

Panel Presentation for the United Republic of Tanzania

Presented during the IRG-8TH Session from 19-23 June

At Vienna International Centre

1. Confiscation regimes that extend to all corruption offences and the capacity required to implement the legislative powers:

- Tanzania follows the system of common law legal system. Generally confiscation of corruptly obtained properties and related issues are governed by two laws.
 - Part IV of the Prevention and Combating of Corruption Act No.11 of 2007.
 - The Proceeds of Crimes Act [CAP 256 R.E 2002]
- Part IV of the Prevention and Combating of Corruption Act No.11 of 2007 specifically deals with forfeiture of corruption and corruption related offences. While the Proceeds of Crime Control Act, cuts across all proceeds acquired from the criminal activities. Therefore, where there is a lacuna in the Prevention and Combating of Corruption Act No.11 of 2007, POCA will prevail.
- In both Acts forfeiture is based on conviction of the accused. However, when investigation has continued for the period of six months and the suspect dies or disappears as the case may be, the corruptly acquired properties may still be recovered as stipulated by an amendment to POCA through Miscellaneous Amendment Act No.3 of 2016.
- The Acts further provide for protection of the illicitly acquired properties before the suspect is arraigned in the court of law to answer corruption charges or conviction of the accused person. It

is also important to note that in the course of investigation, the Attorney General is empowered to issue Prohibitory Notice which lasts for six months pending the completion of investigation. Also an application may be made to the court by the Director of Public Prosecution (DPP) for seizure (freezing) of ill-gotten properties as provided for under Section 34 (2) and 38 of the PCCA).

- These Acts give powers to the DG of the PCCB, DPP and the Attorney General to make an application to the Court for recovery of stolen assets.

2. Value-based confiscation and the confiscation of instrumentalities

- The legal framework in Tanzania does not set the limit for confiscation of proceeds of crime.
- There is also no limit or restriction on the confiscation of instrumentalities (i.e. the facilities that are used to facilitate criminal activities).

3. Confiscation of intermingled proceeds and transformed or converted

Property:

- PCCA allows forfeiture of any property provided that there are all reasonable grounds to believe that the properties were corruptly acquired.
- The PCCA is silent regarding the intermingled proceeds of crime. Nonetheless, in defense, the accused person has the right to adduce before the court of law that, a portion of the suspected property in which is accused of was legally acquired. Put simply, the onus of proof entirely lies upon him (accused).

- The Proceeds of Crime Act empowers the court to grant pecuniary penalty against the accused person. The order may direct the accused to pay back the value equivalent to the proceeds of crime in monetary terms to the Treasury.

4. The protection of bona fide third parties in relation to confiscation:

Both PCCA and POCA allow the third party with an interest/claim to the alleged property to be served with a written notice to appear and adduce evidence in his or her defense that he unwittingly acquired the property. (See section 41 of PCCA and Section 16 of POCA)

5. The reversal of the burden of proof in confiscation matters, thus requiring the offender to demonstrate the lawful origin of alleged proceeds of crime:

- The PCCA provides details for the DPP to make an Application for forfeiture order against the property in respect of a person convicted of the corruption offence, the person and any other person claimed to have an interest in the property may appear and adduce evidence at the hearing of the Application. In other words, the accused is duty-bound to prove to court that the alleged property was legally acquired (reverse onus of proof).

6. Asset management offices and the use of assets for law enforcement;

- By and large, all confiscated assets in the United Republic of Tanzania are potentially the property of the Republic and as a matter of principle is supposed to be registered in the name of

Treasury Registrar for proper management and custody. (See section 43 (1), (2) & (3) of PCCA and Section 15 (1), (2) & (3).

- The two Acts ***do not*** provide for the use of corruptly acquired assets by the law enforcement agencies. However, currently there is a move to amend the PCCA to allow for the use of a portion of the illicitly acquired assets- by the law enforcement agencies say the PCCB or Police.

7. Challenges identified during the lifetime of the confiscation legal regime or any steps taken to better implement the provision of article 31 of UNCAC would be mostly appreciated.

- Linking the proceeds of crime to other related offences. It is very hard to prove that the alleged properties were ***ALL*** acquired corruptly.
- Lack of Non-Conviction based provision for Asset Recovery tends to impair the efficiency of our investigation processes. However, in the just ended review of the PCCA, the omission/lacuna (NCB) has been taken care of.
- Resources are limited especially in high profile corruption cases

SUCCESS STORIES

1. Political zeal and will led by His Excellency Dr. John Pombe Magufuli, the President of the United Republic of Tanzania.

2. Increased value of assets recovered (forfeiture of stolen assets) from Tshs. 7 Billion (approx USD 3.2 Million) for the year 2014/2015 to Tshs.53.9 Billion (approx USD 25 Million) for the year 2015/2016.
3. The Introduction of Public Expenditure Tracking system for enhancing VFM.
4. Effective inter-agency collaboration among other law enforcement agencies. For example Criminal Justice Forum.
5. Launched NACSAP III
6. Wider Public participation in the fight against corruption
7. Trial of the biggest ever corruption case in the country involving proceeds of close to USD 150Million. This is the recent case which was filed on 19th June, 2017.