

# NETWORK OF ANTI-CORRUPTION PROSECUTORS (NACP)

INTERNATIONAL  
CO-OPERATION IN  
CORRUPTION CASES



## BACKGROUND



We live in an increasingly globalised world where money, people and goods can easily move across borders. Crime is no longer limited to the confines of a country's borders.



The globalisation of crime has given rise to the globalisation of criminal networks. Key documents, witnesses or suspects can be disseminated across multiple jurisdictions. This makes it difficult to enforce criminal law.



An OECD survey undertaken in 2015 showed that 70% of officials working on anti-corruption consider that there are obstacles to Mutual Legal Assistance that adversely affect their work. These impediments are associated with language differences, dual criminality, immunity, tax or banking secrecy issues. This creates safe havens for corruption and economic crimes.

## ABOUT THE ODPP KENYA



The ODPP is established under **Article 157** of the Constitution of Kenya and the ODPP Act. The ODPP today has a presence in all the 47 counties in Kenya, with its headquarters in Nairobi.



Initially under the Office of the Attorney General, the Constitution of Kenya 2010 established an independent national prosecution office.



The ODPP Kenya has since asserted its independence and grown from staffing levels of 73 to slightly over 1,000. This has enabled the office to professionally manage prosecutions in Kenya.

PLUS **1,000** Current Staffing levels

ODPP has prioritized inter-agency cooperation that has led to the improved relations with investigative agencies and successful arraignment of complex corruption cases involving senior public officials.

**KENYA IS A SIGNATORY TO INTERNATIONAL  
AND REGIONAL TREATIES AS FOLLOWS;**



**INTERNATIONAL LEVEL**

- (i)** UN Convention against Transnational Organized Crime (UNTOC)
- (ii)** United Nations Convention against Corruption (UNCAC) of 2003, Article 46:1



**REGIONAL LEVEL**

- (i)** The treaty for the establishment of the East African Community
- (ii)** The African Union Convention on Preventing and Combating Corruption

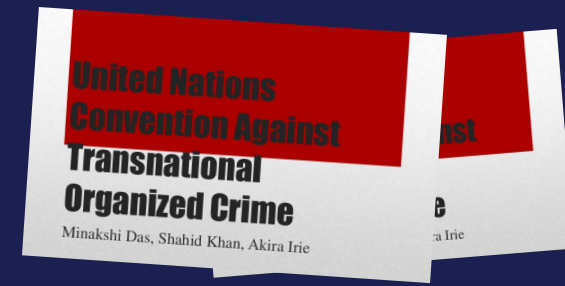


**Kenya was the first  
country to sign  
UNCAC**

## INTERNATIONAL INSTRUMENTS/CONVENTIONS FOR COOPERATION



United Nations Convention against  
Corruption (UNCAC) of 2003,  
Article 46.1



UN Convention against Transnational  
Organized Crime (UNTOC) of which  
Article 18 provides measures for Mutual  
Legal Assistance.

## EXISTING INTERNATIONAL NETWORKS TO WHICH KENYA IS A PARTY

Network of  
Anti-Corruption  
Prosecutors

**NACP**

Commonwealth  
Network of Contact  
Persons

The purpose of the Commonwealth Network of Contact Persons is to facilitate international cooperation in criminal cases between Commonwealth member States, including on MLA and extradition, and to provide relevant legal and practical information.

**Kenya is a member of the Commonwealth, Harare Scheme and London Scheme relating to Mutual Legal Assistance in criminal Matters within the Commonwealth.**

## REGIONAL LEGAL INSTRUMENTS/CONVENTIONS



The Treaty for the  
Establishment of the East  
African Community

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The African Union Convention  
on Preventing and Combating  
Corruption

## NATIONAL LEGAL FRAMEWORK



### **Constitution of Kenya Article 2 (5) and (6)**

**It acknowledges international law via the above articles; UNTOC and UNCAC, under these Kenya has complied through the enactment of the following national laws;**

- a.** Mutual Legal Assistance (No. 36 of 2011) Act
- b.** Extradition (Commonwealth Countries) Act & Extradition (Contiguous and Foreign Countries) Act.
- c.** Anti-corruption and Economic Crimes (no. 3 of 2003) Act
- d.** Evidence (Cap 80) Act
- e.** Prevention of Organized Crimes (No.6 of 2010) Act
- f.** Proceeds of Crime and Anti-money Laundering (No.9 of 2009) Act



