

2024

COMMON AFRICAN POSITION ON ASSET RECOVERY

IMPLEMENTATION IN KENYA

TRANSPARENCY
INTERNATIONAL KENYA

COMMUNITY INITIATIVE
ACTION GROUP KENYA

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CAPAR Implementation in 2024

A pilot CSO assessment of the implementation of the Common African Position on Asset Recovery in 2024

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Methodology initially developed by CiFAR – Civil Forum for Asset Recovery and reviewed and revised by CiFAR, Transparency International and all piloting civil society organisations.

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ABBREVIATIONS

ARA	Asset Recovery Agency
AUCPCC	African Union Convention on Preventing and Combating Corruption
CAPAR	Common African Position on Asset Recovery
CSO	Civil Society Organization
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FRC	Financial Reporting Centre
KRA	Kenya Revenue Authority
MLA	Mutual Legal Assistance
PEP	Politically Exposed Person
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act
UNCAC	United Nations Convention Against Corruption

METHODOLOGY

This report is a civil society organisation (CSO) assessment of the extent to which the recommendations of the Common African Position on Asset Recovery (CAPAR) have been implemented in the country. This was undertaken through the piloting of an assessment tool carried out between November 2023 and March 2024. This tool was subject to revision through a research meeting in April 2024.

This tool is a way to assess government implementation of CAPAR commitments and as a basis to advocate for reform. It contains four different fields:

- **Recommendation:** The recommendations are derived from the four pillars of CAPAR. These recommendations have been carefully selected based on their appropriateness and measurability in assessing a country's asset recovery framework. They each correspond to a recommendation set out in the CAPAR and can therefore be directly linked to a commitment made by an African Union Member State
- **Indicator:** The indicators used in the assessment are derived from the sub-components of the CAPAR recommendations. These indicators address three key aspects: the existence or presence of certain elements, the specific provisions or elements included, and the extent or coverage of those provisions in the national asset recovery frameworks.
- **Ratings:** The ratings provided for each indicator are categorized into three levels: No, Somewhat, and Yes. By evaluating and measuring the options of "No/Somewhat/Yes," it becomes possible to assess the effectiveness of a country's asset recovery framework. These ratings help identify areas where improvements can be made.
- **Justification for the rating:** Alongside assigning a rating to each indicator, the rating is substantiated by information to support the assigned rating. The information offers credible evidence and reasoning that supports the given rating. The basis for the information provided ranged from credible sources and public information, to consultations with experts and government officials.

	Yes
	Somewhat
	No

The report is laid out across several sections:

- The summary provides an overall explanation of the results of this assessment and a summary graph showing overall progress in implementing the CAPAR.
- It is followed by the individual assessment of each Pillar and indicators within that Pillar.
- Each of the four Pillars includes a summary of the results of that pillar, with a graph indicating scores by Pillar. Each indicator is then included with the findings of that indicator and a justification of how that finding was reached.

CSOs are essential for the implementation of CAPAR through providing oversight on the in-country implementation of CAPAR and providing recommendations for reform. This includes by:

- **Raising Awareness and Promoting Recommendations:** engaging with the public and stakeholders via the media, in meetings, and in forums to increase awareness about CAPAR and its recommendations.
- **Assessing Government Commitment Implementation:** evaluating the level of commitment implementation by governments, pinpointing gaps and offering inputs for improvement.
- **Advocating for Reforms:** championing necessary reforms in asset recovery legislation, institutions, and practices to align with CAPAR recommendations.

SUMMARY

This report assesses Kenya's progress in implementing the Common African Position on Asset Recovery (CAPAR), which is a political commitment by African governments adopted in February 2020 in the framework of the African Union to promote effective and efficient asset recovery. The focus is on four key pillars: detection and identification of assets, recovery and return of assets, management of recovered assets, and cooperation and partnerships.

This report assesses the extent to which Kenya has effectively implemented the CAPAR and the steps still needed to have a strong asset recovery system in place. The findings indicate that while Kenya has made significant strides in establishing legal frameworks and institutions for asset recovery, challenges remain in effectively implementing these measures.

Main findings:

- **Pillar 1:** Although Kenya has a foundational legal framework for asset detection and identification, the effectiveness of these measures is compromised by limited accessibility, transparency issues, and insufficient institutional capacity.
- **Pillar 2:** The absence of a comprehensive national asset recovery strategy results in fragmented recovery efforts and a lack of coordination among agencies.
- **Pillar 3:** Despite efforts being made to recover assets, gaps in transparency, public engagement, and comprehensive policies undermine the trust and effectiveness of asset management efforts.
- **Pillar 4:** Kenya's frameworks for cooperation and partnerships are in place but are hampered by limited capacity, selective information sharing, and inadequate stakeholder engagement.

Overall, the findings of the report suggest that while Kenya has established a strong legal foundation for asset recovery, significant improvements are needed in transparency, coordination, capacity building, and public engagement to ensure the effective implementation of CAPAR commitments.



