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DIRECT ASSET RECOVERY FRAMEWORK IN KENYA

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PRESENTATION OUTLINE

- Introduction
- Legal framework for direct recovery
- Sample case
- Conclusion



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Introduction

- Kenya was first country to sign and ratify UNCAC (9-12-03)
- Had already established a specialised anti-corruption agency
- Legal status and independence
- Has preventive, Education, Investigative and recently, oversight of ethical conduct in the public sector.



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Introduction cont'd...

- 2007, Kenya completed two self assessment check-lists: (1) On the state of national anti-corruption laws and, (2) on technical assistance.
- 2009- Undertook a Gap Analysis study.
- Developed an implementation action plan guiding law reviews to date .



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Legal Framework (general)

- 7 core statutes and about 5 other supportive statutes
- Core statutes:
 - The Constitution of Kenya
 - Leadership and Integrity Act
 - Ethics and Anti-Corruption Commission Act
 - Anti-Corruption and Economic Crimes Act
 - Public Officer Ethics Act
 - Proceeds of Crime and Anti-Money Laundering Act



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Legal Framework (direct recovery)

- Article 2 (6) of the new Constitution incorporated all treaties and Conventions ratified by Kenya as part of Kenyan law.
- However, treaties and conventions are subservient to domestic legislation.
- Jurisprudence around Article 2(6) in early stages of development



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Legal framework – Direct recovery

Civil recovery – conviction based not tested

- (i) Enforcement of foreign judgements
- (ii) Direct action by states

Foreign judgements:

- Foreign Judgements (Reciprocal Enforcement) Act- substantive law
- S. 9 of CPA compliments and categorises proceedings as civil



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Legal framework –Direct recovery

- Conditions:
 - a. Judgement pronounced by a competent court of law
 - b. Must be on merits (final)
 - c. Must be not in conflict with international law
 - d. Reciprocity- Must be recognise Kenya judgements law
 - e. Must not be fraudulently obtained
 - f. Must be consistent with natural justice



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Legal framework –Direct recovery

Direct action by states:

- S. 57 of same Act allows foreign states to institute civil proceedings in Kenya
- Conditions:
- Must be state recognised by Kenya
- Object of action is to enforce private right vested in the head of state or any officer of state in public capacity (contracts by states)



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Direct recovery- Sample case

Somalia Republic Case

- 1973- D.R of Somalia bought house used as official Ambassador's residence
- 1991- Govt of Siad Barre overthrown
- No legitimate Govt until TFG (early 2000's) and TNG
- 1995 –Duly accredited Ambassador sold residence to a Nairobi couple



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Somalia republic case

- In a suit filed by former Embassy officials and the Republic of Somalia in conjunction with the Republic of Somalia
- June 2014-Kenyan Court of Appeal upheld the High Court's decision to revoke the title and declared the sale of the



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Conclusion

- Kenya recognizes civil suits initiated by other States in recovery of assets.
- Kenya supports direct recovery by foreign states.



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