## EXISTING REGIONAL NETWORKS TO WHICH KENYA IS A PARTY

**a)** East African  
Association of  
Prosecutors

**EAAP**

**ARIN - EA  
&  
ARIN - SA**

**b)** The Asset Recovery  
Inter-Agency Network for East  
Africa (ARIN - EA) and The Asset  
Recovery Inter-Agency Network  
for Southern Africa. (ARIN - SA)

**c)** Eastern and Southern  
Africa Anti-Money  
Laundering Group

**ESAAMLG**

**GLJCN**

**d)** The Great Lakes  
Judicial Cooperation  
Network

**EAPCO**

**e)** Eastern Africa  
Police Chiefs  
Cooperation  
Organisation

## **EAST AFRICA ASSOCIATION OF PROSECUTORS (EAAP)**

EAAP is an Association of National Prosecution Authorities of East Africa, whose mandate is to promote and facilitate cooperation among its member states through: detection, investigation and prosecution of crimes in the region as well as to offer legal assistance to its members.

Kenya currently holds the Secretary General office, with the association's secretariat hosted at the ODPP Nairobi office.



## EAAP EXPANSION

Although the East Africa Association of Prosecutors was conceptualized from a background of the East Africa Community, there is greater advantage in enlarging the scope of operation to cover the greater Eastern Africa Region. This will create room for the harmonization of our laws, processes and procedures to facilitate greater cooperation in prosecutorial and investigative assistance amongst our respective and other neighboring states.

To this end, On 29th August 2019, Kenya recently signed an MOU of cooperation, collaboration and coordination in Anti-Corruption, Recovery of proceeds of crime, MLA, Organized crime and counter terrorism with Ethiopia



## STRATEGIES ADOPTED BY THE ODPP KENYA IN FIGHTING CORRUPTION

Establishment of a special Taskforce on Anti-Corruption



Alternatives to Prosecutions (Plea bargaining and Diversion)