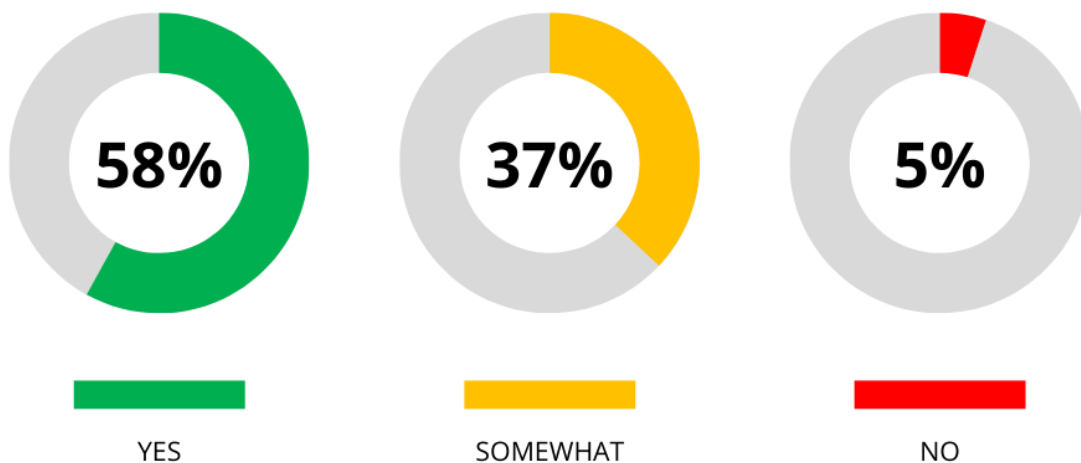
PILLAR 1: DETECTION AND IDENTIFICATION OF ASSETS

OVERVIEW

This pillar focuses on strengthening the mechanisms for detecting and identifying illicit assets, both domestically and internationally. The findings highlight Kenya's existing legal framework, such as the Public Officers Ethics Act of 2003 and the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) of 2009, which mandate public officials and financial institutions to declare assets and conduct due diligence. Despite these legal provisions, the implementation of these laws is inconsistent. Asset records of public officials are only accessible to a limited audience, and information on beneficial ownership is not publicly available. This limits transparency and hampers the effective tracking of illicit financial flows.

While some agencies like the Asset Recovery Agency (ARA) are empowered to track assets across borders, they often face capacity challenges, including inadequate financing and human resources. Additionally, there is a lack of a robust framework for the exchange of information between agencies and across jurisdictions. The Financial Reporting Centre (FRC), while legally equipped to handle suspicious transaction reports (STRs), also faces similar capacity constraints.

Thus, while Kenya has established a foundational legal framework for asset detection and identification, the actual effectiveness of these measures is somewhat compromised by limited accessibility, transparency issues, and insufficient institutional capacity.



4.1.1. STRENGTHENING DOMESTIC AND REGIONAL SYSTEMS

A) Enhancing existing laws and making new laws, where there is deficiency, to allow for the transparency and accessibility of records of assets of public officials

Indicator i) Is there a law requiring public officials to record their assets publicly?

	A law exists clearly requiring public officials to publicly record their assets. The law applies to all public officials or at least all those in decision making or other positions of authority.
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Justification for the rating

Section 26 (1) of the Public Officer Ethics Act mandates that every public officer, their spouse(s), and dependent children under the age of 18 must submit a declaration of their income, assets, and liabilities. The act does not however specify that these declarations must be made 'public', meaning they are submitted to a responsible commission rather than made directly accessible to the public.¹

ii) Does the law require regular updates to these asset records?

	Laws require regular updates to public officials' recorded assets. This is at a minimum annually.
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Justification for the rating

Section 27 (1) of the Public Officer Ethics Act specifies that public officers must submit these declarations every two years. The Act mandates regular updates to asset declarations by public officials to reflect changes accurately. These updates are required biennially (December of the second year), which is less frequent than annually but still ensures periodic reporting.²

iii) Is information on the record of assets of public officials easily accessible?

	Information is accessible to select institutions or individuals, but not available to the general public or available but not in a form that is easily accessible to the general public.
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Justification for the rating

Access to the asset records of public officials is limited. It is available to select institutions or individuals who can demonstrate a legitimate interest, but it is not readily accessible to the general public under Section 30 (1) of the

¹ The Public Officer Ethics Act, 2003. <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PublicOfficerEthicsAct.pdf>

² The Public Officer Ethics Act, 2003. <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PublicOfficerEthicsAct.pdf>

Public Officer Ethics Act. The Act further outlines that information obtained should not be published or made public without prior written authority, indicating limited accessibility.³

C) Encouraging and domestically enforcing transparency and accountability of financial institutions and the financial services sector to address and curb areas of complicity in illicit financial flows and the illicit consignment of African assets to foreign jurisdictions

i) Is there a legal requirement for financial institutions to conduct comprehensive Customer Due Diligence (CDD) on their customers?

There are laws in place that require financial institutions to conduct CDD on their customers.

Justification for the rating

Under the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA), financial institutions, including banks, are mandated to implement robust Know Your Customer (KYC) procedures, which include conducting CDD. These procedures are designed to verify the identity of customers, assess the nature of their business, and understand the source of their funds.⁴

Additionally, regulations issued by the Central Bank of Kenya provide specific requirements and guidelines for financial institutions to follow in conducting CDD.⁵

ii) Is there a legal requirement for financial institutions to maintain up-to-date customer information through Know Your Customer (KYC) procedures?

There are laws in place that require financial institutions to maintain up-to-date customer information through KYC procedures.

Justification for the rating

POCAMLA, 2009 and its accompanying regulations mandate financial institutions to implement robust KYC procedures as part of their anti-money laundering (AML) and counter-terrorist financing (CTF) efforts. These KYC procedures require financial institutions to collect and verify customer information, including identity, address, occupation, and source of funds. Additionally, financial institutions are required to regularly update this information to ensure its accuracy and relevance.⁶

³ Ibid,

⁴ The Proceeds of Crime and Anti-Money Laundering Act, 2009. <https://assetsrecovery.go.ke/wp-content/uploads/2022/06/ProceedsofCrimeandAnti-MoneyLaunderingAct-9-of-2009.pdf>

⁵ Central Bank of Kenya (2013). Prudential Guidelines <https://www.centralbank.go.ke/wp-content/uploads/2016/08/PRUDENTIAL-GUIDELINES.pdf>

⁶ The Proceeds of Crime and Anti-Money Laundering Act, 2009

Regulatory authorities, such as the Central Bank of Kenya and the Financial Reporting Centre, provide guidance and oversight to ensure that financial institutions comply with KYC requirements effectively. Non-compliance with these requirements can result in severe penalties, including fines, regulatory sanctions, and reputational damage. Hence, financial institutions in Kenya typically prioritize the implementation and maintenance of robust KYC procedures to adhere to regulatory standards and safeguard the integrity of the financial system. Financial institutions are also required to keep records for up to 5 years upon termination of client relationship.

iii) Are financial institutions legally required to report suspicious transactions to the appropriate authorities within a specified timeframe?

