a State Party to UNCAC – since 9<sup>th</sup> Dec., 2003. During the 1<sup>st</sup> IRG of 28 June-2 July, 2010, Kenya was drawn for review in year 4 of the 1<sup>st</sup> cycle.
- Kenya had already done a Gap Analysis Study of UNCAC in 2009.
- In Feb, 2013, UNODC – **advance notice** to Kenya on its review w.e.f. July, 2013, and a **formal notice** in July, 2013 – review by Governmental Experts from Cabo Verde and Papua New Guinea (PNG), supported by UNODC.
- In July, 2013, AG appointed a National Steering Committee on the review.
- On 31 October, 2013, the Cabinet formally approved the UNCAC review.
- The review on Kenya was undertaken between July 2013 and September, 2015. A Country Review Visit was held from **1st to 3rd September, 2014**.
- The **final Country Review Report** and the **Executive Summary**, were finalised in September, 2015. The Executive Summary was tabled during the Resumed 6<sup>th</sup> Session of IRG, held in St. Petersburg, Russia, 3-4 Nov., 2015.

# BACKGROUND – CONT'D (Country visit: 1-3 September, 2014)



### III). UNCAC REVIEW REPORT IMPLEMENTATION PROCESS

- **Review Follow-Up Workshop: 16-17 March, 2016 - Implementation Matrix.**
- **Outline of 41-high-level UNCAC Report recommendations (Reccs)**
  - (a) **Chap. III** : 23 reccs on Legislative Recommendations (Criminal Law and Procedure) , and Operational and Institutional Reccs (Cross-Cutting Reccs) .
  - (b) **Chap. IV**: 18 reccs on Extradition & Prisoner Transfer; Special Investigative Techniques; Cross-Cutting Issues; MLA, and Law Enforcement Co-op.
- **Implementation Matrix:** *UNCAC article ;Recc; TA; Current status; Priority; Time-frame; Actors; Action; External Assistance Required, and Budget.*

### III). UNCAC REVIEW REPORT IMPLEMENTATION PROCESS – CONT'D



### III). **UNCAC REVIEW REPORT IMPLEMENTATION PROCESS-CONT'D**

- **Time-Frame and Budget:** 3 years @ approximately Kshs. 381 m (US\$ 3.81 m).
- **Inter-Ministerial Technical Committee** - to ensure the implementation of the UNCAC Report recommendations - through laws, policies, etc.
- **The Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015)** – chaired by AG – based many of its recommendations on UNCAC Review Report. The Report was presented to the President on 17<sup>th</sup> November, 2015.
- **New Bills to address review gaps:** (a) Bribery Bill, 2016, (b) Anti-Corruption Laws (Amendments) Bill, 2016, (c) Whistleblower Protection Bill, 2016, and (d) False Claims Bill.
- **Kenya Integrity Plan (2015-2019):** developed by **the Kenya Leadership and Integrity Forum** (public, non-state actors, etc), which brings together 15 sectors–joint planning, implementation and reporting on the implementation of anti-corruption measures. One of the priorities is the implementation of Kenya’s international anti-corruption obligations.
- **Draft National Ethics and Anti-Corruption Policy** (under development): considered UNCAC Review Report of Kenya as well as the best practices of the 10 least corruption countries as per the 2015 Transparency International Corruption Perception Index (CPI).

## IV). KEY CHALLENGES FACED, AND TA NEEDS

- 1) **Key Challenges**
- Transfer of Criminal Proceedings – no policy framework or legal precedent
- Capturing and maintaining statistics - in the envisaged UNCAC format.
- Constitutional and legal challenges: e.g. illicit enrichment .
- Limited capacity - e.g. human, technological, institutional, etc.
- Limited resources for implementation of the Report (human, financial, etc).



