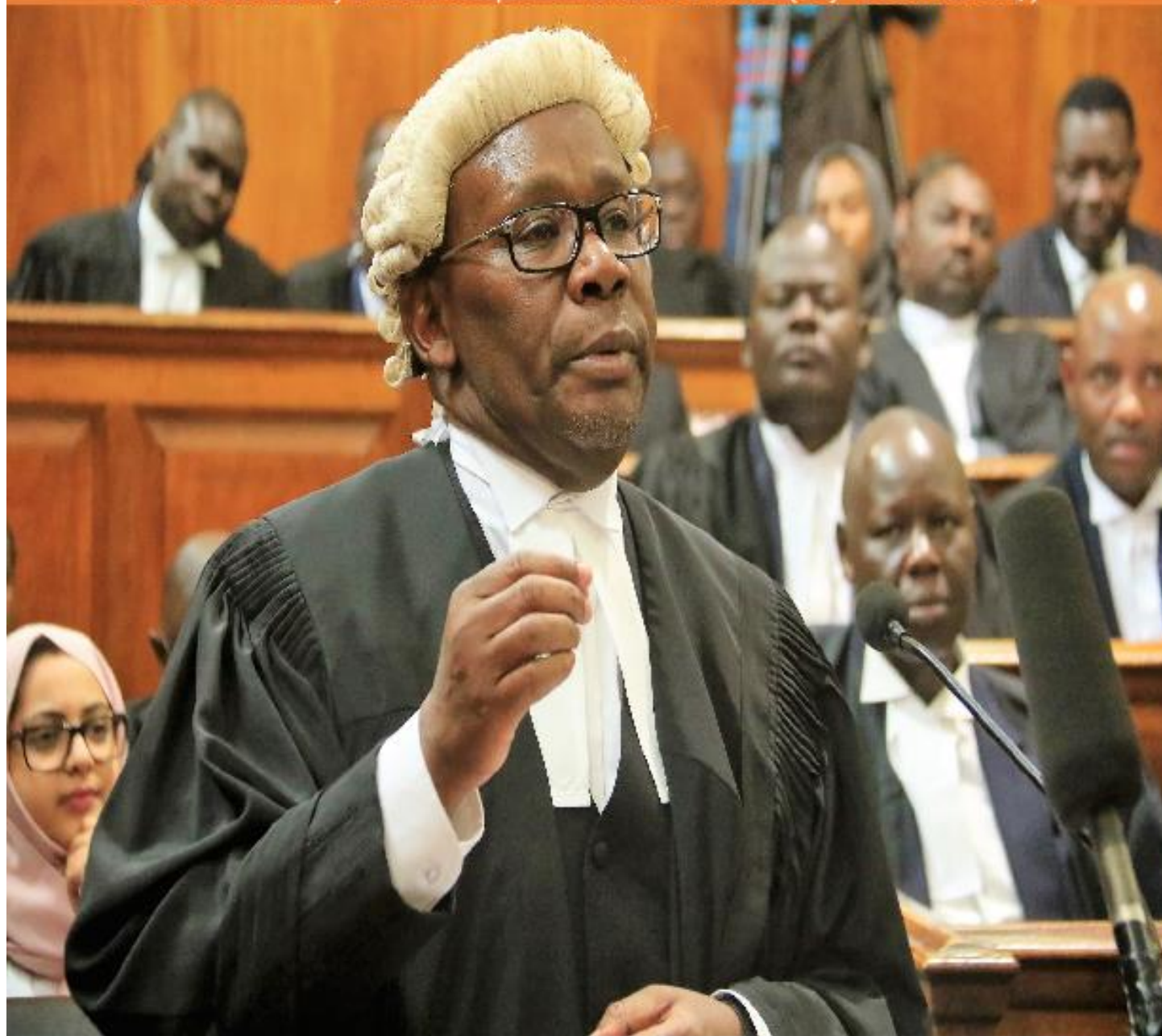


Mwanasheria Mkuu

Office of the Attorney General and Department of Justice Edition 1 (July - December 2017)



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 - Reforms for Ease of Doing Business
 - OAG&DOJ Decentralizes its services
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 - Unclaimed Benefits from Public Trustee

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

The Constitution of Kenya 2010, Office of the Attorney General Act No 49 of 2012 and Executive Order No 1 of 2016 outline the key functions of OAG&DOJ:

GOVERNMENT SERVING

- Principal Legal Adviser to the Government
- Represent the National Government in civil proceedings and matters before foreign courts and tribunals
- Legislative Drafting Services
- Negotiate, draft, vet and interpret Agreements and treaties for the Government
- Policy on Administration of Justice
- Coordination of Governance, Justice, Law and Order Sector reforms
- Central Authority on Mutual Legal Assistance

PUBLIC SERVING

- Promote, protect, and uphold the Rule of Law, defend the Public Interest, Human Rights, and Democracy
- National Registration Services (Companies, Societies, Marriages, Adoptions, Security Rights and Coat of Arms)
- Public Trustee Services
- Official Receiver
- Oversight over the Legal Profession
- Legal Aid and Legal Policy Management
- Anti-Corruption Strategies, Integrity and Ethics
- Political Parties and Elections Policy Management.

VISION

To be the best institution in the region in the provision of public legal services and the promotion of a just, democratic and corruption-free nation

MISSION

To facilitate the realisation of good governance and respect for the rule of law through the provision of public legal services, protection and promotion of human rights and upholding of ethics and integrity.

DID YOU KNOW (PUBLIC INFORMATION):

1. The AG has right of audience in proceedings of Public Interest or involving Public Property;
2. The Office shall be the depository of all laws and local and international documents, agreements and treaties signed for and on behalf of the Government;
3. The Attorney General shall have custody of the Public Seal of the Republic of Kenya;
4. A State Counsel is an Advocate of the High Court of Kenya and is appointed by the Attorney General by Gazette Notice;
5. All State Counsel shall perform the functions of the Office with **COMPLETE LOYALTY AND DEDICATION** and shall not indulge in any act that may affect the sovereignty and interests of the nation;

A State Counsel has a duty to;

- a) Promote Respect for the Rule of Law and Administration of Justice;
- b) Treat the court with candour, courtesy and respect and shall not influence court decisions by use of deceptive or reprehensible methods;
- c) Deal with other lawyers fairly, courteously and in good faith
- d) Uphold integrity and reputation of the legal profession and promote fairness, justice, and honesty.
- e) All State Counsel in any Government Ministry or Department are officers of the Attorney General and are answerable to the Attorney General;
- f) No Ministry or Department shall engage the services of a consultant to render any legal services relating to the functions of the Attorney General without approval of the Attorney General;
- g) All Government Ministries, Departments and State Corporations shall seek the opinion of the Attorney General on any matter raising substantial legal or constitutional issues;
- h) All Government Ministries and Departments shall notify the Attorney General of all material litigation within three days upon the filing of any pleadings;

The Attorney General shall after 13th June of every year, prepare and furnish the President with a report that shall contain:

- I. Financial statements of the Office;
- II. Description of the activities of the Office; and
- III. Any other information relating to the functions of the Office.

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COLLOQUIUM FOR STATE COUNSEL 2017 AT THE SAFARIPARK HOTEL (20 -21 APRIL 2017).

MESSAGE FROM **THE ATTORNEY GENERAL**



Professor Githu Muigai EGH, SC

This Office was instrumental in the development and passage of the Constitution and continues to play a critical part in the implementation process.

The transformational change anticipated in the Constitution makes it a living document that guides the governance of this country. It is a journey that we must all walk together as a country through participation and knowledge of governance structures and decisions by the citizens to achieve cohesion and responsibility by all of us.

The inaugural publication comes at a crucial time in the governance of our country where the public and every officer has a right to access information held by Government. Information on government policies and programs ensures that the citizen is informed to participate effectively in the management of government at both the national and county levels through public participation.

During the past year, there have been several developments that have been instrumental in the governance in the country. The global campaign to end corruption

has played a significant role in many of the developments that are taking place in the country. Fundamentally, the role of my office as the Central Authority in Mutual Legal Assistance has facilitated the development of legislation in line with international conventions and obligations as a sign of commitment to attain a Corruption Free Status by the year 2030. Several conventions are at the heart of the progress witnessed in this country, these include United Nations Conventions against Corruption (UNCAC), United Nations Convention against Transnational Organised Crime (UNTOC), United Nations Office on Drugs and Crime (UNODC)

Today, because of strengthening the Stolen Asset Recovery Initiative (SARI) and the Global Initiative for Fiscal Transparency (GIFT), Kenya has established the Assets Recovery Agency (ARA) and the Financial Reporting Center (FRC). The fight against corruption is an on-going global commitment developed under UNCAC of which Kenya is currently going through the 2nd Review Process. These institutions also review the confiscation of proceeds from wildlife crimes, human trafficking which have contributed to global insecurity. During the 4th TICAD Conference last year, Kenya joined

thirteen African countries to launch the UNODC Regional Program in a bid to strengthen joint security operations. The UNODC Regional Program for Eastern Africa aims to promote and support effective responses to transnational organized crime and illicit trafficking while strengthening a functional justice system against terrorism to be implemented by member states in accordance with the Rule of Law.

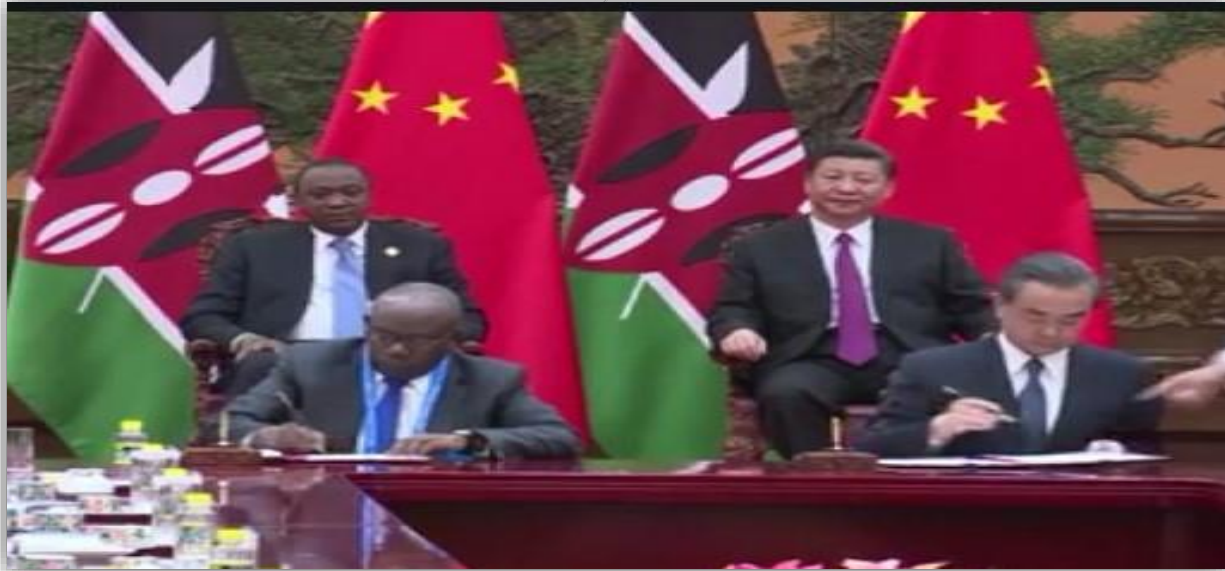
The government's commitment in the fight against corruption is jointly linked to Kenya's position as the preferred destination for trade, finance and investment in Africa. Kenya is on an upward trajectory of reform and development that is marked by the rapid rise of foreign investments through the Public Private Partnerships (PPPs) especially in the areas of infrastructure, extractive and Information Communications Technology industries.

With this hindsight, significant reforms are being witnessed with the establishment of the Business Registration Service (BRS) to strengthen and fast track the initial registration process for businesses. This is coupled with the recent inauguration of the Nairobi Center for International Arbitration (NCIA) recognizing Nairobi as an international center for dispute resolution complementing the judicial system. The recent Ease of

Doing Business of Kenya ranking by the World Bank attests to this transformational change that was envisaged by the framers of our Constitution.

The strengthening of the legal justice system in the country is a notable commitment to provide adequate legal representation to all citizens. The process has reached fruition with the enactment of the National Legal Aid Service (NLAS) Act 2016 and subsequently the National Legal Aid Action Plan to guide the rolling out of the service to all parts of the country. Indeed, legal services constitute basic human rights as articulated in Chapter Four of the Constitution on the Bill of Rights.

This publication comes at an opportune time as it provides an opportunity for the public to learn about the activities of the Office and the inter-relations within the sphere of governance of the country that is in the hands of so many who remain in the periphery. This publication provides an avenue for knowledge sharing that is beneficial to state counsel serving in various ministries as well as other government officers. It further provides a platform to provide information of the Ministry /Office's activities complementing the decentralization of the services provided by the Office to the regions and counties.



Kenya in May 2017 signed three major agreements with the People's Republic of China signifying commitment in the fight against corruption. The Treaty on Extradition, the Treaty on Mutual Legal Assistance and the Treaty on the Transfer of Prisoners were signed by the Attorney General, Professor Githu Muigai on behalf of the Government of Kenya in the presence of President Xi Jinping of China and President Uhuru Kenyatta of Kenya yesterday during the Belt and Road Summit that took place in May 2017 in Beijing.

A note from the Solicitor General

Welcome to the inaugural Edition of Mwanasheria Mkuu Magazine, an edition that seeks to demystify the Office of the Attorney General and Department by telling you what this Office is all about. As the year 2017 ends, it is time to reflect on what this Office has been doing in the area of democratic governance.

The Office has been synonymous with the holder of the Office with the general public having little knowledge on what the Office does on a daily basis and how it impacts of their lives.

I take this opportunity to thank all OAG&DOJ Staff who enabled us to achieve this goal and many others, in particular for sharing the experiences that relate to ensuring that Kenyans get to understand the nature and dynamics of the OAG&DOJ. Our Vision remains to defend public interest in courts and tribunals at both national and international level.



Njee Muturi CBS

Chapter Four of the Constitution of Kenya outlines the general provisions relating to the Bill of Rights. The right of access to information held by state, or other parties required for the exercise or protection of any right or fundamental freedom is a fundamental right that cannot be abrogated or wished away. Further, the government is mandated to publicize any important information that affects the nation. It is in fulfillment of this obligation the Office of the Attorney General and Department of Justice highlights some of the cases that are such great significance in the promotion of government interests while defending human interests or public interests but have largely being ignored.

This inaugural edition also seeks to open the public to the general workings of the Office as part of the knowledge sharing process.

We welcome comments and suggestions to improve the content and quality of our magazine.



Solicitor Njee Muturi presents to the President for assent the Appropriation Bill, 2015. Looking on are National Assembly Speaker Justin Muturi, and National Treasury Cabinet Secretary Henry Rotich.

Kenya Hosts International Law Conference By A. Chepseba

Twelve Ministers of Justice and eight Attorneys General were among 400 international delegates who attended the 56th Annual Session of the Asian African Legal Consultative Organisation (AALCO) hosted by Kenya in May 2017.

The high profile International Law Conference, the third to be held in Kenya brought together delegates from 47 governments from Asia, Middle East and Africa. Economic Superpowers China, Japan, Malaysia, Singapore as well as oil rich Saudi Arabia, Nigeria, Kuwait, Jordan and South Africa were represented in Nairobi. Russia attended the AALCO Conference as first time observer.

The first Conference was held in Bandung, Indonesia in 1955 where member states committed to forging Asian African cooperation on international legal matters with the Bandung Spirit continuing to inspire states in the quest for an egalitarian and just international legal order. Kenya has twice hosted AALCO; during the 28th Session in 1989 and the 44th Session in 2005.

The Conference was officially opened by the Deputy President William Ruto and centered on issues ranging from Violent Extremism and Terrorism, and the Status and Treatment of Refugees. This comes in the wake of government efforts at closing Dadaab, Africa's largest refugee camp that holds thousands of Somali, Ethiopia and South Sudanese refugees.

Conference discussions also centered environmental concerns touching on the protection of the atmosphere as well as examining the emerging issue of International law in cyberspace. The Immunity of State Officials from Foreign Criminal Jurisdiction under

the Vienna Convention on Diplomatic and Consular Relations as well as discussions focusing on Promoting Rule of law in Asia and Africa and Combating illegal trade on wild flora and fauna as part of the transnational organized crimes.

African countries have seen increased cooperation and trade and have been seeking legal advice in the areas of conflict of laws in international trade, law of treaties, extradition and mutual legal assistance in criminal matters and debt relief. In recent years, the law of the Sea has for the continent generated significant interest due to exploitation of maritime resources located within the territorial waters.

Of significant interest to Kenya has been recognition as an international center for commercial dispute resolution further recognizes Kenya as a key investment and financial destination in the world. In December 2016, President Uhuru Kenyatta inaugurated the Nairobi Center for International Arbitration. Other highly sought after centers for dispute resolution in the world include, United Kingdom, New York, Malaysia and Dubai.

The Conference came at a time when Kenya has been seeking to submit its candidature for various international positions, key among them, the International Court of Justice, International Criminal Court, and International Tribunal on the Law of the Sea amongst others. Kenya is credited for having developed the concept as well as the rules and regulations governing the exploitation of maritime resources through the Economic Exclusive Zones (EEZ) during the Montego Bay negotiations of 1982 introduced by the Late Frank Njenga who served as AALCO Secretary General between 1988 and 1994.



Group Photo of Heads of Government delegations attending AALCO 2017 in Nairobi, Kenya between 1 May and 5 May 2017.

Q&A with AG Githu Muigai during the 56 session of AALCO held in Kenya

What is the background of AALCO and how did Kenya get involved?

AALCO is a forum that provides advice to member states in matters of international law as well as cooperation in legal matters. Some of the areas of international law that have been of recent focus include, the law of diplomatic relations, the law of the Sea, conflict of laws in international trade, law of treaties, and mutual assistance in criminal matters. AALCO represents the interests of 47 countries that are home to a large percentage of the world's population. It is the symbol of the transformative power of international cooperation, and the bedrock upon which our nations can continue providing peace and stability for all. Kenya has, for nearly fifty years, supported the mission and vision of AALCO and will continue to do so.