Community Outreach Sessions



Multi-Agency Task Teams



Establishment of Anti-Corruption and Mutual Legal Assistance divisions



Bilateral Agreements on Cooperation



Asset Freezing and Forfeiture



Capacity Building



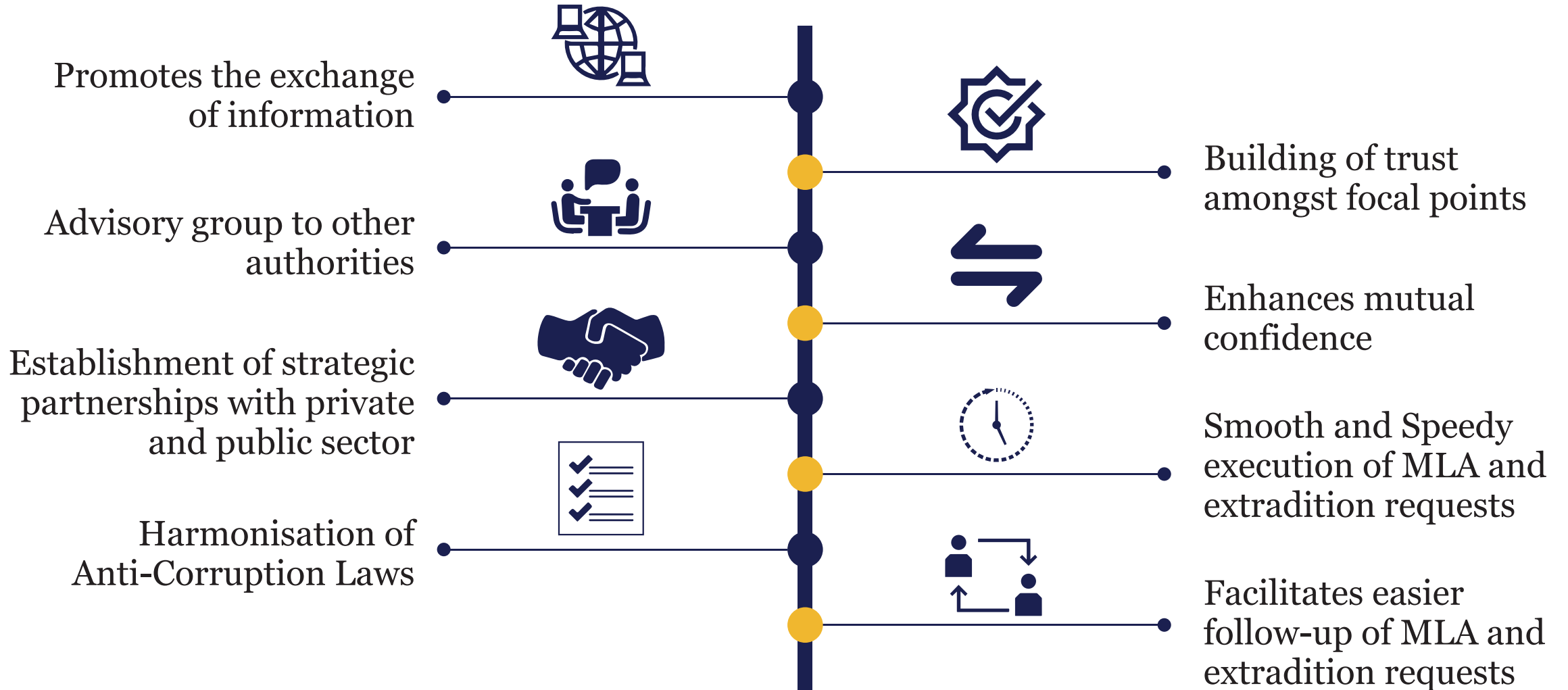
Involvement in networks



Sharing of intelligence with a view of converting it into evidence

Building Bilateral with the UK, US, Switzerland, and multilateral relations with the EU, UNODC and GIZ

## BENEFITS OF AN ANTI-CORRUPTION NETWORK



## CASE STUDIES OF INTERNATIONAL COOPERATION



### Kenya - Tanzania cooperation (2019)

Tanzania and Kenya made a joint commitment to combat cross-border crime. This was demonstrated when Mr. Baraka Chaulo, who is facing robbery charges, was repatriated along with the illegal assets in his possession. Illegal assets include 351 million shillings in different currencies and 35kgs of gold worth 2 billion shillings. Furthermore, the two countries signed a memorandum of understanding on mutual assistance to counter crime offences

### Request for Extradition of Amil Hassan Raage to the United States of America

(pursuant to the Extradition Treaty between the USA and the UK of Dec 22 1931, made applicable to Kenya on June 24, 1935, and continued in force between the United States and Kenya pursuant to an agreement concluded on Aug 19 1965) (Also in accordance with article 16 of the UNTOC convention).

**US \$872,000**  
**The estimated loss with Raage's criminal conduct**



## CASE EXAMPLES HIGHLIGHTING CHALLENGES IN INTERNATIONAL COOPERATION IN CORRUPTION CASES

### Request for Mutual Legal Assistance with regard to seizure of Ivory by Thai Customs Department

Two Mombasa brothers plotted to export Ivory disguised as tea. However, Thai customs officials were able to seize the Ivory. The Kenyan authorities requested the Thai authorities to return the Ivory for purposes of using it as evidence in court. The Thai authorities acceded to Kenya's request in so far as allowing Kenyan authorities to attend to the extraction of the DNA as observers without bringing any part of ivory out of the Kingdom of Thailand. This highlights the lack of cooperation among countries in the South



**3,127 Kgs**

Amount of the seized ivory

**\$5.76M**

Estimated value of the ivory  
in the black market

## CASE EXAMPLES HIGHLIGHTING CHALLENGES IN INTERNATIONAL COOPERATION IN CORRUPTION CASES *(Contd)*

### Conflict between Legislation and the Constitution

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Some domestic Statutes like the MLA and Extradition Acts are yet to be harmonised with the provisions of our Constitution so as to comply with the separation of the Offices of the DPP from the AG and to appreciate the new place of the ODPP in international cooperation as far as mutual legal assistance and extradition are concerned. *For example:*