Financial institutions are legally obligated to provide STRs within a specified timeframe.

Justification for the rating

Financial institutions must report suspicious transactions to authorities within a set timeframe. POCAMLA mandates institutions to detect and report such transactions to the Financial Reporting Centre (FRC). The AML/CFT (Amendment) Act 2023 specifies a two-day reporting window after the suspicion arose.⁷

iv) Does the legal framework require the financial institution to conduct Enhanced Due Diligence (EDD) on high-risk customers or transactions?

There is a legal framework that provides for the requirement for financial institutions to conduct EDD on high-risk customers.

Justification for the rating

POCAMLA and its accompanying regulations outline the obligation for financial institutions to implement risk-based approaches to customer due diligence (CDD), which includes the identification and mitigation of higher-risk customers and transactions.

Under this framework, financial institutions are required to assess the risk associated with each customer and transaction to determine the appropriate level of due diligence to apply. Customers or transactions deemed to pose a higher risk of money laundering or terrorist financing require enhanced scrutiny, which may involve additional verification steps, more extensive documentation requirements, and ongoing monitoring.⁸

v) Are financial institutions required by law to identify and monitor Politically Exposed Persons (PEPs)?

There are comprehensive legal requirements for financial institutions to identify and monitor PEPs.

⁷ The Proceeds of Crime and Anti-Money Laundering Act, 2009

⁸ Ibid,

Justification for the rating

The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) of 2009 and its accompanying regulations mandate financial institutions to implement measures to identify and monitor PEPs as part of their anti-money laundering (AML) and counter-terrorist financing (CTF) efforts.⁹

Financial institutions are required to have procedures in place to identify PEPs among their customers and to subject them to enhanced due diligence (EDD). This may involve obtaining additional information about the source of funds, assessing the nature of the business relationship, and conducting ongoing monitoring of transactions. However, there is no register for PEPs so the measures applied by institutions might not be robust since there is no fall-back database for verification of PEP status. Therefore, Kenya should develop and regularly update the PEP database.

4.1.3 STRENGTHENING AND ENHANCING EXISTING BODIES AND INSTITUTIONS

A) Enhancing the effectiveness of domestic, regional, and global financial institutions, revenue collection authorities, financial intelligence centers (FICs) and units, through reform of laws and mandates as well as advocacy

i) Are specific agencies designated to facilitate existing frameworks of cooperation and enable effective detection and identification and tracking of assets across borders?

Agencies are clearly designated and empowered to facilitate networks of cooperation and to enable effective detection and identification and tracking of assets.

Justification for the rating

The Asset Recovery Agency (ARA) is mandated under Section 54 of POCAMLA to carry out functions in Part VII and XII, which include tracing, identifying, managing and recovering proceeds of crime.¹⁰ The ARA works in collaboration with various domestic and international agencies to facilitate the detection and tracking of assets across borders. Domestically, it collaborates with law enforcement agencies such as the Directorate of Criminal Investigations (DCI), the Ethics and Anti-Corruption Commission (EACC), and the Office of the Director of Public Prosecutions (ODPP).

Additionally, the EACC under the Anti-Corruption and Economic Crimes Act (ACECA), 2003, Part VI is empowered to investigate and recover the proceeds of corruption.¹¹ Part V, section 24 of the Mutual Legal Assistance Act, 2011 provides for measures for asset recovery through international co-operation and the relevant competent authorities in Kenya that should handle requests.¹²

⁹ Ibid,

¹⁰ The Proceeds of Crime and Anti-Money Laundering Act, 2009

¹¹ Anti-Corruption and Economic Crimes Act, 2003 <https://eacc.go.ke/default/wp-content/uploads/2018/06/aceca.pdf>

¹² Mutual Legal Assistance Act, 2011

<http://kenyalaw.org:8181/exist/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/M/Mutual%20Legal%20Assistance%20Act%20-%20No.%2036%20of%202011/docs/MutualLegalAssistanceAct36of2011.pdf>

KRA has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a framework via which KRA is obliged on exchange of information matters. The KRA also undertakes MLA requests for tax-related matters. Internationally, the ARA cooperates with foreign counterparts, including other asset recovery agencies, law enforcement agencies, and international organizations, through mutual legal assistance treaties (MLATs), international agreements, and other forms of cooperation mechanism.

Additionally, Kenya is a member of regional and international bodies, such as the Eastern Africa Association of Anti-Corruption Authorities (EAACA), Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA), the East African Community (EAC), the United Nations Office on Drugs and Crime (UNODC), and the Financial Action Task Force (FATF). Participation in these organizations facilitates cooperation and exchange of best practices in asset recovery and anti-corruption efforts at the regional and global levels.

ii) Does the FIU have a legal framework or guidelines to facilitate the exchange of reporting of suspicious activity (for spontaneous dissemination and dissemination upon request)?

There is framework or guideline to facilitate the exchange of STRs and is being utilised.