Kenya is proud to host the 56th Annual Session of the Asian-African Legal Consultative Organisation (AALCO) that 1 May to 5 May 2017. This is the third time that Kenya is hosting this auspicious International Law Conference having previously done so in 1989 and 2005. The Conference brings together delegates from 47 governments from Asia, Middle East and Africa. We are also honored to welcome the Socialist Republic of Vietnam that became the 47th Member State after joining AALCO in February this year. Kenya also welcomes the observer states and inter-governmental organisations. In particular, we commend the Government of Russia for joining us as an Observer State.

Seven Asian States, namely Burma (now Myanmar), Ceylon (now Sri Lanka), India, Indonesia, Iraq, Japan, and the United Arab Republic (now Arab Republic of Egypt and Syrian Arab Republic) founded AALCO (originally known as the Asian Legal Consultative Committee) on 15 November 1956. In April 1958, the participation of countries of the continent of Africa was facilitated when the Organisation changed its name to Asian-African Legal Consultative Committee (AALCC). The name was later changed in 2001 to Asian-African Legal Consultative Organization (AALCO) to reflect the growing status of the Organization and the place it has secured among the family of international organizations. The Bandung Conference was a meeting held in April 1955 in [Bandung](#), [Indonesia](#). Twenty-nine mainly newly independent Asian and African nations participated at the Bandung Conference and focused on political self-determination, mutual respect for sovereignty, non-aggression, non-interference in internal affairs, and equality, issues that were of central importance at that time. Some of those issues continue to be of relevance today, more than sixty years after the Bandung Conference.

Kenya is proud to acknowledge and pay tribute to the late Prof. Frank Xavier Njenga, the first African elected to the position of Secretary-General of AALCO for the period between 1988 and 1994. The late Prof. Njenga was a man renowned in the international community for his sterling contribution in the development of what is today known as the Economic Exclusive Zones (EEZ) in maritime law.

What is the essence of international cooperation today in view of AALCO?

The principles of international law guide the practice of international relations. These are the set of rules that guide how states are to relate with one another. The laws dictate how disputes are to be solved; how resources are to be shared outside the territorial boundaries; how states are to assist, their neighbours achieve peace. Ideally, the concept of non-interference in another state's internal affairs is guided by international law as internal affairs affect the way other countries do business. It is these laws and systems operating between states that my Office provides guidance to the government.

My office is the Central Authority for Mutual Legal Assistance in Kenya. What this office does simply is create the laws that facilitate the apprehension of those engaged in criminal affairs in operations that transverse the different states. These include guiding laws to extradition between states, transfer of prisoners, and recovery of stolen assets in foreign countries, among others. Indeed, these links between the Ministry of Foreign Affairs and my office are very important.

The world today stands at a precarious crossroads where pertinent issues such as climate change, terrorism, conflict, and instability continue to afflict all nations.

The topics of the 56th Session are significant to all of us, ranging from matters of the Violent Extremism and Terrorism, to the Status and Treatment of Refugees that continue to have a great impact of our governments.

The field of Information and Communication Technologies has grown exponentially in the recent past presenting a challenge in developing legislation that is in line with the ever-growing changes. Nevertheless, International law in cyberspace has, made significant advancements by generating new norms for innovative platforms, and for the regulation of various aspects of cyberspace. Kenya is the Vice Chair of the open-ended Working Group of AALCO, whose mandate is to deliberate on among others; International law pertaining to State Sovereignty in cyberspace; peaceful use of cyberspace, within the rules of international cooperation in combating cybercrimes.

Kenya signed an Agreement with AALCO in July 2007 establishing the Nairobi Regional Centre for

Arbitration. This Agreement was implemented upon the enactment of the Nairobi Centre for International Arbitration Act, 2013. The President himself inaugurated the Nairobi Centre for International Arbitration in December 2016 and AALCO now has established five regional Arbitration Centres with the other centres situated in Malaysia, Egypt, Nigeria and Iran. This is the spirit of international cooperation.

What Is The Benefit For Kenya?

AALCO will bolster Kenya's leadership in the region and affirm the country's sustained support for AALCO's ideals while highlighting Kenya as an investment and tourism destination. As a Government, we continue to open our doors to different partners guided always by the principles of mutual respect and benefit. The arrival of delegates from across the globe also raises the profile of Kenya through marketing of the event. It also increases our visibility in the world stage and this is bound to have lasting economic benefits.

What Are the Legal Aspects in Kenya's Position on Violent Extremism and Terrorism?

Kenya stands at the front line of the global struggle against terror groups such as Al-Shabaab and Al-Qaeda that are an attack on the culture, conscience and dignity of our peoples. Their desire to try to subjugate populations to accord to their puritanical and violent vision by justifying mass murder, mutilation and the terrorizing of innocents is not acceptable under any circumstances.

Kenya has transformed its Counter Terrorism tools from a legal and operational perspective. Our record of investigations, prosecutions and convictions has improved dramatically and led to a reduction of the number of

attacks on our people. We continue to be an anchor country in the African Union Mission to Somalia that is acting under the authority of the UN Security Council to stabilize Somalia and degrade Al-Shabaab. Our actions in Somalia have robbed Al-Shabaab of its key base and source of funding. Our efforts alongside our African partners have helped provide the people of Somalia with a chance to establish a stable government for the benefit of Somali people and the world at large. In addition to a toughened counter terrorism approach, Kenya is implementing local efforts to counter radicalization and recruitment, while delegitimizing the ideologies of hatred and division.

Kenya's national efforts are encapsulated in the *National Strategy to Counter Violent Extremism* that was launched in September 2016, by His Excellency the President of Kenya. The Strategy articulates the terrorism prevention pillar of our Counter Terrorism strategy whose overarching aim is *"to rally all sectors of Kenyan social, religious and economic life to emphatically and continuously reject violent extremist ideologies and aims to shrink the pool of individuals that terrorist groups seek to radicalize and recruit"*

Finally, the National Government has launched a campaign to train frontline public servants to recognize recruitment attempts and respond effectively to them through a homegrown risk assessment and response tool. National Agencies are also engaging in the rehabilitation and reintegration of violent extremists whose risk profile makes them unsuitable for prosecution. The Counter Violent Extremism pillar encourages citizens, religious leaders and scholars to counter deny and delegitimize the ideological claims of groups such as Al-Shabaab and Al-Qaeda.

Thank you.

Quotable Quotes

"[The law] is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage." *The Value and Importance of Legal Studies, Joseph Story, (1779-1845).*



Slaying the Stump of Tribalism in Kenya, Can the youth get support from the elders?

Kenya makes progress in 2nd Review on Implementation of UNCAC

By C. Nyagah

Kenya is currently undergoing its Second Review on the implementation of the United Nations Convention Against Corruption (UNCAC) with focus being on Chapters II on Preventive Measures and V on Asset Recovery.

The Second Review on the UN Convention against Corruption (UNCAC) that took place in Nairobi between March 2016 and September 2016 observed that Kenya had made significant strides after instituting legislation criminalizing corruption while undertaking measures to arrest, freeze and seize illicit wealth.

Kenya was the first country in the world to sign and ratify UNCAC when the Convention was opened up for signature on 9 December 2003. The UNCAC Convention introduced a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors. The Convention complements the United Nations Convention against Transnational Organized Crime (UNTOC). Kenya is also one of the Founder Members of the International Anti-Corruption Academy (IACA), which is dedicated towards building competent human resource capacity for effective onslaught against corruption.

During the first stage of Review, the key areas of concern

for Kenya was development and enactment of legislation while the second stage focused on the prevention and asset recovery of illicit wealth as part of its anti-corruption intervention campaign.

Over the last 12 years, the Government has initiated diverse legal and institutional reforms geared towards combating corruption. This has involved the enactment of various anti-corruption laws and establishment of various watchdog and anti-corruption bodies. The Government has enacted the Bribery Act, the Access to Information Act, as well as the Whistleblower Protection Act, all which contribute to addressing the issues of corruption.

The country has already established a multi-agency framework that brings together relevant law enforcement agencies in its fight. The multi-agency framework on corruption in Kenya includes the Asset Recovery Agency, Directorate of Criminal Investigations, Ethics and Anti-Corruption Commission, Central Bank of Kenya, Financial Reporting Center, Kenya Revenue Authority, Directorate of Public Prosecutions and Office of Attorney General.

The multi-agency and multi-disciplinary approach use the strengths of the various institutional mandates to jointly trace and freeze assets, investigate corruption incidences and bring to prosecution the perpetrators of corruption including cases involving senior government officials at both National and County Governments.

The government through the multi-agency and multi-disciplinary approach is also introducing into the education curricula of the country studies on leadership, ethics and integrity for all its citizens. Currently, all new civil servants receive education on corruption and economic crimes while being inducted into Public Service.

The government is also working on the ratification of UNCAC through the International Anti-Corruption Academy (IACA) to pave way for advanced training of anti-corruption officers, judicial officials as well as prosecutors to effectively deal with the vice of corruption.

There is significant importance for collaboration between various actors in the fight against corruption, especially the National Assembly and the Judiciary while appreciating efforts made by all partners in facilitating prevention, investigation, asset tracking and recovery, prosecution and conviction of corruption related crimes.

The Review Process

The Attorney General, vide gazette notice 7771 dated 18th August 2017, established the National Steering Committee to oversee the review process which includes the following phases: Self-assessment (through the completion of a Self-Assessment Checklist); Expert review; Constructive dialogue; Country review visit or a Joint meeting, and the Consideration of the country review report by the UNCAC Implementation Review Group.

The country is expected to complete the Self-Assessment Checklist, scheduled to be submitted by 1 December 2017. The checklist is a tool used by UNODC to assess the progress made by States Parties in the implementation of UNCAC. It is used to assess the challenges States Parties face in the implementation of the Convention and the technical assistance needs they have.

The review process is undertaken by UNCAC Governmental experts who carry out review based on the responses to the comprehensive self-assessment checklist and any supplementary information provided by the State party under review. At the end of the review process, the Governmental experts prepare a draft country review report that is then sent to the State party under review for agreement and is prepared in accordance with the Blueprint for country review reports and executive summaries.

In the interest of transparency and accountability and as a demonstration of Kenya's commitment to the implementation of its international obligations relating to the fight against corruption, Kenya will publish and disseminate the country review report. This is to elicit public comments on the report. The report will also be tabled in Parliament (the National Assembly) for consideration thereby prompting Parliament to pass the necessary legislation that may be required to make Kenya fully compliant with the requirements of UNCAC.

In order for Kenya to be adequately prepared for the review, several critical steps must be undertaken, the Constitution of a National Steering Committee on UNCAC Review; Completion of the UNCAC Comprehensive Self-Assessment

Checklist and Participation in the 9th Session of the Meeting of the Implementation Review Group of the UNCAC to be held in Vienna, Austria in June 2018.

Kenya through the National Steering Committee has already prepared and submitted a Draft Self-Assessment Checklist to the UNODC Secretariat and is awaiting engagement with the Implementation Review Group in June 2018.



Kenya National Steering Committee on UNCAC

The UNCAC process is evidence of the various steps that the government of Kenya has put in place as part of its campaign to be a corruption free state by the year 2030. During the Second Review Workshop on the United Nations Convention against Corruption (UNCAC) in April this year, the UNCAC Secretariat commended Kenya for significant strides made in instituting legislation criminalizing corruption while undertaking measures to arrest, freeze and seize illicit wealth.

The review process is coordinated by the Office of the Attorney General and Department of Justice in consultation the Ethics and Anti-Corruption Commission, the Judiciary, The Office of the Director of Public Prosecutions, the Financial Reporting Centre, the National Anti-Corruption Campaign Steering Committee, Commission on Administrative Justice, Directorate of Criminal Investigations, and the Public Procurement Regulatory Authority. Non-state organizations are also involved in the process to ensure participation; Transparency International and Centre for Law and Research International are part of the team.

“Law is the embodiment of the moral sentiment of the people.” *William Blackstone.*

Office of the Attorney General Set to decentralize Services to the Counties by I. Agum

Kenyans in all the 47 counties are set to benefit from the decentralization of services offered by the Office of the Attorney and the Department of Justice once all mechanisms are put in place.

The decentralization of services is aimed at supporting devolution efforts in the counties in accordance with Article 174 of the Constitution, which aims at promoting social and economic development through the provision of easily accessible services. The National Government Coordination Act 2012 also requires that the national Government ensure reasonable access to its services in all parts of the country. Key services that have already been decentralized include the registration of marriages and businesses, legal profession oversight, civil litigation services, advocates complaints as well as the administration of estates and trusts through the Public Trustee. These services already rolled out in some of the counties are in partnership with the Judiciary and Directorate of Public Prosecution and are to be found within the precincts of the High Courts in the counties. These services are by nature public facing and the most sought after in the Country.

It is imperative to acknowledge that the decentralization of the services started in the offices of the national government coordination (former provisional administration) now County Commissioners Offices that are delegated to undertake services such as registering marriages, dispute resolution as well as public trustee functions. Efforts are also underway to provide some of the services through the Huduma Centres established in all 47 counties.

Other services to be offered include the provision of pro bono or free legal services to members of the public after the National Legal Aid Act 2017 was enacted by Parliament this year. The Legal Aid and Awareness is one of the national flagship projects in the Office of the Attorney General and Department of Justice where the government will facilitate the provision of access to justice for the poor, marginalized and vulnerable in the country. The decentralization of the services is in line with Article 6 of the Constitution that requires all national state organs to ensure reasonable access to its services in all parts of the country. **(See separate story on Kenya launches National Action Plan on Legal Aid).**

Kenya Attends Anti-Corruption Summit in UK by I. Agum

Kenya presented its proposal to be recognised as one of the countries of focus for assistance through the Global Asset Recovery Forum during the Anti-Corruption Summit held at the Lancaster House in London earlier this year. It is one of the few countries in the World that has committed to eradicating corruption through the establishment of the Asset Recovery Agency as part of strengthening the Stolen Asset Recovery Initiative aimed at recovering stolen assets and ensuring their return to the rightful owners.

The Anti-Corruption Summit designed in the format of the World Economic Forum, sought to have an open and frank discussion that would galvanize a global response to tackle corruption. As well as agreeing on a package of specific actions, the summit dealt with issues touching on corporate secrecy, government transparency, the enforcement of international anti-corruption laws, and the strengthening of international institutions.

During Kenya's submission, the Attorney General observed that public contracting and governments' budgets ought to be open and transparent to prevent and

expose the theft or misuse of taxpayers' money. Kenya also welcomed efforts aimed at increasing transparency in the extractive and mining sector while strengthening the responsibilities of all stakeholders. Kenya had increased transparency on tax with a bid to deter tax evasion while strengthening its mechanisms to prevent individuals from concealing illicit wealth by implementing the Common Reporting Standard on automatic exchange of information. Kenya has in place the Mutual Legal Assistance Act 2012 that allows for the exchange of information especially on criminal matters between states.

The essence of the Summit was for States to commit themselves to undertake certain measures to combat corruption and enhance international cooperation in tackling the vice. Three broad thematic areas for commitment were presented at the Summit.

The first, *Exposing Corruption* sought to lift the corporate veil of companies and legal arrangements by undertaking various strategies. Governments are expected to establish public registries and share data on the ultimate beneficial owners of companies and other legal entities. They are also expected to deny the corrupt the use of business channels through strengthening anti-money laundering standards as set out by the Financial Action

Taskforce (FATF). It was noted too that the promotion of global industry best practice targeting legal, accounting, property, trust and company services are deemed as enablers of laundering of proceeds of corruption.

The Summit observed that transparency and public information on public sector budgets, procurement and expenditure through the principles on fiscal transparency as set out by the Global Initiative for Fiscal Transparency (GIFT) ought to make governments submit themselves to regular assessment. Governments were encouraged to sign the Extractive Industries Transparency Initiative (EITI) to increase transparency and accountability in extractive industries as this would ensure proper disclosure of payments to governments from the sale of oil, gas and other minerals. The governments noted the importance of the promotion of whistleblower regimes to facilitate citizens reporting of corruption incidences through the implementation of the Common Reporting Standard on automatic exchange of information for global tax transparency.

The second thematic area of the Summit deliberated upon *Punishing the Corrupt and Supporting those who have Suffered from Corruption* with pertinent issues being encouraging countries to enact necessary laws

to expose and punish corruption such as the criminalization of foreign bribery and corporate criminal liability are in place. It was noted that the blacklisting of corrupt bidders across borders would be done by sharing information. Further, the strengthening of the legal framework for asset recovery and provision of technical assistance and expertise was highly encouraged leading to the proposal that Kenya be a center of focus following the successful establishment of the Asset Recovery Agency (ARA).

The final thematic area, *Driving Out the Culture of Corruption in Societies* where governments were encouraged to create international networks among the various professionals in public and private sectors including twinning arrangements in a bid to promote integrity. The Summit observed the need to promote the debate on the nexus or link between corruption and insecurity, a concern facing many countries in the world. Finally, the promotion of the use of technology as a tool for exposing corruption and strengthening accountability was recommended while encouraging the strengthening of international cooperation using Open Governance Partnership as independent reporting mechanisms.

Pictorial from AALCO 2017



Discussing The Nexus Between Wildlife Crimes And Money Laundering.

Civil Litigation: In Defense of Public Interest

Ministry of Health.

Tobacco War and Protecting Public Health.

British American Tobacco vs. Attorney General,

Court of Appeal No. 112 of 2016,

Court of Appeal in Nairobi,

Judges Hannah M. Okwengu, Festus Azangalala and Fatuma Sichale

17th February 2017.