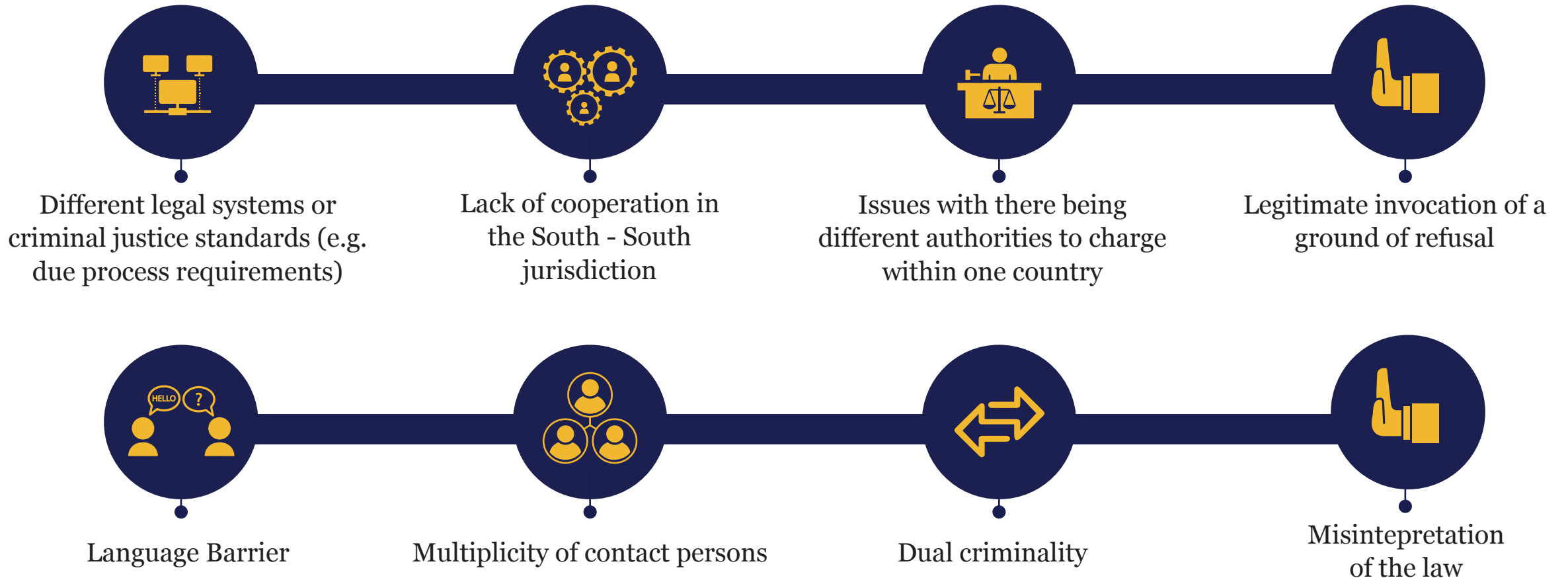
In the **Republic of Kenya v Chris Okemo & Samuel Gichuru**, the Court of Appeal judges ruled extradition is not part of Kenya's criminal justice system and the law assigns responsibility to the AG to decide whether a warrant should be issued and therefore it would be inconsistent with international law for the DPP, who is neither a member of the Executive nor a political appointee, to conduct part of Kenya's foreign affairs. However, the case is before the Supreme Court and this is a challenge to corruption cases, since several cases of extradition are pending which results to delays.

Such Statutes should be accordingly amended.





## CHALLENGES THAT ARISE IN ESTABLISHING AN INTERNATIONAL COOPERATION THROUGH ANTI-CORRUPTION NETWORKS



## CHALLENGES THAT ARISE IN ESTABLISHING AN INTERNATIONAL COOPERATION THROUGH ANTI-CORRUPTION NETWORKS

### Other Challenges;

1. Lack of treaties, bilateral agreements as the legal basis for cooperation;
2. Differences in legal systems
3. Lack of trust between jurisdictions;
4. Excessive restrictions on the use of assistance;
5. Slow methods of transmitting information;
6. Delays in responding to a request;
7. Lack of political will
8. Risk of tipping off or notifying a suspect
9. Failing to comply with reciprocity obligations
10. Lack of harmonisation of statutes with the new Constitution



## RECOMMENDATIONS FOR THE STRENGTHENING OF THE NACP

Appointment of a long term liaison officer.

Establishment of an International Anti-Corruption Court

Creation of NACP Regional Networks



Creation of a NACP Portal

Establishment of one Central Office in Anti-corruption

Developing a mechanism for parallel and joint investigations.

Creation of a centralized mechanism of processing MLAs

*NACP - Network of Anti-Corruption Prosecutors*