Justification for the rating

The Financial Reporting Centre (FRC) in Kenya serves as the Financial Intelligence Unit (FIU) and has a legal framework and guidelines to facilitate the exchange of reports on suspicious activity. POCAMLA which establishes the FRC, under section 23 (2) provides the legal basis for the exchange of financial intelligence related to suspicious transactions.¹³

Under section 44 (2) of POCAMLA, financial institutions are required to report suspicious transactions to the FRC, and the FRC is empowered to receive, analyse, and disseminate financial intelligence to relevant authorities. This includes the spontaneous dissemination of information when the FRC identifies suspicious activity during its analysis.¹⁴

Additionally, the FRC has established guidelines and procedures for the exchange of information with domestic and international counterparts. These guidelines outline the process for requesting and providing financial intelligence, the safeguards to protect the confidentiality and privacy of the information exchanged, and the criteria for determining the relevance and priority of requests.

Furthermore, Kenya is a member of the Egmont Group, an international network of FIUs, which facilitates cooperation and information exchange among FIUs worldwide. Through the Egmont Group, the FRC can access a secure platform for sharing financial intelligence with FIUs in other jurisdictions, enhancing its ability to combat money laundering and terrorist financing across borders.

¹³ The Proceeds of Crime and Anti-Money Laundering Act, 2009

¹⁴ Ibid,

iii) Does the FIU have capacities (financing, human resources, and systems) to guarantee the exchange of information?

The FIU have limited capacity to guarantee exchange of information.

Justification for the rating

The FRC has been making efforts to enhance its capacities, however, challenges still exist, such as the need for ongoing training and skill development, ensuring adequate resources for technology upgrades, and addressing gaps in staffing or expertise. However, the FRC's commitment to strengthening its capacities demonstrates its dedication to facilitating the exchange of information and combating financial crimes effectively. The FRC applied to be a member of EGMONT, which was finally approved in the last Egmont plenary and, it is expected that soon, FRC will be part of Egmont which will greatly boost the institutional capacity of the FRC in exchange of information matters.¹⁵

iv) Are there any significant legal restrictions to responding to mutual legal assistance requests (i.e., banking secrecy; restrictions related to the nature or status of the requesting counterpart, or on the sole grounds of fiscal matters, among others)?

Several restrictions in responding to MLA requests exist.

Justification for the rating

Section 10 and 11 of the Mutual Legal Assistance Act outline grounds for the execution of a postponement of the execution of a request and grounds for refusal respectively. This may present some restrictions and limit the exchange of information.¹⁶

v) Is there a mechanism to facilitate the exchange of information between tax authorities and foreign counterparts (i.e., the OECD tax information exchange)?

There are comprehensive mechanisms to facilitate the exchange of information between tax authorities and foreign counterparts.

Justification for the rating

Kenya has mechanisms in place to facilitate the exchange of information between tax authorities and foreign counterparts, including participation in the OECD tax information exchange initiatives. One significant mechanism for this exchange is the Convention on Mutual Administrative Assistance in Tax Matters. Kenya is a signatory to

¹⁵ EGMONT is indicated as one of FRCs partners in its website <https://www.frc.go.ke/>

¹⁶ Mutual Legal Assistance Act, 2011

this convention, which provides a framework for international cooperation in tax matters, including the exchange of information between tax authorities of different countries.

Additionally, Kenya has committed to implementing the Common Reporting Standard (CRS), developed by the OECD, which facilitates the automatic exchange of financial account information between jurisdictions. Under CRS, financial institutions in participating countries are required to collect and report information on foreign account holders to their respective tax authorities, which are then exchanged with the tax authorities of other participating jurisdictions.¹⁷

vi) Do the agencies designated to facilitate cooperation and tracking of assets across borders have capacity (financing, human resources, and systems) to guarantee their mandate?

The agencies mandated to facilitate cooperation and tracking of assets across borders have limited capacity.

Justification for the rating

The capacity of agencies designated to facilitate cooperation and tracking of assets across borders in Kenya, such as the ARA and the FRC, depends on various factors, including financing, human resources, and systems.

The government allocates budgets to these agencies to support their operations, including staffing, training, technology, and other resources necessary for asset recovery and financial intelligence activities. However, the availability of funding may vary over time and may impact the agencies' ability to carry out their functions optimally.¹⁸

While efforts are made to strengthen the capacity of these agencies, challenges still exist, such as resource constraints, staffing shortages, technological limitations, and the complexity of transnational financial crime investigations.¹⁹

¹⁷ Deloitte (n.d). Kenya makes strides towards enhancement of tax transparency.

<https://www.deloitte.com/ke/en/services/tax/services/kenya-makes-strides-towards-enhancement-of-tax-transparency-by-f.html>

¹⁸ Office of the Auditor General has various audited reports on the ARA's funding allocation expenditure and resources <https://www.oagkenya.go.ke/?s=Assets+Recovery+Agency+>

¹⁹ Report of the Auditor General on FRC for the year ended 30 June 2021. <https://www.treasury.go.ke/wp-content/uploads/2023/06/Financial-Reporting-Centre.pdf>

B) Encouraging multi-institutional cooperation and strategies to ensure the effective detection and identification and tracking of African assets across multiple jurisdictions

i) Are relevant agencies adequately resourced to facilitate existing frameworks of cooperation and enable effective detection and identification and tracking of assets across borders?

	Relevant agencies have the resources to perform some of these tasks but not all.
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Justification for the rating

While efforts are being made to adequately resource these agencies, challenges such as resource constraints, competing priorities, and evolving threats impact their capacity to fully address the issues at hand. Continuous evaluation and enhancement of resources, as well as collaboration with stakeholders, including international partners, are essential for strengthening the effectiveness of these agencies in facilitating cooperation and combating cross-border financial crimes.