The Supreme Court is set to give a date when an appeal case lodged by giant tobacco company, British American Tobacco Limited (BAT) against the Government of Kenya and Ministry of Health will be heard. This follows a Court of Appeal judgment made against it in February 2017. The significant ruling by a three-judge bench is the first in Africa and much of the Third World pitting a multinational seeking to frustrate a country's efforts in protecting, strengthening and safeguarding the public health interests of a nation (Kenya) from implementing measures to protect its citizenry from hazardous effects on consumer products, namely tobacco. Statistics indicate that since 2014 to date, there are 58 high profile tobacco related cases in courts and tribunals in different parts of the world. The world will be keenly watching how the case before the highest court in Kenya will turn out in defending public health once a date is set.

Kenya signed and ratified the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) on April 24, 2004. This provided the background for the enactment of legislation on tobacco consumption in the country through the Tobacco Control Act, 2007, the Tobacco Control Policy 2012 and the Tobacco Control Regulations 2014. Kenya was the first country in Africa to ratify the FCTC. As a signatory Kenya remains obligated to put in place measures to curb the cultivation, promotion, sale and use of tobacco and its products.

These legislations were developed with the critical aim of reversing the trend of rising health burden and social economic cost resulting from tobacco related diseases, premature disabilities and deaths resulting from tobacco consumption and exposure to tobacco smoke. That necessarily also included depletion of the environment. The legislations further complement the aspirations articulated in the Kenya Health Policy (2012-2030) for Kenya Vision 2030 and the ultimate realization of

the universal Sustainable Development Goals (SDGs) while protecting the fundamental human rights as guaranteed in the Constitution of Kenya. These include the right to life, right to the highest attainable standard of health, Consumer protection, right of children to basic health care and protection from harm, right of citizen participation in governance and management of public affairs and the right to information that empowers the public to access information on anything including tobacco control. The legislations are part of a whole as they also complement many other pieces of legislation such as The Consumer Protection Act, The Cancer Prevention Act, The Access to Information Act, Alcoholic and Drinks Control Act, amongst others.

The World Health Organization's FCTC is the first treaty that was negotiated under the auspices of the World Health Organisation itself and was developed in response to the globalization of the tobacco epidemic made possible by tobacco companies through capital-intensive marketing, advertising, and international movement on contraband and counterfeit cigarettes leading to increased tobacco use. Because the final product is still tobacco, meant for human consumption, all of them are the same, including the so-called "contraband" and "counterfeit" from 'regular' tobacco from formally established tobacco industry.

At the close of business on October 31 2017, 43 African countries according to WHO had ratified the FCTC indicating a rising level of awareness, willingness and commitment of governments to invest in the improved health of their citizens. Tobacco related diseases and disabilities increase costs of healthcare to individuals, families, businesses; governments and the public at large. This in turn compromises the social economic development of governments as illnesses and weak health care systems adversely affect productivity slowing economic growth and the GDPs of countries leading to increased poverty in Africa. However, this fact has not diminished the morbid interest of tobacco companies from investing in the region. Due to the stringent regulations on tobacco in place in other parts of the world, there has instead been a significant shift and transfer of infrastructural development and operations to Africa, notably in Ghana, Democratic Republic of Congo, Kenya, Nigeria, Sierra Leone, South Africa, Zambia, Zimbabwe and Malawi.

The reawakening and realization by African governments of the need to protect its peoples' health systems continues to witness the aggressive

engagement by tobacco companies in the implementation of health policies and Kenya's case at the Kenya Supreme Court will be watched keenly in many parts of the world as the companies strive to resist the changes using all means available. Tobacco companies operating in Africa are currently engaged in a charm offensive to forestall and delay the implementation of health regulations touching on tobacco and its products. Ministry of Health officials at Afya House have cited the court case as one of the key barriers to health and development in Kenya but are highly optimistic that the case in court will be ruled in favour of public health as opposed to the commercial interests of the multinational.

In 2014, the Cabinet Secretary of Health established regulations that were meant to operationalize the Tobacco Control Act 2007. These were supposed to come into force on 5 June 2015. However, in April 2015, BAT sued the Cabinet Secretary for Health challenging the **constitutionality of the tobacco regulations**. In suit papers, BAT sought for temporary orders seeking the stay of the regulations pending hearing and determination of their appeal. On 4 June 2015, the eve of the day the regulations were to be effected, the High Court ruled in favour of BAT and the regulations were stayed for the matter to be determined.

Subsequently, on 24 March 2016, the High Court ruled in favour of the Cabinet Secretary, Health stating that the regulations were constitutional and they did not contradict the Tobacco Control Act. Judge Mumbi Ngugi stated in her ruling "***The Tobacco Control Act has very clear objectives of safeguarding individuals and the public from the dangers posed by consumption of tobacco, which as the Act states in its objects clause, has been implicated in causing debilitation, disease, and death. The Regulations impugned in this petition are intended to safeguard the public, those who smoke and those who do not, and to provide certain information with regard to the contents of tobacco products.***"

Judge Mumbi Ngugi further order the tobacco regulations come into effect six (6) months after her ruling, that is, 26 September 2016. The judgment was a significant success for Kenya in its defense of public health and the national interests for its citizens against the commercial interests of a company according to the Attorney General. However, the Government's

success was short-lived as BAT appealed the court ruling at the Court of Appeal.

On September 22, 2016, the Court of Appeal stopped for a period of 30 days, the coming into force of the tobacco regulations pending the hearing and determination of the appeal by BAT. On 18 October 2016, the appeal by BAT was heard and a date of judgement was given as 16 December 2016. The reading of the judgement was postponed until 17 February 2017 when it was delivered, to the dismay of the tobacco manufacturer who has now appealed to the highest court of the Republic.

The judgement made by the three Court of Appeal Judges, Hannah M. Okwengu, Festus Azangalala and Fatuma Sichale stated that the appeal by BAT was dismissed in its entirety; meaning that the judges upheld the decision of the High Court, that the tobacco regulations were to be effected immediately the ruling was made.

How the Government won: Facts of the Case.

The Court of Appeal ruling that followed the dismissal of the suit by BAT meant that the Ministry of Health had an obligation to safeguard the health interests of Kenya by implementing regulations under the Tobacco Control Act 2007. However, with the case now before the Supreme Court, the Government of Kenya and the Ministry of Health are currently in limbo regarding the implementation of these regulations that are for the greater benefit for the public and future generations as they await the decision of the court. What is interesting to note is that while the government has been temporarily halted from implementing the regulations, BAT continues to earn millions if not billions at the expense of the people of Kenya. It would appear that the time has come for the Government to sue BAT for **conspiring to defeat public health policy** on tobacco control by **aspiring to control tobacco Regulations in this country!**

Some of the salient facts that convinced the judges to rule in favour of the public health interests of the country examine the extent of the damage caused by the consumption of the tobacco products. Whilst BAT acknowledged that indeed the products were harmful, and sought to have that fact expunged from suit papers, it's important to recognize that laws are not developed in vacuum but instead to correct a malady or problem on an issue. The Ministry of Health has argued that the provision of preventive health care services is critical for the socio-economic

development of the country. A sick nation will only hamper the development of a country as all the state resources are channeled towards healing and rehabilitating those who are sick, a very expensive process.

In its suit papers, the Ministry of Health represented by the Attorney General submitted evidence illustrating the harm caused by the tobacco products using the Global Adult Tobacco Survey (GATS). GATS, a global standard for systematically monitoring adult tobacco use (both smoking and smokeless) and administered by the Kenya National Bureau of Statistics (KNBS) in 2014 revealed shocking details on the extent of the damage caused. The GATS reporting system fulfils Kenya's obligations under the WHO FCTC by identifying six evidence based tobacco control strategies summarized by the acronym MPOWER. The strategies include monitor tobacco use and prevention policies; protect people from tobacco smoke; offer help to quit tobacco use; warn about the dangers of tobacco; enforce bans on tobacco advertising, promotion and sponsorship; and raise taxes on tobacco.

GATS revealed that tobacco, as an addictive substance, was a leading health risk factor contributing to nearly 40 percent of all admissions in public hospitals countrywide with many deaths resulting from cancers of the lung, trachea and bronchitis. Tobacco smoking causes 71% of lung cancer, 42% of chronic respiratory disease and 10% of cardiovascular/ heart disease and strokes and is also responsible for 12% of male deaths and 6% of female deaths. The statistics revealed that smokeless tobacco, consumed through chewing, sniffing and inhaling through the now trendy use of Shisha which is unregulated in Kenya, contained cancer causing compounds associated with oral cancer, hypertension, heart disease and other conditions. Health facilities in tobacco growing regions (Migori, Busia, Bungoma, Kirinyaga, Muranga and Machakos) reported 60% of all cases as tobacco related.

Exposure to second hand smoking, the Ministry of Health submitted, posed significant threat to the health of children, including respiratory tract infections such as pneumonia and bronchitis, coughing and wheezing, worsening of asthma and ear, nose and throardiseases, heart diseases in adulthood and mental impairment. Pre-natal exposure to tobacco smoke during pregnancy resulted in many developmental conditions including sudden infant death syndrome, reduced birth weight and decreased lung function in

babies. The same illnesses also affected the pregnant mothers.

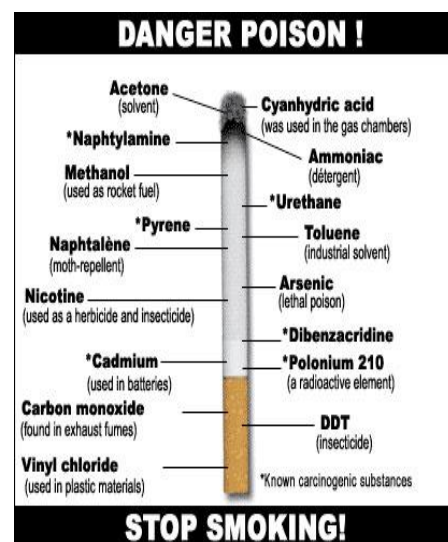
The Ministry of Health statistics revealed further that 3 million adults used tobacco products with 72% of these adults using the products within 30 minutes of waking up illustrating the addictive nature and power of tobacco and that more than 50% of the users had unsuccessfully tried to quit the habit. In addition, 300,000 adults started using tobacco before they were 15 years of age.

Tobacco companies worldwide have for many years strongly resisted the release of information contained in their products. However, scientific studies have shown evidence that there exist more than 7,000 tobacco compounds found in cigarettes and cigars with 20% of these being known as toxic and cancer causing substances. A single tobacco cigarette stick contains hydrogen cyanide used in gas chambers; ammonia used as a floor cleaner; toluene an industrial solvent; arsenic used as a poison; butane as a fuel; DDT as an insecticide; acetone used as a paint stripper; methanol used as rocket/ jet fuel; naphthalene used in mothballs; nicotine a drug; weed

killer, insecticide and reptilicide; cadmium used in car batteries; carbon monoxide found in car exhaust systems; vinyl chloride used in making PVC products. Cancer causing substances to be found in the same one cigarette stick are

toluidine; urethane; dibenzacridine; polonium 210; naphthylamine; pyrene; dimethyl nitrosamine; cadmium; and benzopyrene. The promotion of e-cigarettes as alternatives is not acceptable or viable as they contain the same substances.

Effective health care systems while playing a key role in the early identification of tobacco use are obligated to intervene by advising users to quit, a challenge compounded by the delayed/ stalled implementation of Kenya's Tobacco Control Regulations on tobacco control as attested by the Ministry of Health.



The ban on advertising, marketing of tobacco products, ban on public smoking as well as the requirement to use pictorials depicting damage caused by tobacco on cigarette packaging were some of the recommendations of the FCTC and the Tobacco Control Act 2007. The implementation of these in Kenya may have started in earnest but there has been a reversal with a notable return in public smoking. Reduced prices of the products and availability especially in neighborhood shops such as kiosks are part of the frustrations witnessed by the Ministry of Health. A taxation regime on tobacco proposed through the Tobacco Control Fund is vigorously being challenged in the BAT suit as double taxation. The regulations require that manufacturing companies remit two (2) percent of the value of the tobacco manufactured or imported in any financial year to the Tobacco Control Fund as compensatory contribution. These funds are to be used for research, documentation, and dissemination of information on tobacco and tobacco products; promoting national cessation and rehabilitation programs while mitigating the negative effects of tobacco products. It is even not contestable whether the two (2) percent solarium

compensation can ever be equivalent to the damage caused by the products. The concern for alternatives to tobacco production in Kenya as part of the regulations is anticipated to see the active technical involvement of the Ministries of Agriculture and Environment together with forestry services in rehabilitating plant fields of chemical compounds associated with tobacco farming, while sensitizing, facilitating and encouraging farmers to change.

It is these fundamental facts presented by the Ministry of Health that convinced the judges of the need to value the lives of citizens as opposed to the commercial interests of companies, meaning that the lives of human beings cannot be ranked along with business profits.

The world waits with baited breath to see whether the public health and national interests of Kenyans will be sacrificed at the altar of commercial interests by the highest court of the land when passing judgment on the appeal by BAT. Will it be a David and Goliath case? Only time will tell but Civil Litigation will fight tooth and nail for Kenya.

OAG&DOJ PICTORIALS THE BONDING PROCESS IN CIVIL LITIGATION



Government Launches National Action Plan on Legal Aid by F. Gathumbi

The Government has validated the National Action Plan on Legal Aid, 2017-2022 that will serve as a road map for coordinated implementation of legal aid interventions between the government and legal aid actors in the country. The National Action Plan will provide strategic action on legal aid that is consistent with other strategies within the justice sector and facilitate the full implementation of the National Legal Aid and Awareness Policy, 2015 as well as the Legal Aid Act, 2016.

The National Action Plan on Legal Aid is developed by the National Legal Aid Service Board (NLAS) in collaboration with the International Development Law Organization (IDLO), an international intergovernmental organization with the mandate to promote the rule of law and good governance. The National Action Plan is a result of a comprehensive, consultative process and an extensive document review with key stakeholders.

The National Legal Aid Service (NLAS) was established to provide affordable, accessible, sustainable, credible and accountable legal aid services to indigent persons in Kenya. NLAS is also mandated to provide legal awareness, support community legal services by funding justice advisory centers and promote alternative dispute resolution methods that enhance access to justice. These services are based on the principles of impartiality, gender equality, and non-discrimination, protection of the marginalized and the rules of natural justice.



Speaking during the launch of the Action Plan on Monday 18 December 2017, Attorney General Githu Muigai reiterated that legal aid and legal awareness were critical components of access to justice in the country. Parliament established the National Legal Aid Service in 2016 after the enactment of the Legal Aid Act 2016. The Legal Aid Act envisages the provision of free legal aid as a way to facilitate access to justice.

“This National Action Plan on legal aid is a broad collaboration and coordination framework for all actors in the justice sector whose objectives include building stronger justice institutions, improving access to and quality of legal services to members of the public especially the poor and vulnerable while reducing poverty and empowering citizen participation in governance. All these objectives are geared towards enhancing national security,” Professor Muigai stated.

The launch was witnessed by the NLAS Chairperson, Ms. Nazima Malik, and other board members representing various institution in the justice sector, such as the Judiciary, Kenya National Commission on Human Rights, National Police Service, Department of Correctional Services, Director of Public Prosecutions, Law Society of Kenya, National Council for Person with Disability, Council of Legal Education, the National Treasury, Public Benefits Organizations. Also in attendance were members of the Diplomatic Corps as well development partners led by the European Union.

Ms. Malik observed that the goal of the National Action Plan on Legal Aid is to enhance the facilitation of access to justice through a national, sustainable and quality legal aid and awareness framework in line with the Constitution, regional and international human rights standards.

“The Plan is a further demonstration of government’s commitment to ensure access to justice for all persons in line with its constitutional, international and regional obligations and will be used by the national and county governments to promote and facilitate implementation of legal aid programmes and activities to ensure access to justice for all,” Ms. Malik stated.

The 2010 Constitution expanded the Bill of Rights to include for the first time extensive provisions on economic, social and cultural rights. One of the most celebrated aspects was the recognition and protection of human rights and fundamental freedoms to preserve the dignity of individuals and communities while promoting social justice. Further, the Constitution obligates the State to ensure access to justice for all persons and protects the rights of every accused person by ensuring that they have a fair trial and an advocate is assigned to the accused person at the cost of the State.



As stipulated in the Legal Aid Act 2016, the Service is the successor of National Legal Service and Awareness Programme (NALEAP) that was launched in 2007 to provide legal advice in the short term with the goal of providing legal representation in the long term. The programme launched a number of pilot programs, including the Nairobi High Court Family Division Pilot Project, the Nairobi Children's Court Pilot Project, the Mombasa Capital Offences Pilot Project, Project, the Kisumu Paralegal Advise Office Pilot Project, the Nakuru Children's Justice Pilot Project, and the Moi University Law Clinic (Eldoret) Pilot Project, The Pilot Projects in the 5 Counties are in operation with the Services office providing free legal aid to poor, vulnerable and marginalized community in Kenya. Besides the 5 Pilot Project, the Service plans to roll out its services in the remaining 42 Counties the next five years.

European Union Support in Promoting Democratic Governance in Kenya, *By T. Nderitu*

The European Union, among other development partners have over the years supported the Government of Kenya, through the Office of the Attorney General and Department of Justice (OAG&DOJ) implement various projects and programmes in the governance sector. This has been, and continues to be executed through its 5-year budgets commonly known as European Development Fund (EDF), which is a pool of contributions from the European Member States, managed by the European Commission, the executive body of the European Union.

*In this issue, **Mwanasheria Mkuu** will focus on the support extended to OAG&DOJ during the last four EDFs since 2004.*

1. 8th EDF Democratic Governance Support Programme (DGSP): The Democratic Governance Support Programme (DGSP) was funded by the European Development Fund (EDF) in partnership with the now defunct Ministry of Justice and Constitutional Affairs. It was managed by a Programme Bureau for Institutional Reform and Democracy in association with **GOPA???** Consultants and Matrix Development Consultants. It began in mid-2003 and ended in December 2006.

