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Review of implementation of the United Nations Convention against Corruption

Executive summary: Kenya

Note by the Secretariat

The present conference room paper is made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the second year of the second review cycle.

* CAC/COSP/IRG/2019/1.



II. Executive summary

Kenya

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 organization 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 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).

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”, 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; POCAMLA, S. 119).

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).

POCAMLA (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 (POCAMLA, 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 (POCAMLA, 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);
- Digitization 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).