4.1.4 ENCOURAGING AND ADVOCATING FOR TRANSPARENCY

A) Simplifying the ability of source and destination countries to identify suspicious activities, wealth and transactions by: a) encouraging transparency and accessibility of information regarding remuneration of public officials in order to empower source and destination countries to easily conduct lifestyle audits of suspected officials

i) Is the remuneration of public officials (either specific or in bands) publicly available and accessible?

	Information is available but is not up to date or published regularly or easily accessible for members of the public or not available for all public officials or only covers part of their overall remuneration.
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Justification for the rating

Article 230 (4) of the Constitution of Kenya, 2010 (4), gives powers and functions of the Salaries and Remuneration Commission to;²⁰

²⁰ Constitution of Kenya, 2010. Article 230. <https://www.klrc.go.ke/index.php/constitution-of-kenya/153-chapter-twelve-public-finance/part-7-financial-officers-and-institutions/399-230-salaries-and-remuneration-commission>

- (a) set and regularly review the remuneration and benefits of all State officers; and
- (b) advise the national and county governments on the remuneration and benefits of all other public officers.

The remuneration of public officials is generally public information but accessing it may not always be straightforward. Salaries and allowances for specific public officials, particularly high-ranking government officials, are typically determined by legislation, government policies, or guidelines set by relevant authorities.²¹

B) Simplifying the ability of source and destination countries to identify suspicious activities, wealth and transactions by: b) Signing onto global standards for transparency, particularly as an aid to developing taxation and legal systems to assist in responding to globalization and the behaviour of private sector actors and multi- national companies

i) Is the country a signatory or does it adhere to global standards such as the Extractive Industries Transparency Initiative (EITI), Exchange of Information on Request (EOIR), or Global Reporting Initiative (GRI)?

	Proclamations made or expressed intention to sign, but formal signing pending. Kenya is a party to some but not all relevant instruments.
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Justification for the rating

Kenya is not currently a signatory to the Extractive Industries Transparency Initiative (EITI). As of now, Kenya has shown interest in the EITI but has not officially committed to its implementation.²²

Regarding the Exchange of Information on Request (EOIR), Kenya adheres to the global standards set by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Kenya has undergone peer reviews and committed to improving its transparency and information exchange practices.²³

For the Global Reporting Initiative (GRI), while Kenya does not have a national mandate to follow GRI standards, several Kenyan companies, especially in the private sector, voluntarily adopt GRI standards for sustainability reporting to enhance transparency and accountability.

²¹ Transparency International Kenya Memorandum On the Proposed Third Remuneration And Benefits Review Cycle 2021/2022-2024/2025 For State Officers And All Other Public Officers By The Salaries And Remuneration Commission (2023). <https://tikenya.org/wp-content/uploads/2023/07/TI-Kenya-Memorandum-on-SRC-Salary-Review.pdf>

²² Kariuki Muigua (2019). *Promoting Open and Accountable Management of Extractives in Kenya: Implementing the Extractives Industries Transparency Initiative*. <https://kmco.co.ke/wp-content/uploads/2019/08/Implementing-the-Extractives-Industries-Transparency-Initiative-in-Kenya-Kariuki-Muigua-15th-August-2019.pdf>

²³ OECD (2024), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Kenya 2024 (Second Round, Combined Review): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, <https://doi.org/10.1787/348052b1-en>.

C) Simplifying the ability of source and destination countries to identify suspicious activities, wealth and transactions by: c) ensuring the creation of domestic beneficial ownership registers or other measures to encourage transparency regarding ownership

i) Is there a legal framework requiring the disclosure of beneficial ownership information?

	A law specifically addressing the disclosure of beneficial ownership information exists and is being implemented.
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Justification for the rating

Kenya has a legal framework requiring the disclosure of beneficial ownership information. This requirement is primarily outlined in the Companies Act, 2015.²⁴

Section 93A mandates that companies maintain a register of beneficial owners. It requires companies to identify and record individuals who have significant control over the company, either directly or indirectly.

Section 93B provides the details on the content that must be included in the register of beneficial owners, such as names, identification numbers, nationality, date of birth, and the nature of control or ownership.

Section 93D requires companies to submit beneficial ownership information to the Registrar of Companies. The information must be kept up-to-date, and companies are obligated to notify the Registrar of any changes in beneficial ownership

ii) Are beneficial ownership registers publicly available and accessible?

	Beneficial ownership registers are not accessible to the public.
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Justification for the rating

Beneficial ownership registers in Kenya are not publicly available and accessible to everyone. Instead, they are maintained by the companies themselves and made available to competent authorities for regulatory and law enforcement purposes upon request.

Companies (Beneficial Ownership Information) Regulations, 2020, were established under the Companies Act, 2015. Outlined under regulation 10 is that the register of beneficial owners is not publicly accessible. Instead, the information is made available to;²⁵

- i. The Registrar of Companies

²⁴ The Companies Act, 2015.
http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2015/TheCompaniesAct_No17of2015_RevisedCompressed.pdf

²⁵ The Companies (Beneficial Ownership Information) Regulations, 2020
https://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN12_2020.pdf

ii. Competent authorities (such as regulatory and law enforcement bodies)

The disclosure to these entities is generally for purposes such as investigations, regulatory compliance, and the enforcement of laws.