The DGSP aimed at enhancing democratic governance in Kenya through strengthening the checks and balances of state institutions. These are considered as not only parliament and the judiciary, but also decentralized government structures, independent bodies and civil society. The programme had three mutually reinforcing areas of activities:

i) Assistance to Parliament: The project, funded jointly by the U.K. Department for International

Development (DFID) aimed at establishing a legal and research department and improving the existing library services. Modernization of the library, research and information services in Parliament was undertaken with a view to enhancing the effectiveness of MPs in Parliament and supplying them with information and services to better carry out their parliamentary duties.

ii) Assistance to the Legal/Justice system: The project's main objective was to improve the capacity of the Kenya Law Reform Commission (KLRC) to review laws and specifically to increase the number and quality of preliminary bills originating from the Commission. This was achieved through the enhancement of: a) information communication technology capacity, b) research capacity and improved library services, c) human resource capacity especially in the drafting department and finally d) the publicity and media profile of the Commission.

iii) A Flexible Fund to support initiatives of the Civil Society Organisations, NGOs and government institutions: The DGSP 'Flexible Fund' component partly aimed at strengthening Civil Society Organisations (CSOs) to enable them to pursue a wide range of activities in promoting good governance. The 'Flexible Fund' selected and provided grants to 22 Governance NGOs at the beginning of 2004. Implementation began in mid-2004 and ended at the beginning of 2006. The total cost of the Programme was Kshs. 526 million.

2. 9th EDF Non-State Actors Support Programme (NSA-NET): The programme covered the period 2010/11 – 2012/13. The Non-State Actors Support Programme (NSA-NET) was a Governance and Democratisation Programme in the former Ministry of Justice, National Cohesion and Constitutional Affairs. The Programme aimed at strengthening the capacities, networking, dialogue, information exchange and

involvement and cultural expression in development processes by the Non State Actors.

The global objective of NSA-NET was to improve the quality of life for the people of Kenya, especially the poor, marginalized and vulnerable. It enabled all sectors of the society have a voice in national development policies, thereby enhancing local ownership of development programmes. The specific objective of the programme was to strengthen the mechanisms, networks and capacity for deepening and broadening of NSA involvement in development processes.

During its implementation, the Programme extended grants to 12 Non State Actors who executed various initiatives towards achieving the Programme's objective. These NSAs included Rural Agency for Community Development and Assistance (RACIDA); Handicap International; Oxfam GB; Institute for Law and Environmental Governance (ILEG); Godown Arts Centre; and Alliance Française. Others were Trocaire; Forum Syd; Wajir Peace Development Agency (WPDA); Centre for Law and Research International (CLARION); Christian Aid; and Search for Common Ground (SFCG). The cost of the programme was Kshs. 550 million.

3. 10th EDF Bridging Divides through Accountable Governance (BDAG) Programme. The programme commenced in 2012 and ended early 2016. The purpose was to lend support to Governance institutions in Access to Justice and Local Governance aimed at improving accountable governance by systematically building evidence-based citizen voice and Non-State Actors (NSAs) engagement into key governance reform areas, making public institutions more accountable and responsive to citizens' views and evolving realities, and more effective in their implementation of Vision 2030 political pillar targets. The programme supported activities of the then National Legal Aid and Awareness Programme (NALEAP) and Kenya Law Reform Commission (KLRC) at a total cost of Kshs. 172 million.

4. 11th EDF Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD-K). Both Parties

(EU and GOK) signed the Financing Agreement for PLEAD-K in September 2017. Upon commencement, the Programme is expected to last 60 months until 2022.

The Program for Legal Empowerment and Aid Delivery in Kenya (PLEAD) is a continuation/ extension of the National Indicative Program (NIP) of the 11th European Development Fund (EDF) for Kenya. **(PLEAD is in support of several SDG goals).** Its primary Sustainable Development Goal (SDG) is to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" (SDG 16). Its second SDG is to "achieve gender equality and empower all women and girls" (SDG 5). PLEAD targets 5 counties with the largest urban centres and 7 counties of the most marginalized areas of Northeastern Kenya (the "12 Focal Counties"), where the rule of law is particularly challenged due to social inequalities or abject poverty. PLEAD reaches out to both the national and county levels to cover both the Formal Justice System ("FJS") and Informal Justice System ("IJS").

PLEAD has four interlinked and mutually supportive result outcomes that involve: (1) access to legal aid, (2) court administration, (3) the criminal justice system, and (4) capacity-building of the National Council on the Administration of Justice (NCAJ). Outcome 1 seeks: "Access to legal aid and assistance is enhanced, especially for the poor and vulnerable." A sub-component of Outcome 1 calls for support to the Department of Justice (DoJ) to ensure implementation of the new legal and regulatory framework mandated by the Legal Aid Act of 2016. Actual implementation of the activities is planned to commence in January 2018 and will cost Kshs. 300 million.

*In the next issue, **Mwanasheria Mkuu** will focus on the support OAG&DOJ has received from GIZ and UNDP in enhancing governance issues in Kenya.*

Quotable Quotes

"Come now, and let us reason together . . ." The Song of Solomon – Isaiah.

Fighting corruption: My responsibility by F. Mwakio

Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit. It is a moral issue perpetrated by individuals with low integrity and no regard for the welfare of others. In Kenya, as in most developing Countries, corruption is devastating the economic development agenda thus increasing poverty by concentrating resources in the hands of a few, scaring away both local and foreign investors, and causing serious underdevelopment in the country.

It continues to be a growing concern in Kenya as it flourishes in terms of the number of participants and the amount of resources involved. Today, we talk of individuals pocketing billions of shillings of public funds with relative ease. Every successive annual Auditor General's report documents increasing cases of missing billions, confirming in part that more public coffers continue to be looted by an increasing number of individuals. Since the advent of a devolved system of governance, the number of corruption related cases has increased as evidenced by the number of County officials being investigated and prosecuted.

Members of the public, who are the most affected by corruption, wield a lot of power that can positively be used to deal corruption a deadly blow. Inadequate participation by the public in the fight against corruption, however, is a major setback to the fight thus leaving graft to seep into all sectors of society.

A major step towards fighting corruption is for Kenyans to embrace and practice the National Values as enshrined in Article 10 of the Constitution of Kenya. Let each one of us embrace transparency, be accountable for our actions, be patriotic and love our country. As such, none of us should ever engage in corruption as it harms other Kenyans. The National Anti-Corruption Campaign Steering Committee (NACCSC) has rolled out a values-based anti-corruption campaign targeting all sectors of the society and we appeal to all Kenyans to join. A society that embraces and practices values will not stand by and watch public resources being plundered by a few selfish individuals.

NACCSC has also collaborated with the Inter-Religious Council of Kenya (IRCK) via a Memorandum of Understanding (MOU) signed on 8 April 2015 to map out their joint intervention in the fight against corruption. As the custodians of the moral values of the society, religious leaders enjoy the trust of their adherents thus giving them a unique position to make an important difference in the fight against corruption. Given that corruption is because of lack of morals, religious leaders can use this platform to preach against corruption and promote ethical behaviour as well as the embrace and practice of the societal values.

Among the activities agreed upon in the MOU, was the design and development of powerful values-based scripture-referenced messages to be disseminated through the churches, mosques and temples. Already a booklet entitled *"Faith Communities against Corruption"* containing six messages has been

launched nationally. It is expected that Kenya being a highly religious society, many will see the value of these messages. NACCSC has collaborated with the County Governments to jointly formulate and implement anti-corruption campaign strategies, programmes and activities at the grassroots levels. These include the establishment and operationalization of County Anti-Corruption Civilian Oversight Committees (CACCOCs) and decentralization of the National Anti-Corruption Campaign Steering Committee to involve citizens firsthand in the fight against corruption. The CACCOCs, in 26 counties so far regularly carry out sensitization and awareness creation for county residents on what corruption is its forms, manifestations, effects and action they should take whenever they come across it. Specifically, members of the public are encouraged to participate in the fight against corruption, become intolerant to corrupt practices and jealously guard against misuse of the resources that have been devolved for development and service delivery, but most importantly, support local and national initiatives to fight corruption.

NACCSC has just concluded a five-month intensive radio campaign on seven radio stations themed **"Elections and Good Governance"** to reach a wider audience. The interactive campaign reached an approximate 20.4 million listeners weekly through Radio Citizen, Kameme FM, Musyi FM, Hope FM, Pwani FM, Radio Ramogi and Iftiin FM stations. Various stakeholders in the electoral process were invited and participated in the campaign to discuss different topics, in the

fight against corruption and general election. Pre-election programmes focused on the importance of electing leaders of integrity, while post-election programmes are focusing on corruption preventive mechanisms and how voters can hold their leaders accountable.

Going forward, NACCSC wishes to translate the high awareness level and knowledge that citizens have on corruption

into tangible action. In conceptualizing the campaign for the next five years, NACCSC has identified a number of key strategic objectives. These include a shared value system among the citizens across the country, increased public awareness and information on corruption, empowering citizens to fight and prevent corruption, creating linkages and collaboration with strategic partners and stakeholders,

strengthening institutional integrity and accountability, building an effective human resource capacity and automating NACCSC's operations.

Every individual has a role to play in the fight against corruption. For the fight against corruption to be won, we all must play our roles effectively.

Remember, **'Fighting Corruption, My responsibility!'**



H. E. James Ongwae Governor of Kisii County Advising New Caccoc Members During a Capacity Building Workshop at Zonic Hotel



A Group Photograph of Naccsc And IRCK Officials During one of the many Working Workshops To Formulate The Values-Based Scripture-Referenced Messages



Naccsc Vice Chair Rev. Jessie Mutura with Ag. Director David Gathii in one of the Radio Station Studios.

Government Strengthens its Legal Capacity by HRM&D

During the last financial year, 2016/ 2017, the Government strengthened its legal capacity with the employment of fifty new State Counsel and the promotion of 170 officers at the Office of the Attorney General and Department of Justice. The new State Counsel were received in May 2017 by the Attorney General, Professor Githu Muigai at the start of an induction course for civil servants at the Kenya School of Government, Kabete Campus.

The Attorney General called on the new lawyers to remain faithful to the call of duty as advocates of the High Court and officers of the Court stressing the need for them to act according to their training and Code of Conduct. The Chief Legal Advisor observed from his experience, that work at the largest law firm in the East African region remained challenging yet had been the most fulfilling in all his 35 years of legal practice. He asked the lawyers to endeavour to remain in civil service as this was the only sector they would continually gain an enriching and diverse work experience.

“Your joining the Civil Service I believe is borne of the desire to serve a greater good. However, the challenges experienced in public service coupled with the attractions of the private sector will tempt many of you to seek better opportunities elsewhere, but I urge you to remain in the service as you develop your careers. I must admit there is no better place for you to learn than in the government,” the Chief Legal Advisor emphasized.

“The multiple and complex mandates we share within the largest law firm in the region illustrate the dynamic nature of our Office. Indeed, the experiences you will gain while at State Law are uniquely different from those shared by other advocates in the private sector. This is one thing that you will realise and in as much as you will be attracted and pouched by other private entities, you will appreciate the uniqueness of this Office,” he continued.

The Attorney General however had a word of caution, “State responsibility bestowed on us as State Counsel cannot be quantified by anyone. While we bear the responsibility, we are more often than not crucified in the defence of our call to duty while protecting the law.”

All State Counsel are required to familiarise themselves with the Constitution, the Office of the Attorney General Act 2012, as well as other laws and regulations including government circulars and

directives that are issued from time to time. It is also important to seek instructions from various state clients as failure to do so can lead to misadvising the government and result in disciplinary action being taken against the state counsel.

The Director of the Kenya School of Government, Kabete Campus, Dr. Mohamed Nur urged the new lawyers to continually update their skill and knowledge to effectively offer public legal services. He further stressed the importance of order, discipline and protocol as a critical component of civil service.

“You must always keep in mind that you will be addressing the needs of an increasingly enlightened public. This is indeed a good thing as it allows advocates to move away from their legal comfort zones that include complex litigation to adopt a softer approach of mediation where all parties endeavor to build and improve on existing relationships while creating new ones. This means that as State Counsel, you must continuously keep abreast of new developments in legislation, emerging legal issues and developments in Kenyan jurisprudence and remain knowledgeable legal professionals who are able to discharge services of the highest standards. You are the next frontier for the transformation of legal practice and should not shy away from embracing new procedural mechanism using technology including e-discovery which can increase efficiency and reduce costs involving discovery of documents in litigation,” Dr. Nur advised.

Group photo with new State Counsel during the induction course at the Kenya School of Government.



Meanwhile the Public Service Commission of Kenya (PSC) promoted 170 officers who include 115 State Counsel as well as 55 Non-legal officers. The Office had in December 2016 advertised for the various vacancies within the establishment. The internal advertisement was circulated to all officers in the government. The composition of the promoted officers is 99 women and 71 men.

State Law Honours Long Serving Officers by Retirees Welfare Committee

The Office of the Attorney General and Department of Justice in the last financial year (2016/2017) honored 15 officers who had served the Government for more than thirty (30) years in various capacities.

The officers were honored in June 2017 during a farewell ceremony attended by more than 300 officers and family members of the retiring officers.

Those honored include:

1. Mr. David Karaya, Accounts Department;
2. Ms. Elizabeth Thuo, Public Trustee;
3. Mr. Geoffrey Ochieng, Accounts Office;
4. Ms. Eunice Kerubo, Human Resources;
5. Ms. Nancy Njeru, Administration;
6. Mr. Titus Musyoki, Companies Registry;
7. Ms. Agnes Nzioka, Registrar General's Office;
8. Ms. Hellen Kosuri, Civil Litigation;
9. Ms. Winfred Wandeto, Public Trustee;
10. Mrs. Bernice Gachegu, former Registrar General;
11. Mr. James Marienga, former Secretary in the Advocates Complaints Commission;
12. Mr. Barrack Otieno, Public Trustee;
13. Mr. Julius Kojwang, Finance Department;
14. Mr. Samson Okoth, Public Trustee and
15. Mr. Gerishon Okaru, Internal Audit.



Attorney General Githu Muigai paid tribute to the officers who had dedicated most of their adult life to serve in public service.

"Today's celebration is in recognition of the many years our friends and colleagues have served in public service. We honour them for they gave of their youth and adulthood to serve us and the people of the Republic of Kenya with utmost dedication and humility. They have mentored us in the various stations that they worked and are an important part of our family," he stated.

Celebration of long serving officers at the State Law Office started in 2014 and has now been institutionalized as part of the culture. In his off the cuff

remarks, Professor Muigai observed retirement was a period marked with wisdom, gratitude and celebration in adulthood.

"This is a period of wisdom, gratitude and celebration



of the different stages of life that we have passed through. This is the period when an individual is at their best, where you share all that you have to enrich the society around you. You want to empower all those that are around you, you want to show them a different way of doing things; you want to teach from your own experience where you are now much wiser, humbled yet enriched with life knowledge and skills," stated the Attorney General.

He called on older Kenyans to assist the younger generation become more responsible people in society who were interested in serving the government at all



levels. The Chief Legal Advisor humbled by the many years that the officers had served, called upon younger officers to continually tap from the knowledge and skills of their elders.



Reforms in The Ease of Doing Business in Kenya

By K. Gathuma, S. Mwakio, B. Oscicho

The Government of Kenya in 2010 identified enterprise development and investment as vital for the country's socio-economic growth. These reforms introduced through the enactment of modern corporate laws aimed at enhancing and promoting the ease of doing business in Kenya. The corporate laws made the business sector competitive by streamlining and automating the business registration processes. The old business registration regime dating back to the colonial era has seen rapid transformation over the last five years and culminated in the establishment of the Business Registration Service.

Concerted efforts by the Government to transform Kenya as the preferred financial and investment destination in Africa through the adoption of modern corporate business practices has seen the country's ranking improve significantly. Today, Kenya is the third most competitive economy in Africa after Mauritius (25th) and Rwanda (41st). The changes in ranking attributed to reforms that have been undertaken to the business laws, which fall under the administration of the Business Registration Service. In the 2017 World Bank rankings on the Ease of Doing Business, Kenya improved 12 places after finishing 80th in a survey conducted in 190 economies. In the 2016 rankings, Kenya was at position 92. The new ranking is the highest since 2008 when the country finished in 84th position.

Business Registration Service (BRS) is established under the Business Registration Service Act, 2015 as a semi-autonomous body under the Office of the Attorney General and Department of Justice. Its mandate includes: the general implementation of policies, laws and other matters relating to the registration of companies, partnership and firms, individuals and corporations carrying on business under a business name, bankruptcy, hire purchase and chattels transfers.

BRS is mandated to oversee the operations of the Companies Registry, Movable Property Security Rights Registry (Collateral Registry), Insolvency (Official Receivers) Registry and the Hire Purchase Registry. It is governed by the Board of Directors and headed by a Director General who is the Chief Executive Officer of the Service.

BRS main goal is to encourage efficiency and transparency in service delivery. To achieve this, the Service has introduced an online system through which the stakeholders can channel their comments, compliments and complaints through the email address cr@ag.go.ke (queries are responded to within 24 hours).

COMPANIES REGISTRY

The Company Registry was previously governed by the Companies Act (Chapter 486) enacted in 1962. This law had



not been amended; it was archaic and not in tandem with the modern ways of doing business leading to the enactment of the new Companies Act, 2015.

The implementation of the Companies Act 2015 was done in two phases. Phase 1 involved the implementation of the regulations to the Act; these are now in force. The Regulations comprise The Companies (General) Regulations, 2015 which contains the Model Articles of Association for the various types of companies, permitted characters, symbols, signs and punctuation that can be used in a company name, and the Registrar of Companies (Companies Forms) Rules 2015 which contains the various forms to be used when transacting business.

Phase 2 involves amendment of the 2015 Regulations and Rules to include various aspects of compliance. This phase is ongoing. In order to operationalize Section 612 of the Act which relates to 'sell out and squeeze in' form CR49 (Notice to Non Assenting Shareholders) and section 660 of the Act which requires the directors of quoted companies to prepare and file with the registrar a copy of the Directors Remuneration Report for each financial year have been introduced. The Rules have been amended to include *Forms Cr 29 to 48* for Companies registered in Kenya.

The Companies Act, 2015 brought transformation in the registration process with the adoption of digital technology to streamline the process. This has seen a shift from manual registration and lodgment of documents to an online registration system on the e-citizen platform. It is now possible for one to register business names, companies, and partnerships and make changes through the online platform. Status Reports of companies (referred to as "CR12") can also be accessed through the online platform. Further filling of returns as well as cessation of business is currently done online.