## IV). KEY CHALLENGES FACED, AND TA NEEDS – CONT'D

### • 2) Technical Assistance (TA) Needs

The TA needs identified in the UNCAC Report were:-

- Summary of good practices/lessons learnt
- On-site assistance by an anti-corruption expert
- Capacity-building programmers for anti-corruption/MLA authorities, etc.
- Development of an Action Plan for implementation
- Legislative drafting/drafting of model laws

### 3) TA Opportunities:

- Donor consultative meeting on the implementation of the UNCAC Report: 18<sup>th</sup> March.
- Germany (GIZ) chairs the Anti-Corruption Donor Working Group: UK; USA; Germany; African Development Bank; Sweden; Finland; Switzerland, and the World Bank.
- New UNODC Regional Programme (2016-2021) on *Promoting the Rule of Law and Human Security in Eastern Africa* – is also keen on supporting anti-corruption work.

# V). LESSONS LEARNT FROM THE REVIEW - KEY SUCCESS FACTORS

- **Enabling Constitutional / legal framework:** Constitutional / statutory/Executive/administrative
- **Political will:** President, Cabinet, Attorney-General (or line Minister), and other stakeholders.
- **The review process should be participatory:** e.g. involvement of Parliament or CSOs, for ownership.
- **Effective institutional arrangements** for implementation - e.g. an Inter-Agency Steering Committee established by an appropriate authority
- **Provision of funds** for the implementation process
- **Lessons learnt** from the reviews of other countries are useful - e.g. lessons learnt from Mongolia and Malaysia.

v).

## LESSONS LEARNT FROM THE REVIEW - KEY SUCCESS FACTORS-CONT'D

- **TA:** Should be demand-driven not supply-driven/“**basket**” approach – e.g. GJLOS Reform Prog. in Kenya.
- **Dedicated courts for corruption and economic crimes**  
- Anti-Corruption and Economic Crimes Division of the High Court – best practices from Malaysia, and Uganda.
- **Leverage on best practices:** IPCRM a best practice - now **MAT (EACC;ODPP;FRC;DCI; ARA; KRA;OP, and NIS)**- to ensure real-time co-operation in fighting corruption-thro' joint investigations, intelligence sharing, prosecution, asset recovery, recovery of taxes, etc. This has resulted in, *inter alia*: asset recovery of **Kshs. 421 m**; freezing of assets worth **Kshs. 1.3b**; preservation of assets worth **Kshs. 130 m**, and arraignment of **110 suspects** (and 1 company).

## VI). CONCLUSION AND THE WAY FORWARD

- Kenya has greatly benefitted from the UNCAC review, e.g. objective advice on the efficacy of our anti-corruption laws, policies, institutions, etc.; TA; sharing of best practices, etc.
- The UNCAC Review Report has helped the country comply with and implement a number of its international obligations as per Articles 2(6) and 132(1)(c)(iii) of the Constitution of Kenya.
- The UNCAC Report has become a reference point under various governance peer review mechanisms that Kenya is subject to e.g. APRM (Oct.-Nov, 2016), and the review of the implementation of the AU Convention on Preventing and Combating Corruption.
- Kenya to leverage on the new UNODC Eastern Africa Regional Programme (2016-2021) on *Promoting the Rule of Law and Human Security in Eastern Africa*, to support the implementation of its UNCAC Report, among other measures.
- UNCAC review Follow-Up workshop planned for February, 2017.

## VI). CONCLUSION AND THE WAY FORWARD – CONT'D

- Preparations for 2nd cycle review (w.e.f. July 2017) on Chapters II (Preventive measures) and V (Asset Recovery) underway.
- Conclusion: States should implement their international obligations–Art. 26 of the Vienna Convention on the Law of Treaties, 1969 (*pacta sunt servanda* principle)(“**agreements must be kept**”). Further, ability and willingness of a state to implement their international obligations are key to UN membership – as per Art. 4(1) of the UN Charter.
- Fighting corruption is in the best interest of every state. Thus, the States Parties to UNCAC must implement their UNCAC obligations not only because International Law requires it but also because it is in their self-interest to get rid of corruption.

**THANK YOU!**  
**MERCI BEAUCOUP!**  
**ASANTENI SANA!**