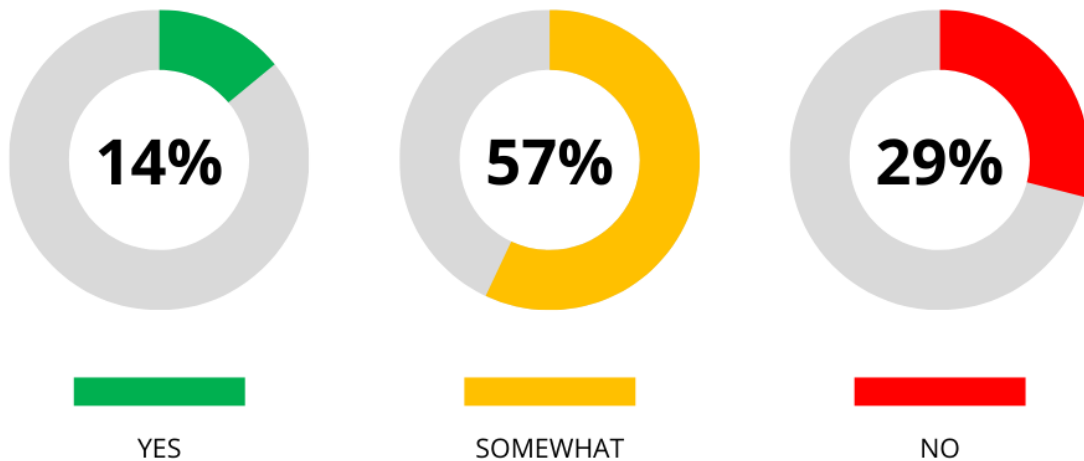
Regulation 11 further clarifies that the beneficial ownership information is not to be disclosed to the general public. The intention is to protect sensitive information while still allowing access to authorities who may need it for legitimate purposes.

PILLAR 2: RECOVERY AND RETURN OF ASSETS

OVERVIEW

Pillar 2 addresses the recovery and return of stolen assets, focusing on the legal and institutional frameworks that facilitate these processes. The assessment reveals that Kenya lacks a comprehensive national asset recovery strategy, which affects the coherence and effectiveness of recovery efforts. The Asset Recovery Agency (ARA) and the Ethics and Anti-Corruption Commission (EACC) have been identified as the primary agencies responsible for asset recovery, but there is ambiguity regarding their respective roles and coordination mechanisms, which has led to inefficiencies.

Kenya has been proactive in cross-border recovery efforts, evidenced by agreements such as the Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK) with Switzerland, the UK, and Jersey. However, despite these efforts, there is still a need for a unified national strategy and better coordination among various institutions involved in the asset recovery process. Advocacy initiatives align with regional focuses prescribed by CAPAR, yet the practical implementation of these efforts remains fragmented due to resource constraints and a lack of clear policy guidelines on asset utilization.



4.2.1 PRIORITIZING THE RECOVERY OF AFRICAN ASSETS

A) Implementing strategies to ensure the simplification of technical and legal processes involved in asset recovery

i) Does the country have an asset recovery strategy?

	No asset recovery strategy in place.
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Justification for the rating

The National Ethics and Anti-Corruption Policy provides a section that covers asset recovery, policy issues, policy statements and interventions.²⁶ However, there is no standalone national asset recovery strategy.

ii) Is there an agency designated and/or plan in place for ensuring that the strategy is implemented?

	No designated agency or plan for strategy implementation.
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Justification for the rating

There is no standalone asset recovery strategy in place however the agencies that exist such as ARA and EACC implement provisions provided for in existing laws.

C) Advocating for the advancement of global financial architecture, to gear it to aid the recovery of African assets; D) Advocating for destination countries to remove barriers to asset recovery and return, including by simplifying their legal procedures and preventing abuse of those procedures

i) Has the country engaged in advocacy initiatives in the past three years targeting the global financial architecture or destination countries in order to remove barriers to asset recovery and return?

	There has been engagement in advocacy targeted at the global financial architecture or destination countries to address barriers to asset recovery and return however the engagements have not been extensive.
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²⁶ Office of the Attorney General and Department of Justice. *National Ethics And Anti-Corruption Policy*. Sessional Paper No. 2 of 2018. P. 27-28 <https://repository.kippra.or.ke/bitstream/handle/123456789/4228/ANTI-CORRUPTION-POLICY-2020.pdf?sequence=1&isAllowed=y>

Justification for the rating

The Kenyan government has been involved in cross-border asset freezing, confiscating, and returning corruptly acquired assets.

Notably, international cases often begin due to the proactivity of the countries holding stolen Kenyan assets. For instance, the return of USD 349,057 followed a successful case against the company Smith & Ouzman in the UK for bribery, even though no convictions had been handed down in Kenya.²⁷

The Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK) is an agreement signed by Kenya, Switzerland, the United Kingdom, and Jersey. It aims to enhance asset recovery efforts.²⁸

ii) To what extent have these advocacy initiatives been in line with the regional focus prescribed by CAPAR?

	The advocacy initiatives have partially been in line with CAPAR.
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Justification for the rating

Kenya's advocacy initiatives align with CAPAR's regional focus by actively engaging in cross-border asset recovery efforts. International cases often initiate due to proactive countries holding stolen Kenyan assets, as seen in the successful return of USD 349,057 from the UK. The Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK) enhances asset recovery efforts by involving Kenya, Switzerland, the UK, and Jersey.²⁹

4.2.2 STRENGTHENING LEGAL AND FINANCIAL INSTITUTIONS TO AID THE PROCESS OF ASSET RECOVERY

A) Establishing appropriate institutions at a domestic and regional level for the recovery of African assets and strengthening existing domestic or regional institutions for recovery of African assets through enhanced capacity

i) Are there agencies in place mandated to pursue the recovery of stolen assets?

	Agency or agencies with clear legal mandates for asset recovery and clear delineation of roles exists.
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²⁷ CiFAR (2022). Asset Recovery in Kenya. P.12 <https://cifar.eu/wp-content/uploads/2022/10/Asset-Recovery-in-Kenya-2.pdf>

²⁸ Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK). Agreement between Government of Kenya, and Swiss Federal Council, and Government of the United Kingdom and Government of Jersey.