The e-business platform has also increased the efficiency with which services are rendered. Currently it takes an average of 3-5 days from date of submission to register a business.

It would be worth noting that, most of the manual processes have moved to the digital platform as of 15 October 2017 and no manual processes are accepted. Indeed, The Companies Act, 2015 has transformed the way of doing

business in Kenya hence making it an international e. investment destination of choice.

LINK A BUSINESS

Due to the transformations going on and the statutory requirement of maintaining registers, data and records on registries, the BRS has introduced a process known as '*link a business*' as part of a records clean-up exercise and an audit trail. This will help eliminate the issue of missing files and conveyancing of wrong information to the Registrar. The application is a free service done by the proprietor of a business, a director of a company or the company secretary. Link a business has further made the registration process easier as the "CR 12" has been automated.

What '*link a business*' does for an individual who has already registered a business entity is to make sure his/her records are already up to date, enable easier access to the e-business system and ensure that their records are protected against double registration, or fraudulent activities. The director or company secretary uploads the current status of the company as they know it. From the back end, the Companies' Registry counter checks with the information they have in the registry and if it matches, it is approved and uploaded into the system. If it does not a match then the individual is required to visit the Companies Registry to verify the information and update the same accordingly.

'*Link a business*' is available on the e-citizen, an on-line platform that provides access to government services to the public. To '*link a business*', all one has to do is open an account on the e-citizen portal. Once the account is opened, the user should click on the link a business portal and follow the instructions on the page. '*Link a business*' can be done anywhere as long as there is access to the internet.

SALIENT FEATURES OF THE COMPANIES ACT

Some of the salient features include:

- a. Introduction of one-person companies: The Companies Act, 2015 introduces single member companies. The requirement of 2 or members has been dispensed with making starting up a business an easy process for sole proprietors.
- b. Consent of the directors and shareholders to register company: All directors and shareholders are required to sign the memorandum form. This ensures that the persons included in a company are aware of such inclusion and give their consent to such inclusion.
- c. No obligation to have Company Secretary for Private Companies: Where a private company has a paid up capital of less than 5,000,000 Kenya shillings, it has no obligation to have a company secretary.
- d. Minimum age Limit for Directors reduced to 18: The minimum age of a director has been reduced from 21 years to 18 years thus giving young people more opportunity to do business.

No Restrictions on the objects of the Company: A company has no limit as to the type of business it can do subject to its own limitations. There are however regulated business sectors such as security agencies; banks, mortgage and other financial institution, gambling agencies other regulated businesses.

THE CHALLENGES IN THE IMPLEMENTATION OF THE COMPANIES ACT 2015

The Challenges faced are numerous taking into account that the Act introduces a completely new regime with distinct features from the Old regime. In addition, the voluminous nature of the Act means that there is need to constantly study and seek interpretation of the Act. Some of these challenges are highlighted below.

Double Registration/Registration of Companies with Similar names

Double Registration has at times led to fraudulent activities causing some companies serious financial losses. This occurred mainly because of the previous three regimes of registration of companies; the C. files (manual) files, the RG-BPMS files (registered under the Business Process Management System) and the files registered under the new digital online platform. Double Registration has also caused losses to the office of the Director General in terms of resources spent on court cases and damages paid where the Registrar is found culpable.

In an effort to address the problem, the new e-Business system has integrated all the regimes of business registration into one system hence reducing the chances of double registration. Clerical staffs continue to receive training on how to conduct name searches and registration of business names.

BRS has also conducted a comprehensive audit of the Companies Registry and has retrieved lost/misplaced files; this was carried out by the National Youth Services (NYS) personnel. The staff are now able to check compliance of companies especially in terms of filing annual returns and identify the companies with similar names.

Further, Section 58 of the Companies Act was amended empowering the Registrar to strike off a company that fails to comply with the directive of changing its name where there is registration.

Sensitization of the Stakeholders

BRS has continuously engaged with stakeholders to sensitize them on the salient features of the Companies Act and the e-Registry. A liaison committee between the practitioners and BRS is in place to ensure that the practitioners are well informed of the changes taking place at the Registry.

THE INSOLVENCY ACT 2015

The Insolvency Act was assented into law on 11 September 2015. It consolidates procedures relating to bankruptcy of natural persons and corporate insolvency matters. The two are now under one Act, the Insolvency Act. The Bankruptcy Act Chapter 53 of Laws of Kenya (Formerly the English Bankruptcy Act 1930) previously governed bankruptcy while the Companies Act Chapter 486 Laws of Kenya (formerly the English Companies Act of 1948) governed the liquidation of companies. The two Acts largely reflected the English position of the time as they had not been repealed; they were rarely amended.

Objectives of Repealing the Bankruptcy Act and the Companies Act Part VI

Repealing the Act was deemed necessary to secure an equitable distribution of the property of the debtor/ Company among his/its creditors according to their respective rights against him/it. In relieving the debtor/company of his/its liability to his/its creditors, it enables enable him/it to make a fresh start in life/business free from the burden of his/its debts and obligations. Further to this, it was important to protect the interests of the creditors in his/its affairs and for the imposition of punishment where there had been fraud or other misconduct on his part. In any dispute especially of a commercial nature, it is necessary to offer suitable alternatives other than declaring bankruptcy or liquidation of companies. By so doing, the focus shifts from debt recovery to restructuring mechanisms that will enable the business to recover while creating better safeguards for investors business to grow.

Impact of the Insolvency Laws on Insolvency Practice in Kenya

1. The new Insolvency Act 2015 has significant impact on commercial legal practice. Unlike the previous Companies Act Cap 486, that was subjecting companies to liquidation; the new Insolvency Act seeks to redeem insolvent companies through administration (work out). The Act focuses more on assisting insolvent natural persons, unincorporated entities and insolvent corporate bodies whose financial position is redeemable, so that they may continue to operate as a going concern and meet their financial obligations to the satisfaction of their creditors. This means that there will be more business for lawyers operating in the commercial law.

2. The Act now regulates Insolvency Practitioners under Part II of the Insolvency Act. These are individuals who are appointed to administrate, liquidate an individual or company that is insolvent. The appointment can be done by the court, creditors, directors or the Official Receiver depending on the circumstances of each case. The Act allows members of two professional bodies' that is, ICPAK and LSK to be the licensed Insolvency Practitioners. The Insolvency Act does not allow members of these bodies to automatically be Insolvency Practitioners; they have to apply to the Official Receiver. In the previous Acts, lawyers were not obligated to apply to the Official Receiver for them to handle bankruptcy and winding up matters.
3. The Insolvency Act 2015 introduces the concept of cross border insolvency; which allows for administration/liquidation of multi-enterprise groups across various jurisdictions. The United Nations Commission on International Trade Law (UNCITRAL) working group V (Insolvency) is currently developing regulations on cross-border insolvency; Kenya is a member of the working group. Once the UNCITRAL regulations are developed, Kenya will adopt and domesticate the same.

The Act, while a step in the right direction, is facing a few challenges on implementation:

- The complexity of insolvency matters requires rigorous training for both the bench and commercial lawyers to get a sound grasp of the insolvency law. It is noted for good measure that the proper functioning and development of the judicial insolvency system is dependent upon the quality of the people who are in charge of the running of the courts and those who use it to advance their clients' interests.
- Some concepts may not be practical to the Kenyan context and may thus require amendment and review. However, this can only be done once the Act is tried and tested.
- There is urgent need for sensitization resulting from the bulkiness of the Act that also contains complex issues relating to insolvency.
- Latest trends in insolvency such as Cross collateralization, bankruptcy restriction orders or undertakings as well as post commencement financing are all new concepts that practitioners must appreciate.

QUOTABLE QUOTES

"The strength of the constitution lies entirely in the determination of each citizen to defend it." Albert Einstein.

COLLATERAL REGISTRY (Movable Property Security Rights)

The Movable Property Security Rights Act, No. 13 of 2017 was enacted and commenced on 16th May, 2017 and the Movable Property Security Rights Regulations, 2017 were gazetted on 24th May 2017. Further, the collateral registry was created on the e-Citizen portal and has been operational since 25th May, 2017.

The main objective of the development of the Collateral Registry is in line with the spirit of the Ease of Doing Business to increase access to credit to firms especially micro, small and medium enterprises (MSMEs) by developing the appropriate legal and institutional frameworks to allow and facilitate the use of movable assets as collateral for loans.

A diagnostic study showed that the previous legal framework that governed interests in different securities was fragmented, out of date, and cumbersome to use by both lenders and borrowers. The laws that were analysed in the study were the Chattels Transfer Act (Cap 28), Hire Purchase Act (Cap 507), and the Companies Act (the then Cap 486) amongst other laws.

The MPSR Act operates as a law governing secured transactions between a creditor and a lender where in return for a loan advanced, the borrower gives movable property as security or collateral. What the law does is that it diversifies the type of collateral a person can give as security moving from the traditional form of security e.g. land, motor vehicles, machinery

to other forms of movable collateral such as stock in trade, household furniture, crops, bank accounts, proceeds of sale and even personal items such as phones and laptops. For the borrowers, this law provides an environment where it is easier for them to access credit. It also becomes easier for the borrower to use one collateral as security against different loans. For the lender, it creates an environment where they are more secure in lending credit to a class of people they would not normally lend to, and accept as security collateral they would not traditionally accept as such. The Act not only gives provisions to protect the lender in event of default, but it also establishes a collateral registry, which acts as a public notice to any other entity interested in the collateral, that there is a prior interest and should they chose to lend against the same collateral, they will become second or third in priority in event of default.

The MPSR Regulations provide for the proper conduct of the business of the collateral Registry. The regulations create the electronic registry that is aimed at enhancing the confidence of lending institutions and create an enabling environment to lend against

movable assets as collateral or security.

Development of a functional and technically sound collateral registry:

The Electronic Collateral Registry is now a fully developed and functional registry that runs on the government's service single sign-on platform of e-Citizen. To date, the registry has over 10,000 Initial Notices that have been lodged by various lenders with secured amounts are of more than Kshs. 500 billion.

Training and capacity of stakeholders implementing the reforms, awareness and communication

BRS has made concerted efforts to reach out to the key stakeholders in the MPSR ecosystem, primarily the Kenya Bankers Association that is the umbrella body for banks in Kenya. In line with this, BRS has conducted three well-attended sensitization workshops.

BRS conducted individualized training on the use of the electronic registry to specific banks that have made requests and are keen to come on board. Some of these are Barclays Bank of Kenya, Standard Chartered Bank, Equity Bank, Commercial Bank of Africa, NIC Bank and Diamond Trust Bank.

BRS continues to conduct these individualized training on request. It has also developed an MPSR user manual and conveyed the same to the Stakeholders.

Capacity building for officers implementing reforms on the Movable Property Security Rights Act 2017.



Q&A One on One with the Acting Director General of the Business Registration Services on the Ease of Doing Business.

Acting DG of BRS Kenneth Gathuma says the public should expect an end to the malpractice of missing files and demand for bribes to push files. Mr. Gathuma spoke to *Mwanasheria Mkuu* on the ongoing transformation of this critical Semi-Autonomous Government Agency in the Office of the Attorney General and Department of Justice, whose efficiency is partly linked to the overall competitiveness of Kenya's economy. Here are the excerpts:



What Does The Digitisation Of Company Registration Entail?

It starts with the very basics. It means applications for registration of a business can now be done on the digital platform. We started this journey in 2015 when the government launched the e-Citizen platform, and after that, an Act constituting our organisation, the Business Registration Service (BRS) Act of 2015, was passed. We are meant to implement the new company laws under the Company Act 2015, Insolvency Act 2015 and the Business Registration Service Act. In 2015, we started registration of business names and issuing name searches digitally, and significantly, on November 1 last year we started registering companies online.

We did it on a pilot basis for a month and on December 1 2016; we went live fully, on e-citizen. Thereafter, we also set up a digital platform for daily interactions between businesses and the registry, and since April, we have had stability in the system. That has cut to a maximum of three days the time it takes to register a company without any external influence. We will be locking down the manual processes on October 15 2017. The issue of missing files and wrong information is now outdated.

What Can I Do On The Portal?

You can register a business name, limited liability partnerships, limited liability companies and public companies. You can do searches on the portal, meaning you do not have to come here and queue for official search. For businesses registered after December 1 2016, their data is already clean and is on the portal. However, for those registered previously using paper files, the owners need to access the "link a business" function on the portal and key in the firm's particulars. We have somebody on our end who goes and verifies the data from the physical file. Once we ascertain the information is in order, we make the company verified, and all its information goes digital. We have already scanned and archived all the paper files for future reference. On the e-citizen platform, you pay using digital platforms such as mobile money, credit cards, bank transfers or cash deposit. You do not need to interact at all with the cashiers here.

We Have Had the Long Standing Issue of Shadowy Companies in Kenya, Does This Portal Resolve That?

This is exactly what it is supposed to resolve, because going forward if your company is not verified within a set timeframe, of say the next three months, then we are going to deem you to be in non-compliance. In that case, we plan to send out a notice that everybody who is running a business must make it known to the companies' registry that you are in operation, and make annual returns. Therefore, once we get to 2018, and note that certain companies on the index have no activity, and then the Companies Act does empower the registrar to take certain actions. This includes asking them to show cause why they are not in business, and if they are not, they are stricken off the register. However, a vast majority of the companies in Kenya were registered after 2010. They do have their data on other platforms, so we are trying to do a data merge. Once we do that, we will have a sense of which company is alive and which one is not.

People Have Been Asked For Bribes In Order To Do A Search, Files Have Gone Missing Among Other Issues At The Registry. Is This Now in the Past?

We are making systems that are smarter than the bad elements. We are aware that sometimes we have had such issues, and this is frowned upon as a matter of policy. Nevertheless, we are saying that by virtue of going on a digital platform and making every interaction with a member of the public subject to an audit trail, the issue of missing files and wrong information is outdated.

Once we stop the manual processes, everybody who comes into the fold will be channeled through the digital platform, that way we will know who is interacting with a client, and can track how long it takes for a transaction to take place, and if there is a spike in deliverables we put them to task. Our biggest challenge is the official search, which is where we have made the biggest effort to reform the process as we go around tying down the other elements.

What Safeguards Are In Place To Protect The Privacy And Integrity Of Companies' Data?

As far as privacy is concerned, we must keep in mind that company files are public files, and anybody can come and peruse one. They just need to pay a fee of Sh200. The law covers this. On integrity, we are having the registry and the business owner both verify that the data is correct. When we have that meeting of minds, it is then that we tick on that file as verified, and it goes green on the portal.

When Do You Expect To Have Migrated Everyone To The New System?

This is something that is in process. We are giving ourselves three months to do a complete data cleanup for the active companies. We could be talking of a quarter to a third of all registered companies being dormant. Through this exercise, we are going to be aware of the number of companies that are not active, and come up with a way of keeping them off the register. We are empowered by the Companies Act to deregister dormant companies. However, we will do a lot of stakeholder engagement and public awareness before we go down that path. We have 20,000 companies verified on the system so far.

How Much Has Been Spent On The Automation?

Development partners have funded most of this process, largely the World Bank that has given us ICT system support. The government has also provided funding to BRS to achieve this objective. It is hard to say the exact amount because the contracts signed by the World Bank and its development partners are confidential.

How Far Are You On The Movable Securities Register?

It has been live since June of this year. We have been doing sensitization with the lending institutions, through the Kenya Bankers Association and some individual banks, especially the larger lenders. We have also interacted with microfinance institutions.

OAG&DOJ PICTORIALS:

Kenya Submits Counter-Memorial on the Somalia- Kenya Maritime Dispute.



Kenya's High Commissioner to the Netherlands, Ambassador Rose Makena as Co-agent presents Kenya's Counter memorial to the Registrar of the International Court of Justice, Mr Philippe Couvreur on December 18, 2017.

Kenya Strengthens Mutual Legal Assistance by I. Agum

Kenya continues to receive support aimed at strengthening its efforts towards the reduction and elimination of transnational and cross border crimes that has contributed greatly to insecurity in the world. The support has been through the signing of Mutual Legal Assistance agreements with various governments as well as training to enhance the capacity of law enforcement officers engaged in combating cross border crimes.

The support is part of the various reform programs aimed at strengthening at Governance, Justice and the Rule of Law in the country being undertaken by the Office. Critical areas to be supported include the establishment and operationalization of the Assets Recovery Agency as well as cooperation in pursuing criminal matters under the various governments' jurisdictions.

Kenya has received support from the United States of America, United Kingdom, Sweden, Kingdom of Belgium, and Peoples Republic of China amongst other countries in recognition of the significant strides made in the Governance, Justice and Rule of Law program.

The Mutual Legal Assistance (MLA) Act 2011 came into effect on 2 December 2011 and provides for legal assistance to be given and received by the Government of Kenya from foreign countries and partners in relations to investigations, prosecutions and judicial proceedings on criminal matters. MLA consists of cooperation between different countries for the purpose of gathering and exchanging information requesting and providing assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another. Critically, international judicial cooperation is required as it ensures cooperation between judicial authorities on various legal matters in different cross-border situations.

The Chinese Vice Minister of the Ministry of Supervision of the Peoples Republic of China, His Excellency Mr. Wang Lingjun and Kenya's Attorney General Githu Muigai lead discussions on MLA between Kenya and China in December 2016.

The MLA Act also allows for the creation of a Central Authority through the legal advisors of the member states thus reducing bureaucratic channels of diplomacy in addressing the criminal matters. It further allows for the identification and confiscation of properties obtained either directly or indirectly from criminal activities in different states.



The import of the Act is that beneficiaries of criminal activities in Kenya will have fewer places to hide their loot as the government continues to address the concerns of corruption and transnational crimes.



Swiss Ambassador to Kenya, Mr. Ralf Heckner and Attorney General of Kenya, Githu Muigai Sign a Memorandum of Understanding Between The Swiss Federal Council And The Republic Of Kenya On Mutual Legal Assistance In Criminal Matters.

