



## **OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

### **CHALLENGES AND OPPORTUNITIES RELATED TO DIRECT JUDICIAL COOPERATION BETWEEN THE PROSECUTION AUTHORITIES, AND DISCUSS THE BENEFITS AND BOUNDARIES OF INFORMAL COOPERATION**

#### **Introduction**

Increasing sophistication and complexity of crime as a result of increased digitisation and globalisation has created a need for enhanced regional and international cooperation amongst prosecution authorities. This is due to the voluminous nature of evidence that is now required, which now spans across multiple jurisdictions, along with the witnesses, victims, bank statements etc. that are required for a case. This then creates a need for cooperation with other states to occur so that successful investigation and prosecution of crime may happen. As such, the use of direct and informal cooperation between prosecution authorities is commonplace.

#### **Direct cooperation**

#### **Opportunities related to direct judicial cooperation between prosecution authorities**

- Building of trust amongst focal points
- Facilitates the use of both formal and informal exchange of information
- Enhances mutual confidence and trust
- Provides a forum for officials to better understand legal and procedural requirements in neighbouring countries

- Assists prosecutors develop contacts with counterparts in countries with which they are cooperating or may cooperate with in the future
- Smooth and Speedy execution of MLA and extradition requests
- Facilitates easier follow-up of MLA and extradition requests
- Provides a platform for prosecutors to share experiences, best practices, strategies and expertise
- Fosters the expertise of prosecutors through training and professional exchanges

### **Challenges in Direct Judicial Cooperation Between the Prosecution Authorities**

- Lack of treaties, bilateral agreements as the legal basis for cooperation
- Difficulty understanding other countries' requirements and procedures
- Incomplete answers or assistance provided
- Lack of cooperation or consultation in the process
- Lack of trust between jurisdictions
- Excessive restrictions on the use of assistance
- Slow methods of transmitting information
- Delays in responding to a request
- Interference at the political level
- Risk of tipping off or notifying a suspect
- Different legal systems or criminal justice standards (e.g. due process requirements)
- Legitimate invocation of a ground of refusal
- Language Barrier
- Developed countries' failure to cooperate with developing countries
- Multiplicity of contact persons: States may have several contact persons, which make it difficult to seek a competent authority to assist the requesting state and therefore leads to delays.
- Dual criminality

**Case Example:** In Kenya the Okemo Gichuru case, in 2018 the DPP was designated as the Central Authority for Mutual Legal Assistance requests in Tanzania. Additionally, the DPP was given the Asset Forfeiture mandates.

## **Informal cooperation**

### **Benefits**

- Facilitates the faster transfer of information between agencies
- Fosters communication
- Builds relationships among different prosecution authorities

### **Boundaries**

- Information received may not be admissible in Court
- Informal cooperation is still largely dependent on the existence of bilateral and regional instruments, the networks of regional and international organisations, and existing relationships and partnerships between law enforcement agencies