²⁹ CiFAR (2022). Asset Recovery in Kenya. P.12

Justification for the rating

The ARA is mandated under Section 54 of POCAMLA to carry out functions in Part VII and XII, which include tracing, identifying, managing and recovering proceeds of crime.³⁰ The ARA works in collaboration with various domestic and international agencies to facilitate the detection and tracking of assets across borders. Additionally, the EACC under ACECA Part VI can investigate and recover proceeds of corruption.³¹

ii) Do the institutions in place have capacity (financing, human resources, and systems) to guarantee efficient asset recovery?

Capacity exists in one or two key areas but is lacking in other areas.

Justification for the rating

The capacity of agencies designated to facilitate cooperation and tracking of assets across borders in Kenya, such as the ARA and the Financial Reporting Centre (FRC), depends on various factors, including financing, human resources, and systems.

The government allocates budgets to these agencies to support their operations, including staffing, training, technology, and other resources necessary for asset recovery and financial intelligence activities. However, the availability of funding varies over time and impacts the agencies' ability to carry out their functions optimally.

While efforts are made to strengthen the capacity of these agencies, challenges may still exist, such as resource constraints, staffing shortages, technological limitations, and the complexity of transnational financial crime investigations.

iii) Is there effective coordination and collaboration among the institutions mandated with anticorruption and asset recovery interventions?

Institutions work together in certain situations. There are policies or legal requirements regarding collaboration but they leave room for ambiguity and/or are incomplete. For example, there is a clearing or collaborating platform (multistakeholder engagement platform) but it is informal.

Justification for the rating

The multi-agency team in Kenya, composed of the ARA, DCI, EACC, and ODPP, plays a critical role in combating corruption, economic crimes, and other serious criminal activities.

These agencies work collaboratively within the framework of domestic laws, international agreements, and mutual legal assistance mechanisms to facilitate cooperation and enhance the effectiveness of efforts to detect, identify, and track assets across borders.

³⁰ The Proceeds of Crime and Anti-Money Laundering Act, 2009

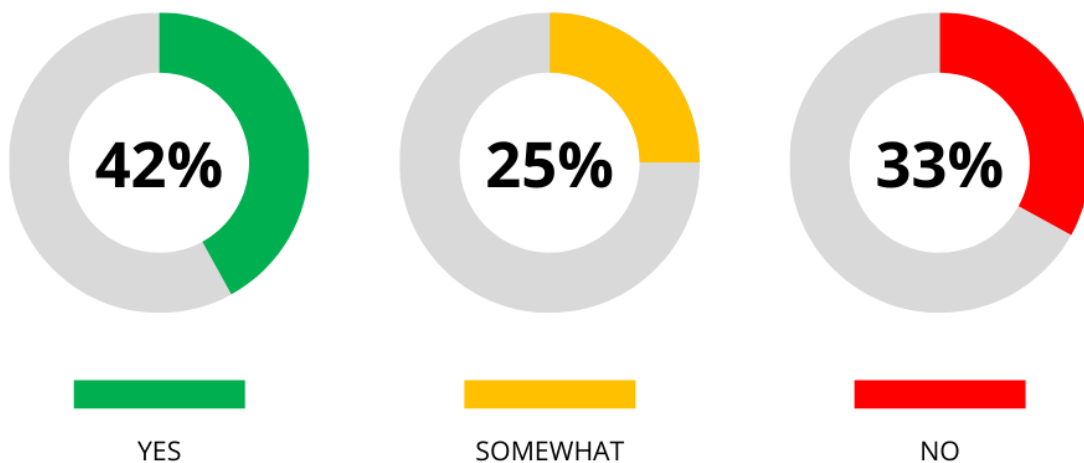
³¹ Anti-Corruption and Economic Crimes Act, 2003

PILLAR 3: MANAGEMENT OF RECOVERED ASSETS

OVERVIEW

The third pillar focuses on the management of recovered assets to ensure they are utilized effectively and transparently. Kenya has a legal framework in place, notably through the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) of 2009, which mandates the Asset Recovery Agency (ARA) to oversee the management and disposal of recovered assets. However, the report indicates that while there are frameworks and institutions responsible for managing recovered assets, there are gaps in transparency and accountability. Regular public reporting on seized and confiscated assets is not mandated, and there is no comprehensive policy guiding the use of returned assets for development or social investment projects.

Furthermore, the management of recovered assets suffers from inadequate public engagement and limited monitoring by civil society organizations (CSOs), media, and other stakeholders. The absence of clear and accessible records on recovered assets and a lack of a robust framework for stakeholder participation undermine trust and public confidence in the asset recovery process. Thus, while there is a framework in place, its effectiveness is limited by a lack of comprehensive policies and transparency measures.



4.3.1 CREATING AND MAINTAINING AN AGREED FRAMEWORK FOR MANAGEMENT OF RECOVERED ASSETS

A) Preserve the value of seized and confiscated assets for the benefit of the source countries, B) Ensure accountability, transparency and boost public confidence in the asset recovery process

i) Is there a framework in place for the management of recovered assets?

A framework for managing recovered assets exists and covers all kinds of recovery and all forms of asset.

Justification for the rating

Kenya has a framework in place for the management of recovered assets. Asset Recovery Agency is primarily responsible for managing recovered assets obtained through corruption, economic crimes, and other illicit activities. The ARA oversees the proper administration and disposal of these assets in accordance with relevant laws and regulations.