Pertinent concerns in the enhancement of international cooperation in eradicating transnational crimes include the need to expedite and streamline MLA proceedings through adoption of easy access to updated information and legislation. This is coupled by significant role played by informal consultation and bilateral meetings between Central Authorities. These create opportunities for trust, mutual understanding, flexibility and reduces bureaucracy in the conduct of international relations. There is also increased urgency in strengthening the capacity of Central Authorities with adequate staff and infrastructure with a particular concern on capitalizing on information technology.

There is urgent concern to recognize regional cooperation is a critical component in managing transnational crimes while being cognizant of the fact that governments are inundated by diversity in legislation, lack of resources hence the need to increase understanding and promote training to law enforcement officers on the use of MLA as a tool to combat transnational crime.

In August 2017, senior government officials successfully completed a training seminar dedicated to the Improvement of The National Framework Awareness on

Mutual Legal Assistance (MLA) in a program supported by the European Union and aimed at ensuring that Kenya remains a beacon of peace and stability in the African continent. The training is part of a three-year project under the European Union Mutual Legal Assistance Project aimed at equipping law enforcers with tools to combat terrorism in the Greater Horn of Africa and Yemen.

Kenya's MLA project involves officers from the National Counter Terrorism Centre (NCTC), the Director of Public Prosecutions (ODPP), Director of Criminal Investigations (DCI), as well as the Office of the Attorney General, key government departments that are in the front line of preventing and investigating transnational or cross border crimes including terrorist threats and attacks.



Officers who took part in the Improvement of The National Framework Awareness on Mutual Legal Assistance Training Project coordinated by the European Union and the International Peace Training Support Centre in Nairobi pose with their course coordinators including Colonel F. Kihanya, Commandant of the Peace and Conflict Studies School, Ms. Estelle Cros, from the European Union Mission in Kenya, Frederick Bayard and Nicolas Perez Perrano, also from EU and Mr. Dan Suter from the United Kingdom.

The Improvement of the National Framework Awareness on Mutual Legal Assistance is aimed at building the capacity and capabilities of the intelligence, law enforcement officials and prosecutors in disrupting acts of terrorism while taking legal action against terror suspects guided by principles of the rule of law and due respect for human rights.

During the closing ceremony, the Attorney General commended the 16 officers who had undergone the training on MLA for their commitment, dedication and diligence in ensuring that the country is safe from terrorism and its associated activities and crimes.

"This training can only enhance your abilities and capabilities in ensuring that as officers you safeguard the country from the vagaries of terror and its related crimes," the Chief Legal adviser stated. He went on to say, "The fight against terrorism is a global challenge and one where as a

country, we stand side by side with our international partners." Professor Muigai illustrated the complexities associated with investigating terror activities noting the high cooperation between multiple agencies in different countries remained a significant approach to combat terrorism.

Among the tools developed during the seminar for facilitating Mutual Legal Assistance, include a dedicated website to access regional information on MLA procedures. This will assist officers to weave through the complex web of regional laws to secure evidence from various jurisdictions to bring terrorists to justice. The Emergency Request Form has also been developed to assist in emergencies in the event of an imminent attack.

A Fiche has been developed to provide the domestic legal basis for the use of special investigation techniques by the law enforcement officers in Kenya. The Fiche is a document that will inform requesting states of Kenya's procedures and powers while enabling them to know what they should include in an MLA request.

The establishment of Single Points of Contact (SPOC) will provide a coordinated link between all security and law enforcement agencies in handling counter-terrorism international enquiries. The development of these tools is contained in The Mutual Legal Assistance Act No. 36 of 2011 as critical components in prevention and combating terrorism in Kenya and in the region.

One of the benefits of the MLA Act for many Kenyans families is that family members serving jail terms in foreign countries will soon be repatriated back to the country once the bilateral agreements and treaties with the sentencing countries are put in place. This follows the drafting of the Model Agreement for Negotiation on the Transfer of Prisoners that is expected to be completed before the end of the year. The Model Agreement will form the basis for the implementation or operationalization of the Transfer of Prisoners Act, 2015 that came into effect on 12 October 2015. The Model Agreement will detail out the conditions for transfer of prisoners as well as the eligibility of the transfers to Kenya and from Kenya. It is estimated that close to 3,000 Kenyans are serving jail sentences in various countries with Kenyan prisons holding a similar numbers of foreign nationals.

The actualization of the Transfer of Prisoners Act 2015 is aimed at facilitating the transfer of persons serving sentences for criminal offences committed in Kenya or in countries outside Kenya.

The Model Agreement will however, apply only where an agreement exists between Kenya and another country. The Act is specific that the conditions for transfer can only be made through an application by the two states through the Attorney General or by an application from the Prisoner to the Attorney General for consideration but only if, that person is a national of Kenya.

UNODC Regional Conference Calls for Enhanced Cooperation between Governments in Africa, by I. Agum, N. Korir.

Incoming UNODC Representative for Eastern Africa has cautioned African governments on emerging threats to global security presented by narcoterrorism; terrorist activities funded through narcotic trade. The Representative urged African governments to take a keen interest in the link between health and law enforcement and called for enhanced capacity building for law enforcement officers in the fight against illicit narcotic trade. The UNODC Representative stressed that these officer were constantly inundated by new developments in psychoactive substances that posed a severe health risk than traditional narcotics of heroin and cocaine developed from agricultural material.

Mr. Armando Amadou Philipo, the outgoing UNODC Representative for Central America and the Caribbean spoke on 1st December 2017 at the weeklong Regional Ministerial meeting of the United Nations Office on Drugs and Crime (UNODC) on Drug Problem; Sharing experiences between the Americas, Asia and Africa in Nairobi. He is taking over from Mr. Jose Vila del Castillo, who has been the UNODC Representative for Eastern Africa for the past four years.

Mr. Philipo observed that Africa and the Middle East were at a crossroad because of the threat posed by psychoactive substance/ drug cartels who were funding terror groups in different parts of the world. The new Director General called for a five-prong approach in handling the threat from experience gained with Central America and the Caribbean where drug lords have in the past threatened the integrity of governments.

Increased national coordination on corruption especially on border management was vital in identifying the entry points for the substances and the traffickers. Secondly, African

governments needed to undertake a transnational threat assessment to establish the severity of the operations of transnational organized criminal groups. Improved information sharing between all law enforcement agencies needed to be improved between the different regions. Narco-cartels

Solicitor General Mr. Njee Muturi signs on the Nairobi Declaration on Promoting the Rule of Law and Human Security in Eastern Africa, 2016-2021 on behalf of the Government of Kenya as Mr. Jose Vila del Castillo, the UNODC Representative for Eastern Africa looks on.



operating from Latin America and South East Asia were identified as funding terror groups operating in the Africa and the Middle East such as Al-Shabaab and ISIS. The fourth approach identified was the development of a comprehensive legal framework to suppress the multi-faceted activities of the drug cartels by training prosecutors in the areas of human trafficking, money laundering and illicit movement. Finally, the establishment of a Regional Trustee Fund on asset recovery anchored on legislation would provide required funding for law enforcement, health and education of illicit narcotic trade. The Regional Trustee Fund would be a replicate of a fund operated by the Department of Homeland Security, Customs and Border Protection (CBP) in the USA.

The need for Inter-Regional connectivity according to Mr. Philipo was necessitated by the fact that the fight against illicit narcotic trade was an international affair requiring concerted efforts by all states. He further urged African governments to increase public awareness on human trafficking, smuggling of migrants and associated illegal human organ transplant trade. To support the awareness program, UNODC anticipates launching the Blue Heart Campaign next year where the private

sector will be expected to join the government in tackling illicit narcotic trade.

The Regional Ministerial Meeting on Drugs is part of the UNODC Regional Programme on Promoting the Rule of Law and Human Security in Eastern

Africa for 2016- 2021. The Programme also known as the Nairobi Declaration was signed by Thirteen Eastern Africa governments to reiterate their commitment to enhancing security and justice for all citizens in their respective countries.

More than 30 government delegations and various United Nations bodies witnessed the endorsing of the (UNODC) Regional Programme on in Eastern Africa on the sidelines of the Tokyo International Conference on Development (TICAD) held in August 2016.

The 13 Eastern African signatory States demonstrated their resolve to address pertinent issues on countering transnational organized crime and trafficking such as wildlife crimes, maritime crimes human and drug trafficking. The African governments led by Kenya committed to countering corruption, terrorism prevention, crime prevention and criminal justice as well as the prevention of drug use, treatment and care of drug use disorders including HIV and AIDS Prevention and care.

The UNODC Regional Program for Eastern Africa aims to promote and support effective responses to transnational organized crime and illicit trafficking while strengthening a functional justice system against terrorism to be implemented by member states in

accordance with the Rule of Law. The program contributes to member states meeting the 2030 targets of the Sustainable Development Goals aimed at promoting simultaneously security and development.

Director General of the United Nations Office in Vienna (UNOV), who is also the Executive Director of UNODC, Mr. Yuri Fedotov during the signing ceremony in 2016, stated that persistent threats posed by terrorism greatly contributed to increased incidents of transnational organized crime further complicating the implementation of the rule of law and protection of human life. Comparing the operations of terror groups in the Sahel, Eastern Africa and the Horn of Africa regions, the Executive Director, UNODC observed that the involvement of terrorist organizations in other criminal activities such as drug trafficking, theft, forging of documents, kidnappings, extortion for protection, fraud and financial crimes transformed terrorism into organized crime.

“There is a blurred border with terrorism and organized crime activities where they merge as one. Whether through benefitting from proceeds of organized crime, receiving material and logistical support, or recruiting and exploiting people, terrorist organizations are benefitting from organized crime activities” stated Mr. Fedotov.

In Eastern Africa, there has been an increase in trafficking of components for improvised explosive devices, illicit trade in charcoal and sugar as a means of income for Al Shabaab; trafficking in heroin to

Eastern Africa was reported as benefitting the Taliban while trafficking of illegal immigrants from the Horn of Africa benefited the Islamic State (IS) and Daesh in Libya.

Solicitor General, Mr. Njee Muturi exchange documents on the Nairobi Declaration with the Director General of the United Nations Office in Vienna (UNOV), who is also the Executive Director of UNODC, Mr. Yuri Fedotov.

Kenya’s Solicitor General Mr. Njee Muturi who signed on behalf of the Government of Kenya stated that while piracy had been on the decline, trafficking in persons, smuggling of migrants, drug trafficking, as well as terrorism, was increasingly being detected. These he noted posed significant threats to human security both in the region and beyond. “The initial security threat posed by Somalia-based Al-Shabaab has transcended into a web of regionally located terror cells, with partial alliances to terror groups beyond the region. Heroin trafficking to and through the Eastern African coastal region from South Asia, as well as regional opiate use, have risen in volume with more sizeable maritime cargo seizures. Also, a significant increase in the smuggling of natural resources, such as and charcoal poses alarming risk not only to the environment but to sustainable livelihoods within the region” the Solicitor General observed.

Mr. Muturi further noted that the Government of Kenya had already put in place measures aimed at



curtailing illicit export trade of charcoal and sugar using falsified documentation concealing shipments. Measures too are in place to arrest radicalisation that is being carried out through online platforms while increased surveillance along the coastal strip and on the high seas of the Indian Ocean was leading to the arrest of drug traffickers who have been using dhows, skiffs and cargo vessels.

Justice Ministers and Attorneys General from the Republics of Comoros, Djibouti, Uganda, Ethiopia, Burundi, Tanzania, Madagascar, Somalia, Mauritius, Seychelles, Eritrea, Rwanda and Kenya, signed the 2016 Nairobi Declaration.

The UNODC Regional Program on Promoting the Rule of Law and Human Security in Eastern Africa 2016- 2021 follows an earlier commitment in 2009 by governments of the region to strengthen the partnership and coordination with the aim of contributing to justice, security and health.

Quotable Quotes

It is not wisdom but Authority that makes a law.” Thomas Hobbes.

Distraught, dissatisfied, dejected... these are some of the faces worn by wananchi who walk through the Commission's doors on any given working day. The common phrases stated when they open up "I trusted my advocate to represent me effectively and diligently; I expected my advocate to keep me informed on the development of my case; I trusted my advocate to release my settlement claim upon taking of accounts; I trusted my advocate to remit the purchase price to the vendor and effect the transfer of title..."

The practice of law is a noble profession, where the practitioners are expected to carry themselves with integrity and honesty. An advocate is perceived to be the gatekeeper of justice and must uphold the rule of law, promote the course of justice and maintain a high standard of professional conduct. Having been put on a pedestal, professional misconduct against an advocate leaves the society disappointed.

The Advocates Act (Cap 16 Laws of Kenya) is the regulatory framework governing the disciplinary system of advocates. Section 53 of the Act establishes the Advocates Complaints Commission that is mandated to inquire into complaints against any advocate, firm of advocates or any member or employee thereof. The nature of the complaints are of professional misconduct such as failing to represent the client competently and with diligence, failure to attend court, withholding money collected on behalf of a client, failing to provide the client with a complete account of his monies upon completion of his case; unreasonably failing to keep the client informed of the status of his case, neglecting a client's case, failing to provide information on costs to the client, settling/compromising a client's case without his permission, entering into an invalid fee agreement, overcharging, issuing 'bouncing' cheques(s), dishonestly utilizing client's funds for one's purpose, failing to return/release client's documents/files despite payment of legal fees and conflict of interest.

The Law Society of Kenya Code of Ethics and Conduct for Advocates expounds on actions that amount to professional misconduct.

These acts of professional misconduct form the bulk of complaints received at the Commission.

Submitting a Complaint

The Commission receives complaints by way of a designated form, the Help Form. The Help Form is completed by the person who wishes to lodge a complaint and duly signed. Any person may make a complaint. Other particulars that should accompany the Help Form include copies of any evidence that supports the complaint and a copy of the Identity Card of the person who wishes to lodge a complaint.

The complaint undergoes various stages depending on its nature and substance.

- The review and investigation stage
- The mediation stage
- The prosecutorial stage

The review and investigation stage

The review process involves going through the particulars stated in the Help Form and supporting evidence and making a determination guided by the following. In the event the particulars of the complaint are anything other than acts of professional misconduct against an advocate, the complaint is rejected and the file closed. The complainant is subsequently notified of the rejection of the complaint detailing the reasons and the closure of the file.

On the other hand, if the particulars of the complaint constitute acts of professional misconduct, the investigative process begins. This involves evaluating the evidence submitted. If the evidence presented confirms the complaint, the advocate concerned is notified of the particulars of the complaint and a detailed response setting out the facts surrounding the complaint is sought from him. If there is need for further evidence, enquiries are made by seeking further information from:

- the person making the complaint,
- Third parties who include insurance companies, law firms, the judiciary and other relevant institutions/persons.

The Commission values the collaborative partnership with stakeholders as it aids in the Commission's service delivery and thus improving the advocates' disciplinary process.

Once the investigation is completed, a determination is made as to whether act(s) of professional misconduct have been established or not. If the complaint is not upheld, the person who lodged the complaint is notified, giving reasons why the complaint cannot be sustained and consequently the file is closed. If the complaint is upheld, it proceeds either to the mediation stage or to the prosecutorial stage.

The mediation stage

The complaints are referred to the mediation process where parties to the complaint agree to be subjected to the In- House Dispute Resolution mechanism. The parties set a date to hold the In-House Dispute Resolution session. The parties mutually entering into an agreement determine the complaint. Upon the settlement of the terms of the agreement, the complaint is marked as settled and the file is closed.

During the First Quarter of the Financial Year 2017/2018, the in –House Dispute Resolution mechanism facilitated the settlement of claims amounting to Kshs. 5, 967,553.50. In default of the terms of the agreement, the matter is referred to the prosecutorial stage. The complaints which may be subjected to the in- House Dispute Resolution mechanism, should not be of a serious or aggravated nature.

The prosecutorial stage

This involves the referral of complaints to the Advocates Disciplinary Tribunal for determination. The prosecutors at the Commission prosecute the matter on behalf of the complainants. If a case of professional misconduct on the part of the advocate has been established, the Disciplinary Tribunal may order: that such an advocate be admonished; be suspended from practice for a specified period not exceeding five years; the name of such advocate be struck off the roll; to pay a fine not exceeding one million shillings; to pay the aggrieved person compensation or reimbursement not exceeding five million shilling; or such combination of the above orders as the Tribunal thinks fit. Between July and October this year, Gazette Notice No. 9916 indicates, three advocates were struck off the Roll of Advocates, seven advocates were suspended, twenty-two matters were resolved and eight matters were dismissed.

In instances where an advocate fails to pay the claim as ordered by the Disciplinary Tribunal, the advocate's property is liable for attachment in execution of the debt. Where a complainant is aggrieved by the order of the Disciplinary Tribunal, an application for review of the order may be made. If an advocate is dissatisfied with the Disciplinary Tribunal's determination, the recourse is to the High Court where an appeal may be preferred.

OAG&DOJ PICTORIALS



SWISS AND KENYA: CHINA AND KENYA- MUTUAL LEGAL ASSISTANCE

Quotable Quotes

“The greatest quality is seeking to serve others.” Buddhist Quote.

PUBLIC TRUSTEE

Colonial Era WAKF Commissioners' Act to be amended by H. Ranji

A 1951 piece of legislation that has governed the management and use of properties bequeathed under Islamic law is to be amended after Muslim leaders petitioned the leader of majority in the National Assembly Aden Duale to ensure that the interests of Muslims were protected in accordance with the Constitution.

The leaders from all 47 counties met in October 2017 and stated that the 1951 Wakf Commissioners Act needed to be amended as its status continued to deny Muslims the right to manage property donated for the welfare of the society.

Chairperson of the Wakf Task Force Commission, Professor Hamadi Boga observed that among the changes sought include the introduction of Wakf knowledge in learning institutions. The chair also called for all Islamic teachers and instructors be remunerated by the government as a measure of countering radicalization in the faith.

Majority Leader Aden Duale affirmed his support for the amendment of the Wakf Act observing that the management of Wakf was beneficial to all members of the society and not restricted to Muslim faithful. Mr. Duale emphasized that properly managed; Wakf had the ability of transforming lives while improving the socio-economic development of a country.

"This amendment that was developed by the Office of the Attorney General will be finalized and I will present it to the Parliament as a bill where it will be debated and passed by February 2018," Duale promised the Muslim leaders.

On his part, Attorney General Githu Muigai observed that the Waqf Act represented one of the greatest tenets of Islamic faith that encompassed compassion for others.

"The Wakf Commissioners Act 1951 is an old law that is not in tandem with current Islamic law nor is it aligned to the Constitution. The current Act is a law that was informed by the policies of the colonial era that categorized Kenyans based on race. Similarly, the structure and organization of the Wakf Commissioners of Kenya as is constituted do not meet the expectations of the Muslim Community and the descendants of those who dedicated their properties to Waqf," the Attorney General stated on the need to amend the law.



Wakf according to Islamic law and Section 2 of the Wakf Commissioners Act is a religious, charitable, or benevolent endowment or dedication of any property in accordance with Islamic Law.

The current law that must be changed defines Muslims as Arabs, members of the twelve tribes, a Baluchi, a Somali, a Comoro islander, a Malagasy or a native of Africa of the Muslim faith. This was discrimination by the colonialist and fails to consider the fact that Islam is professed everywhere.

Professor Saad Yahya, a member of the Commission observed that the Waqf endowments ought to be seen as a significant contribution to national wealth and its growth in a compassionate and poor-friendly manner.

"The growth of Islamic Banking and the Shariah-compliant investment market over the last decade augers well for the Waqf sector and there is need to support the work of the Wakf Commission through the adoption of Shariah compliant financing practice," Professor Yahya stated.

Leader of Majority in the National Assembly, Adan Duale, Chairperson of the National Lands Commission, Professor Mohamed Swazuri and Attorney General Githu Muigai listen in during the National Conference on the Review of the Wakf Commissioners of Kenya Act held in October 2017.

In July, the Attorney General received the task force report to review the Wakf Commissioners Act of 1951. The Taskforce was to make recommendations based on international best practices regarding the management and utilization of Wakf properties in line with Islamic law.

Extracts of the review report submitted to the Attorney General indicate that Waqf continues to benefit the wider community in terms of socio-economic status and eradication of poverty. Further, the Waqf sector is modernizing fast hence the need to keep abreast and adapt innovations taking place in finance, information and communications technology. The report notes that highly qualified personnel are needed to manage these processes and systems, and as such, there are calls for competitive benefits in terms of working environments and remuneration for the administrators (Watawali). Administering a Waqf is wealth management in every sense of the word, the only variation being the boundaries imposed by Sharia.

The report observes that the preparation of a Waqf policy ought to be guided by several principles including strict observance of the basic purposes of Waqf as enshrined in Islamic law and be consistent with generally accepted goals of Waqf. These principles include respect for the traditions and customs of the various communities in which Waqf endowments are in use; and ensure that Waqf assets and infrastructure



A communal well used by members of the community (Photo courtesy of Friends of Fort Jesus, Mombasa).

benefit sustainably the designated beneficiaries, be they individuals or groups.

Under Islamic Law, Wakf is regarded as a final gift to charity that a donor (wakif) can no longer claim. It is irrevocable and must be perpetual. A Waqf can be for any purpose that is not repugnant to Shariah. Family Waqfs (Waqf Ahly) are traditionally focused on protecting future generations from destitution and homelessness, while public Waqfs (Waqf Kheir) are dedicated to the public wellbeing managed by financing educational, public health, orphanages and related facilities and their maintenance.

The report finally recommends that unclaimed assets held by the Public Trustee or Unclaimed Assets Authority, which belonged to Muslim, should be transferred to the Waqf Commission.

Factors that led to the diminished role of the Wakf include but are not limited to use of outmoded management approaches inherited from the colonial government and dating back to the early twentieth century; Inadequate records, making it difficult for donor families and potential givers to track income and expenditure flows for each property; failure to gain the support of professionals, business people and thought leaders who had the goodwill and could have helped to move the institution forward. There was also increased misuse and abuse of Waqf properties by tenants, who sublet the properties at a much higher rent without the proprietor's approval, thereby eroding the Commission's revenues, as they no longer had capacity to enforce new lease conditions. This resulted in resentment and little faith among the public in terms of the level of support accorded. The realization that alternative legitimate ways of creating endowments, e.g. through trust legislation compounded to the further decline of

Wakf Commission with the judicial system also being blamed as being unsympathetic to the Waqf cause.



Old houses in Malindi, Kilifi County that have been converted into shops.

The overall effect meant that donors were no longer creating new Wakfs but instead resorted to the Trust Act managed by the Administrator General's Office at the Office of the Attorney General. The report notes that the extremely poor financial situation witnessed in the 1980s enabled greedy investors to take advantage of the situation and acquire prime properties especially at the Coast that had to be leased out to save the properties from the auctioneer's hammer.

Members of the Task Force appointed to review the Wakf Commissioners Act of 1951 by the Attorney General include Prof Hamadi Iddi Boga, Sheikh Juma Ngao, and Nagib Shamsan as Wakf Commissioners. Shariff Hussein Ahmed, Zubeir Noor Hussein, Shiekh Ibrahim Lethome, Shiekh Abdallah Kheir, Professor Saad Yahya, and Dr. Mwanakitini Bakari serve as members while the Chief Kadhi Sheikh Ahmed Muhdhar S. Hussein is an ex officio member of the Commission.

Quotable Quotes

"The safety of the people shall be the highest law." Marcus Tullius Cicero.

Kenya Hosts International Arbitration Conference by B. Kilei

The first International Arbitration Conference in East and Central Africa held in December 2016 witnessed the inauguration of the Nairobi Centre for International Arbitration (NCIA), a center set to transform dispute resolution in the world as Kenya continues to rise as Africa's preferred destination for trade and investment.

President Kenyatta in a speech read on his behalf by Dr. Henry Rotich, the Cabinet Secretary Treasury, noted that dispute resolution mechanisms as enshrined in the Constitution remained a critical component of the economic development agenda that the country and the African continent at large was pursuing.

"Our continent is today witnessing a surge in investments in key economic sectors as it aspires to improve the lives of its people and the continent as a whole. This economic development agenda coupled together with the rule of law, promotion and respect for human rights demands that we as African states review reform and reengineer our legal processes and institutions to serve our people so that we can position them and profile them in line with the current global architecture," the President stated.



Treasury Cabinet Secretary Mr. Henry Rotich at the NCIA Conference (Photo, courtesy of KNA)

Stating that Kenya was a trajectory of reform and development with rapid rise of foreign investments through the Public Private Partnerships in the areas of infrastructure and the extractive industry, President Kenyatta reiterated the need for Africa to embrace alternative dispute resolution mechanisms instead of seeking the court processes as the arbiter of conflicts.

"It is time for Africa to affirm her confidence in our sons and daughters. I urge my fellow statesmen to join me in focusing our energies in building truly afro-centric approaches which we will acknowledge as our own, beginning with disputes within our regions, across regions and with others who choose to work with us as equal partners."

"The inauguration of the Nairobi Centre for International Arbitration (NCIA) today will mark another milestone in a journey to transform the way we do business in Kenya. We are committed to transforming the lives of our people and the realization of the final agenda for Africa's emancipation and rapid sustainable development," President Kenyatta stated.

Present during the ceremony included Nigeria's Minister of Justice and Attorney General, Mr. Abubakar Malami; Tanzania's Chief Justice, Justice Mohamed Othman; President of the East African Court of Justice, Justice Emmanuel Ugirashebuja, Justice Charles Kajimanga of The Supreme Court of Zambia; Justice Justin Sylvain Ore, President of the African Court of Human Rights, Lady

Justice Joyce Aluoch, Vice President of the International Criminal Court at The Hague, Netherlands, as well as Kenya's Attorney General Professor Githu Muigai.

The Chief Justice and President of the Supreme Court, Justice David Maraga raised concerns over the excessive awards being issued by Kenyan courts



noting that this was a disregard of the dispute resolution clause in the contract. He noted there was need for judicial officials to fully embrace alternative dispute resolution as complementing the judicial process.

Noting that the relationship between the courts and arbitration has never been without suspicions, Justice Maraga stated that the tensions were superficial and straddling between support versus intervention. "A supportive Judiciary is perceived as one that keeps an arm's length contact with arbitration proceedings and outcomes. The court comes in as a friend to support the process and enforce the outcome. Any system of adjudication of disputes will be tested on its ability to deliver enforceable outcomes. For the



public justice system, this instrument of enforcement is invested in the court. For arbitration, however, its efficacy depends to a large extent on support from the courts to recognize and enforce awards,” the Chief Justice stated.

Justice Maraga reiterated that commercial justice was integral to the economic development and stability of a country hence the need for African judiciaries to collaborate with the governments in the quest for economic transformation. Embracing of alternative dispute resolution encompassing arbitration, mediation and conciliation processes in the judiciary has seen the Commercial Court Division capacity

of judges rise to six, the piloting of the judiciary audio visual transcription system as well as the launching of the Business Court Users Committee in partnership with the private sector.

CEO of the Dubai International Financial Center, Dr. Andreas Baugmartner exchange documents with the CEO of the Nairobi Center for International Arbitration, Mr. Muiruri. Looking on is Head of International Law Division, Ms. Njeri Wachira.



OAG&DOJ PICTORIALS



Swaziland Government Officials Come for Benchmarking in Kenya. The team toured the Companies, Societies and Marriage Registries to understand the Registration process.



OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

**PRESS STATEMENT ON THE REGISTRATION OF CUSTOMARY
MARRIAGES**

The Office of The Attorney General and Department of Justice gazetted rules for the Registration of Customary Marriages in Kenya under Gazette Notice Number 5345 on 9th June 2017.

The Constitution of Kenya 2010 expressly provides for the protection of the family and equality of marriage. In 2014, parliament enacted the Marriage Act which provides for registration of all systems of marriages, namely: Civil, Christian, Islamic, Hindu and Customary.

The purpose of the rules is to give effect on the equality of status between all systems of marriage and provide for a process of registration of marriages through certificates issued by the Registrar of Marriages.

The requirements for registration of Customary Marriages as per Gazette Notice 5345 are as follows;

- a) Registration of Customary Marriages started on 1st of August 2017;
- b) Parties who are already married under customary law **SHALL ONLY REGISTER THEIR MARRIAGE AND BE FURNISHED WITH A CERTIFICATE.**
- c) Parties who wish to contract Customary Marriages after the commencement date of registration, shall within three (3) months of completion of the relevant customary rites, notify the Registrar, who shall thereafter issue a certificate.
- d) Parties that have contracted **Christian, Civil and Hindu marriages** that are monogamous in nature **ARE NOT ELIGIBLE** for registration under the customary rules.

MARY MUTAARU,
Ag. REGISTRAR OF MARRIAGES
DATED: 4TH AUGUST 2017.

Quotable Quotes

“Unnecessary laws are not good laws, but traps for money.” Thomas Hobbes.

PUBLIC NOTICE ON UNCLAIMED BENEFITS

Family members of the deceased listed are notified to submit their records to the respective Public Trustee county offices for the processing of the Unclaimed Benefits. The names of officers for each region is provided. These will provide guidance to the public.

1. KISII COUNTY

COUNTY CONTACT PERSON: **MS IRENE NYARIKI,**
PRINCIPAL STATE COUNSEL, ATTORNEY GENERAL
BUILDING KISII.

S/NO, FILE NO. NAME OF DECEASED

1. 129/2009 ABEL ONTOMWA NYANGATE
2. 56/2004 ALEX OMOGA OGARO
3. 75/2006 ALFRED OKISE LANGI
4. 510/2004 AUGUSTINUS OMGOMA ODIPO
5. 515/2006 BISMBA NYANGARESI
6. 208/2004 CHARLES AUMA ONGORO
7. 354/2006 CHARLES ODONGO ONYANGO
8. 42/2002 CHARLES OTWORI MOKAYA
9. 99/2007 DANIEL JAKOYO OSIGA
10. 188/2004 DAVID ORONDO OMBONGI
11. 95/2009 DAVID OTIENO OGUTU
12. 357/2006 DISHON NYAGOWA AWUOR
13. 274/2004 EDWARD AWUOR OGARA
14. 618/2006 ELIAS ABUYA AKELLO
15. 96/2011 ELIJAH NYAUNDII ABEL
16. 693/2006 ELIZABETH B. MOGUUNDE
17. 215/2010 EMMANUEL BUNDO AJUOGA
18. 587/2004 ERASTUS ONGAWO NYABULWA
19. 251/2006 EZEKIEL OKIAKA NYANGUTHE
20. 299/2011 FILMER MOIRONGO MAGETO
21. 183/2010 FLORENCE AKINYI DACHE
22. 38/2004 FREDRICK MAYIENDEOMBATI
23. 39/2007 IGNATIUS ONGETA NYAMWEGA
24. 146/2006 JACINTA ATIENO ONGUNDO
25. 364/2006 JACOB CHACHA MWITA
26. 82/2011 JAMES NYAMWEYA MATOKA
27. 518/2007 JAMES O. MOKAYA
28. 418/2006 JAMES ODHIAMBO ODERO
29. 189/2009 JAMES OKONGO OCHOILA
30. 659/2006 JAMES OMARIBA OGEMBO
31. 321/2014 JANICE MOKE MESA
32. 211/2012 JARED MATAGARO MOSE
33. 498/2006 JARED MWITA MAGAIGWA
34. 177/2006 JEMIMAH NYANCHOKA OBARA
35. 92/2004 JENIPHER ATIENO ATHOO

36. 689/2006 JOEL NYAMWAYA MOSOMI
37. 158/2013 JOHN AKUKU OKECH
38. 403/2003 JOHN ANDALA AMUOM
39. 64/2012 JOHN MAGWORA MOMANYI
40. 167/2011 JOHN NORMAN OKAL
41. 214/2012 JOHNSON OUMA ODUOL
42. 79/2006 JORAM ODONGO
43. 213/2006 JOSEPH K. ATANDI
44. 259/2006 JOSEPH LEPARAKOU
OLOLTULET
45. 68/2006 JOSEPH NYAMWEYA ANYANGO
46. 16/2011 MARIKO EMMANUEL ONGECHI
47. 83/2007 MARTHA K. ORIKU
48. 249/2007 MARY MUNGO
49. 209/2012 MATLIDA AKEYO OCHIENG
50. 47/2010 MICHAEL MARIARA OCHOI
51. 573/2008 MICHAEL OUMA OMONDI
52. 493/2010 NAFTAL BIKORO BANCHANI
53. 285/2014 ORIPHA MORAA MIGERE
54. 222/2007 PATRICK NYAMASEGE OMAE
55. 334/2009 PAUL ADEDE OSUOK
56. 89/2006 PAUL INDA OJUONDO
57. 70/2009 PAUL ORENCE MUNYENYE
58. 100/2010 PAUL OTIENO OKELO
59. 299/2007 PAULINE ABUYUI GARIO
60. 227/2004 PETER JUMA NGOMA
61. 719/2006 PETER MAKORI MRAGIA
62. 418/2012 PETER OMOLO WERE
63. 79/2002 PETER ORIANGO MAIKARA
64. 193/2010 PHINEHAS ONYANGO KIUGU
65. 444/2004 RICHARD KIMIBEI KERING
66. 492/2004 ROBBY ODIENY AHAL
67. 415/2006 SABINA KEMUMA ASANYA
68. 322/2012 SAMWEL OTIENO NORMAN
69. 267/2010 TABITHA ATHERO BUNDE
70. 274/2011 THOMAS OKOTH AUKO
71. 347/2011 WASHINGTON OLUOCH
72. 202/2010 WILSON KEBAYA ABUYA
73. 236/2006 YUNIA NYABOKE NTABO
74. 486/2012 YUNIAH MORAA MOBEGI

2. MOMBASA COUNTY

CONTACT PERSON: **MR JEFFERY MALIRO,**
PRINCIPAL STATE COUNSEL, NSSF BUILDING
MOMBASA.

S/NO FILE NO NAME OF DECEASED

1. 24/04 ABDALLA SAID MBARAK
2. 123/2009 ABDI B. OMAR
3. 109/2001 ABDULKADER JUMA
4. 88/05 ABDULKADIR ABDALLA AMAR
5. 127/2007 ABUSHIRY K. THOYA
6. 237/1992 ADAM JILLO SAID
7. 151/2006 ADINAN MOHAMED HERO
8. 382/2000 AGNES MALAU
9. 329/2000 AHMED KITUI KASINGA
10. 01/2000 ALFRED WAFULA SAKULA
11. 354/2000 ALICE WANJIKU KINUTHIA
12. 265/2000 AMINA SALIM MAKOTI
13. 204/90 BARUTI BIN ULEDI
14. 36647 BEATRICE KABIBI CHAI
15. 237/1998 BEATRICE LUSANJI MUTASIA
16. 18/2007 BENJAMIN BERE DHADHO
17. 418/1999 BERNARD A. MWONZI
18. 344/2006 CALEB OGETO MCHEKA
19. 241/2006 CAROLINE AKOTH OCHIENG
20. 428/2000 CHANGAWA FUNDI MAITHA
21. 257/2006 DAVID DUMU CHANDO
22. 97/98 DAVIES RAPHAEL AKAL
23. 145/2005 DORAH KAWIE MKIBO
24. 32/2004 ELIZABETH JUMWA NGAI
25. 204/2000 ENOS OWIYO MPERE
26. 136/2008 EVA KITHUSI DAVID
27. 247/2009 EVANS GIBSON MACHARIA
28. 80/1988 EVANS MANGA KISIVULI
29. 149/2002 FAITH KASHUKE KISOMBE
30. 24/2000 FAKII MWIJUMA MWINYIPEMBE
31. 278/2000 FATUMA MOHAMED KANGA
32. 108/2010 FELIX FULJENCE MAGHANGA MWAKISHA
33. 429/2000 FLORENCE KABIBI EMANUEL
34. 317/003 GERALD DIRIVO AMOS
35. 200/2006 GETRUDE ATIENO OBUDO
36. 167/2000 IDI BWATUMU IDI
37. 36161 ISAAC CHISEMI NGAO
38. 253/2000 JACOB OMA YA ONGAYE
39. 173/2000 JAMES GUMO
40. 238/2000 JAMES SYALA
41. 356/1994 JANE MWENZA MUKOLA
42. 60/2011 JONATHAN MURUU MUMBA
43. 380/2000 JOSEPH CHIGUNDA
44. 294/2000 JOSEPH ERNEST KEREWOI
45. 43/1994 JULIUS OTIENO ODHUL
46. 73/2011 JULIUS SAID KOMBO
47. 101/2008 JUMA ABDALLA MALEVI
48. 190/2008 JUMA HAMISI MAZIMA
49. 312/1999 JUMA KAMBU
50. 122/2009 KARIFAA ABDALLA MWANZIMI
51. 363/2000 KOMBO JAIKOLUOKO MALO
52. 108/1994 LINUS ADINO PASCAL ORINDA
53. 42/2009 LUCY MWAGHA MWAZUGHA
54. 159/2007 LUKOSO MUGALA HABA
55. 136/1990 MAALIM SAID AHMED
56. 136/1990 MAALIM SAID AHMED
57. 273/2009 MARGARET GUDA
58. 33/2007 MARGARET JOHN JAO
59. 002/2009 MARGARET ROCHUS KARISA
60. 405/2000 MATHIAS TOLE MAGANGA
61. 87/1992 MBARUK M. HAMIS
62. 281/2000 MICHAEL LEMASHATE SESEI
63. 298/1998 MOHAMED A. JAMADAR
64. 273/2007 MOHAMED HAMISI NASSORO
65. 262/1991 MOHAMED JUMA BWIKA
66. 297/2000 MOHAMED RASHID MONDOH
67. 99/2008 MTANA WASI ZEGE NGALA
68. 290/04 MUENI MUSILA NDIVO
69. 168/1998 MUSA JOHARI
70. 124/2005 MWANAHAWA RASHID
71. 288/2000 MWANGOME MBUI MWARUMBA
72. 41/2008 NDARO MWANDARO NDARO
73. 112/1994 NZAI KOMBE
74. 122/2000 OMAR GODHANA WARE
75. 433/2000 PATRICK AKURALA KHASIANI
76. 327/1999 PAUL OWINO OTIENO
77. 101/1984 PAUL WAFULA NYUNDO
78. 423/2000 RAJAB SAID KONDE
79. 298/2000 RAMBO JOHN OJWANG ORACHA
80. 177/2007 RENSON S. M. MWACHIKO
81. 25/2007 RIZIKI SAID MANGI
82. 116/2010 RODGERS MWAMBAAO MWANGOLO
83. 291/2000 ROSE NYAMBUCHU OMBATI
84. 291/2000 ROSE NYAMBUCHU OMBATI
85. 304/1990 RUKIA HASSAN ALIAS RUKIA HUSSEIN
86. 249/2000 SAIDA KHAMISI MOHAMED
87. 95/2004 SALIM KIBWANA ATHMAN
88. 338/1998 SAMSON MWASEZI MWAKUGHU
89. 72/1998 SAMUEL NDICHU MUCHERU

90. 362/2000 STEPHEN MILIMU NAMUSENDE
 91. 53/1992 SULEIMAN M. MWACHIBAKO
 92. 253/1994 SYLVESTER J. MAKHANU
 93. 168/2002 TISIANA GATUMU
 94. 37438 VERONICA A. AWEKA

3. KAKAMEGA COUNTY

CONTACT PERSON:

S/NO FILE NO NAME OF DECEASED

P/NO	NAME OF DECEASED
1	317/93 A. B. MAKOKHA
2	253/96 ABDALLA OMWAYO
3	616/93 ALFAYO WAWWIRE MUSEE
4	487/93 ALFRED ANDAYI ODERA
5	699/04 ALFRED ODHIAMBO MUNIAFU
6	61/93 ANTHONY S. MUTSWENJE
7	686/93 ANZU J. OSONGO
8	368/93 BENJAMIN MATENDE ETWASI
9	493/93 BENJAMIN SAKWA
10	591/93 BOAZ O. WASIKE
11	463/93 BULUMA BULUMA
12	469/93 CELESTINE NYONGESA OMORO
13	346/93 DANIEL ESTIKA OKOKO
14	562/93 DANIEL K. MAKARI
15	546/93 DISHON A. LOTOKHO
16	97/93 DOMIANO MWANZA ZINZOLE
17	285/93 ELIFANSI MAHERO MARUNGU
18	129/95 ERNEST CHUMA OKOK
19	383/93 ESAU MUTENDO
20	404/93 FARIDA A. INDECHE
21	582/93 FRANCIS E. KARANI
22	48/93 FRANCIS KIBWONI ONYANGO
23	258/93 FREDRICK S. OCHARA
24	208/93 GABRIEL OMUNYOLO WAFULA
25	622/93 HENRY I. MUKUNGU
26	118/93 HENRY MULENGA IMBOKU

27	682/93 HUDSON SASAKA WACHILONGA
28	239/93 HUSSEIN W. TWOLI
29	645/93 J. O. OREMBE
30	337/93 JAMES O. ONDEKO
31	281/93 JAMES OKELO NDUNDE
32	558/93 JASON WEKULO W
33	571/93 JOHN DESMOND OFUULA
34	338/93 JOHN EKESA MANGOTE
35	220/93 JOHN N. ANDE MANJIA
36	77/93 JOHSTONE ASWAN ANYANJE
37	160/93 JOICE TABIA MBATI
38	549/93 JOSEPH M. KIPCHANGA
39	235/93 JOSEPH TANGALI MUKOYA
40	519/93 JOSEPHAT MUSAMALI
41	359/93 JOSHUA MURABULA
42	169/93 JOSHUA WASWA WAKHUNU
43	198/93 JULIUS WABWILE
44	114/93 LAWRENCE KISAME
45	350/93 LENYA N. MARKOS
46	300/14 MARGARET SAJIDA SHIDOLE
47	353/93 MARIA A. BOYI
48	377/93 MARY MAKOKHA
49	363/93 MATAYO NYAPOLA NANJENDO
50	316/93 MATHIAS N. MARAKALU
51	156/93 MICHAEL M. SINZOLE
52	557/93 MIRIMO MUSI
53	59/93 MOSES ANYANGU MUNALLAH
54	687/93 NELSON MASUNGO
55	255/93 NICODEMUS W. MWENJE
56	528/93 NYANDO W. NYANDO
57	62/93 OBONYO M. MUNYENDO
58	679/93 OKIYA M. OMATTA
59	153/93 OPUNGA HENRY SASALA MUKANGAI
60	444/93 OSEN M. OKOTE
61	608/93 OTIANGA O. OBARA
62	22/93 PATRICIA MARY ANNE AMALEMBA
63	367/93 PATRICK O. ATSULU
64	473/93 PAUL WERIA CHISUNU
65	19/93 PETER NAMUKURU WERE
66	110/93 PETER W. MUNJALI
67	278/93 RAJAB L. MASIBO

68 132/93 RAMADHAN M. MUKABI
 69 611/93 RASTO MAMBA KHALAYI
 70 667/93 RHODAH WECHESIA
 OKETCH
 71 508/93 SALOME W. MACHU
 72 442/93 SELPHAN N. OFWERA
 73 55/93 SILAS M. SHITANDI
 74 207/93 TABITHA INYAMBULA
 KHASIANI

75 660/93 THOMAS MUSAMBI
 NANDWA
 76 445/93 WAKHANU MURUNGA
 NGILANDEYI
 77 16/93 WANZA SABA
 78 80/93 WICLIFFE TIBWA
 79 33/93 WILSON OMUGA ETUASI
 80 360/93 YUSUF OBULIALIA ANALANJE

Overview of the Functions of the Public Trustee/ Administrator

General by Sarah M Ranji.

The Public Trustee Vision is to be the Trustee of choice through service excellence and our mission is to provide efficient and professional legal services in the administration of estates and Trusts.

Mandate of the Department

- i. Administration of estates of deceased persons under the Public Trustee Act Cap 168 and Law of Succession Act (Cap 160)
- ii. Administration of trusts for minors and persons living with mental disability under the Public Trustee Act Cap 168 and the Trustee Act (Cap 167)
- iii. Administration of Civil Servants Group Accident Policy funds/ insurance proceeds under Work Injury Benefits Act (Cap 236)
- iv. Acting as custodian trustee over property owned by public schools, colleges and other public institutions under the Public Trustee Act (Cap 168)
- v. Performing the duties of the Estate Duty Commissioner under the Estate Duty Act (Cap 483)
- vi. Custodianship of Enemy

Property under the Enemy Property Act.

The process of administration of estates by the Public Trustee:

A report of death is made to the Public Trustee by

- a. Heirs
- b. Employers
- c. Anybody having an interest in an estate of a deceased person such as debtor or creditor
- d. Appointment of Public Trustee by a testator under a will as Executor
- e. Through a Court Order.

The report must declare all the assets and liabilities of the deceased e.g., land, money in banks, shares, motor vehicles and debts accompanied by documentary evidence thereof.

1. Ascertainment of heirs through the County/Deputy County Commissioner
2. Obtaining consent from all the adult heirs
3. Advertisement of the estate in the Kenya Gazette for Notice of Claims for 30 days
4. Calling in of the assets
5. Ascertainment and settlement of liabilities

The estate is then administered either;

1. Under Summary Administration if the gross value of the estate is below Kshs. 500,000/=

OR

1. By petitioning the Court for a Grant of Letters of Administration if the gross value is above Ksh.500,000/=

If Certificate of Summary Administration is issued, signed and sealed by the Public Trustee and the estate is distributed in accordance with the law;

- i. A Petition is filed in court, the matter is advertised in the Kenya Gazette for objections and a Grant of Letters of Administration is issued
- ii. After the expiry of a statutory period of 6 months, an application for confirmation of grant is filed and heard by the court
- iii. A certificate of Confirmation of Grant is issued
- iv. Transfer of movable and immovable assets is done
- v. Distribution of assets and funds is done
- vi. Accounts are passed in Court
- vii. File is closed

Administration of Trusts

The Public Trustee administers the following trusts:

- Trusts for minors and persons living with mental disability
- Acts as Custodian Trustee for public schools, colleges and other public

institutions

- Charitable Trusts
- Wakf Trusts

Process of Administration of Trusts.

A trust file is opened;

The Public Trustee executes a Trust Deed and administers the trust estate until;

- a. A minor attains the age of majority
- b. A person living with mental disability gets well or dies or
- c. Otherwise directed by a court of law.

Administration of Civil Service Group Accident Policy funds/ insurance proceeds under Work Injury Benefits Act (Cap 236)

- These are payments made to dependents of a deceased person and does not form part of the estate
- The funds are therefore not subjected to the rigors of the Law of Succession Act (Cap 160)

Role of the County/Deputy County Commissioners

The County /Deputy County Commissioners are *ex-officio* agents of the Public Trustee in their respective jurisdictions.

They are mandated to administer an estate whose gross value does not exceed Kshs. 100,000/= in counties/Sub Counties where the Public Trustee does not have offices. This mandate is given under rules 16 and 25 of the Public Trustee Rules.

Regional Presence

The Department has established (12) Regional Offices in Nyeri, Embu, Machakos, Kisii, Nakuru, Eldoret, Kakamega, Kisumu, Mombasa, Garissa, Malindi and Meru.

REGIONAL OFFICES AND SERVICES OFFERED

In line with Article 6(3) of the Constitution, the Office of the Attorney General and Department of Justice has decentralized its services to the regional offices. The same has enhanced efficiency and service delivery.

The following are the regional offices and contacts:

WESTERN REGION

Kisumu County (Civil Litigation, Public Trustee and Registrar General)

AG's Chambers, Haki House, 1st Floor

Ms. Janet Langat (regional Head- 0722 736461)

Kisii County (Civil Litigation, Public Trustee and Registrar General)

AG's Chambers,

Ms. Irene Nyariki (0721-558697)

Kakamega County (Civil Litigation, Public Trustee and Registrar General)

AG's Chambers, P.C's Building, Block A, 2nd Floor

Mr. Maroro (0722-345471)

RIFT VALLEY REGION

Nakuru County (Civil Litigation, Public Trustee and Registrar General)

AG's Chambers, Rift Valley Provincial Headquarters, 1st Floor

Mr. Vincent Wahoro (Regional Head- 0797 725733)

Uasin Gishu (Eldoret) County (Civil, Public Trustee & Registrar General)

AG's Chambers, KVDA Building, 9th Floor

Mr. Vincent Wahoro (Regional Head- 0797 725733)

EASTERN REGION

Machakos County (Public Trustee and Registrar General)

AG's Chambers,

Ms. Maureen Nyabochwa (Regional Head- 0711 777933)

Embu County (Civil Litigation, Public Trustee and Registrar General)

AG's Chambers, Labour Building

Ms. Margret Njoroge (Regional Head- 0722 432346)

Meru County (Civil Litigation, Public Trustee and Registrar General)

AG's Chambers, Miringa Mieru Building

Ms. Janet Kungu (Regional Head- 0722 805171)

Garissa County (Public Trustee)

Hillaac Centre, 1st Floor (between National and Co-operative Banks)

Mr. Canain Miyogo (Regional Head- 0722 906653, 020-8001834)

COAST REGION:

Mombasa County (Civil Litigation, Public Trustee and Registrar General)

AG's Chambers, NSSF Building, 9th Floor

Mr. Muiruri (Regional Head- 0735475483)

Kilifi County (Civil Litigation and Public Trustee),

AG's Chambers, Malindi Complex, 1st Floor

Mr. Kennedy Odhiambo (Regional Head- 0724501887)

CENTRAL REGION

Nyeri County (Civil, Public Trustee and Registrar General)

AG's Chambers, PC's Office, Block A,

Mr. Phillip Cheruyoit (Regional Head- 0710 460574)

Kenya Copyright Board (KECOBO)

Is established under the Copyright Act, 2001 (Cap 130). Its mandate is the overall administration and enforcement of copyright and related rights in Kenya. Its mission is to promote the growth of creative industries through effective administration and enforcement of copyright for socio-economic development in Kenya.

National Crime Research Centre (NCRC)

Is established by the National Crime Research Centre Act, 2012. Its mandate is to carry out research into the causes and prevention of crimes, undertake study on efficacy and adequacy of policies, procedures, systems in the criminal justice system; to disseminate research findings, provide crime statistics and advisory services to National Council for Administration of Justice; and make recommendations to institutions that the Council may from time to time determine for appropriate action.

Kenya School of Law (KSL)

Is established by the Kenya School of Law Act, No. 26 of 2012 to provide legal education and professional training as an agent of the Government and specifically to train persons to be advocates under the Advocates Act, provide continuous professional development for all cadres of legal profession, provide paralegal training, develop curricular and training manuals, undertake research and offer consultancy services.

Council of Legal Education (CLE)

Is a public body corporate established under the Legal Education Act No. 27 of 2012 with the mandate to promote legal education and training. The Council licenses legal education providers; harmonizes Legal Education programs; Recognizes and approve qualifications obtained outside Kenya for purpose of admission to the roll of Advocates, administer Bar Examination as prescribed under section 13 of Advocates Act and advice Government on Legal Education and Training.

Nairobi Centre for International Arbitration (NCIA)

Is established under the Nairobi Centre for International Arbitration Act (No. 26 of 2013). Its mandate is to promote international commercial arbitration in Kenya and the use of other alternative disputes resolution (ADR) mechanisms through administration and training so as to enhance the ease of doing business through enforcement of contracts.

Kenya Law Reform Commission (KLRC)

Is established by the Kenya Law Reform Commission Act, 2013 with the mandate to keep under review all laws and recommend reform(s) to ensure conformity to the letter and spirit of the Constitution; to provide advice, technical assistance and information to the National and County Government legislation; formulate by means of draft Bills or otherwise,

proposals for reform of National or County legislation; and to advise National and County Governments on the review and reform of their legislation.

Assets Recovery Agency (ARA)

Is established under the Proceeds of Crime and Anti-Money Laundering Act, Cap 59 B of the Laws of Kenya and is one of the principal institutions within the criminal justice system implementing the Anti Money Laundering and Counter Financing of Terrorism (AML/CFT) framework in Kenya. Its principal mandate is identification, tracing, freezing, seizing and confiscation of all proceeds of crime. The Agency is an integral institution against money laundering, terrorist financing and transnational organized crime.

Victim Protection Board (VPB)

Is established vide the Victim Protection Act, 2014 and mandated to advise the Cabinet secretary on inter-agency activities aimed at protecting victims of crime and the implementation of preventive, protective and rehabilitative programs for victims of crime.

National Anti-Corruption Campaign Steering Committee (NACCSC)

Is established under the State Law Office and Department of Justice vide gazette notice No. 6707 dated 19 September 2014 mandated to undertake a nationwide public education sensitization and awareness creation campaign aimed at effecting fundamental changes in the behavior, attitudes, practices and culture of Kenyans towards corruption.

Business Registration Service (BRS)

Is established under the Business Registration Service Act, No. 15 of 2015. It is responsible for the general implementation of policies, laws and other matters relating to the registration of companies, partnership and firms, individuals and corporations carrying on business under a business name, bankruptcy, hire purchase and chattels transfers.

National Legal Aid Service (NLAS)

The National Steering Committee (NSC) for the National Legal Aid and Awareness Programme (NALEAP) with the mandate to facilitate access to justice for all and create an enabling environment for the establishment of a national legal aid scheme in Kenya was established through Gazette Notice No. 11589 of 2007. The Programme transitioned to the National Legal Aid Service under the Legal Aid Act, No.6 of 2016, in 10 May 2016. Its mandate is to provide and fund legal aid services in Kenya through a Legal Aid Fund; establish and administer a national legal aid scheme; encourage and facilitate the settlement of disputes through alternative dispute resolution, provide an oversight over legal aid providers and facilitate access to justice to all.