The POCAMLA provides legal provisions for the management of recovered assets in Kenya. The Act outlines procedures for the forfeiture, confiscation, and disposal of assets obtained through unlawful activities. It also establishes the Criminal Asset Recovery Fund (CARF) under section 109, which serves as a repository for recovered assets and facilitates their management and utilization for designated purposes. In addition, both the EACC and ARA have internal policies on asset management and disposal and the accompanying manuals to implement the institutional policies.³²

ii) Does the framework make specific provision for measures to preserve the value of seized and confiscated assets?

Comprehensive provisions for preserving asset value exist and in practice assets can be managed in a way that preserves their value.

Justification for the rating

The ARA, under section 111 and 112 of the POCAMLA and complemented by the Proceeds of Crime and Anti-money Laundering (Criminal Assets Recovery Fund) Regulations, 2023, is responsible for implementing measures to safeguard and maintain the value of recovered assets. The framework includes specific provisions and measures aimed at preserving the value of seized and confiscated assets, ensuring that recovered assets are managed effectively and utilized for legitimate purposes in the public interest. EACC and ARA's internal policies on asset management and disposal and the accompanying manuals to implement the institutional policies have measures for preservation of value.

³² CiFAR (2024). Asset Management in Kenya. P. 19-21 <https://cifar.eu/wp-content/uploads/2024/06/Asset-Management-in-Kenya.pdf>

iii) Does the framework require regular, public and accessible reporting on assets seized and confiscated?

	Reporting obligations exist but do not require regular, public or accessible reporting on assets seized or confiscated. Regular means at least once per year.
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Justification for the rating

Under the POCAMLA read to the regulations on CARF, the ARA is required to provide regular reports of assets. The EACC has a similar mandate, however, EACC has seen its reports presented to parliament as per the requirements. It is not clear who ARA should report to.

iv) Does the country provide regular publicly accessible reports on returned assets?

	Reports are prepared and shared with select institutions i.e Parliament and/or are public but limited in information and/or are published with significant delays.
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Justification for the rating

Kenya hasn't consistently provided regular reports specifically dedicated to returned assets. While efforts have been made to enhance transparency and accountability in asset recovery and management, including provisions for reporting on seized and confiscated assets, reporting on returned assets may be less frequent or standardized. An example is with the EACC reporting to the Justice and Legal Affairs Committee (JLAC): although they have to be summoned by the parliamentary committee it is rather not regularly.

4.3.2 ENHANCING OR CREATING INSTITUTIONAL, LEGAL OR POLICY FRAMEWORKS

A) Establishing a recovered asset management agency or designation of an existing entity for management of returned assets with clear administrative powers and responsibilities for transparency and accountability

i) Is there an institution(s) or agency mandated to manage recovered assets? Or have alternative arrangements been put in place (e.g. asset managers)?

	Designated institution mandated for asset management with a clear mandate exists.
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Justification for the rating

The primary institution mandated to manage recovered assets is the ARA. The Asset Recovery Agency (ARA) is mandated under Section 54 of POCAMLA to carry out functions in Part VII and XII, which include tracing, identifying, managing and recovering proceeds of crime.

ii) Does the designated institution or agency have clear administrative powers?

	Clear administrative powers are outlined that establish how the agency should manage recovered assets.
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Justification for the rating

The designated institution, the ARA, has clear administrative powers outlined in POCAMLA. The Asset Recovery Agency (ARA) is mandated under Section 54 of POCAMLA to carry out functions in Part VII and XII, which include tracing, identifying, managing and recovering proceeds of crime. Under section 111 POCAMLA gives a mandate to ARA to administer CARF.³³

iii) Does the designated institution or agency have requirements to ensure transparency and accountability in its actions towards the general public?

	The institution(s) or agency(s) have some obligations to report but these are only indirect (e.g. to parliamentary committees) and/or do not specify the form of reporting and/or do not require detailed disclosure of their activities.
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Justification for the rating

The ARA under the Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023, has specific requirements to ensure transparency and accountability in its actions towards the general public. Section 13 of the regulations mandates that the agency must maintain accurate records of all its transactions and make periodic reports available to the relevant oversight bodies. Additionally, Section 15 requires the agency to publish annual reports detailing the fund's performance, including the assets recovered and how they were utilized. These measures are aimed at promoting public confidence and ensuring that the agency's actions are subject to public scrutiny.³⁴

B) Creating or establishing, in accordance with domestic laws, a central returned asset account in local and designated foreign currencies**i) Is there a central account or fund for recovered assets?**

	Established central account or fund for recovered assets exists and is implemented.
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³³ The Proceeds of Crime and Anti-Money Laundering Act, 2009

³⁴ Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023.

Justification for the rating

The Criminal Assets Recovery Fund is managed by the Asset Recovery Agency (ARA) and is designated for specific purposes outlined in POCAMLA.

ii) Are records on recovered assets in the central account or fund published and publicly accessible?

	Records not published or accessible.
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Justification for the rating

Records on recovered assets are not always consistently published and publicly accessible.

C) Codifying or adopting domestic and regional policies on use of returned assets for development, meeting sustainable development goals or implementing any other social investment projects as deemed fit by the Member State

i) Is there policy on how recovered assets are to be used and who they are to benefit?

	No policy on asset utilization and beneficiaries exists.
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Justification for the rating

There is no clear policy on how recovered assets are to be used and who they are to benefit. However, there are certain provisions in the CARF regulations that outline the utilization of Recovered Assets;³⁵

- CARF regulations require that the utilization of recovered assets be transparent and aligned with national priorities.
- The funds recovered and placed in CARF are to be used for purposes such as supporting law enforcement agencies, strengthening the justice system, and other initiatives deemed necessary by the government.
- There is a focus on ensuring that recovered assets contribute to development goals, including social investment projects.

³⁵ Proceeds of Crime and Anti-Money Laundering (Criminal Assets Recovery Fund) Regulations, 2023.

ii) Does this policy require that returned funds are used for development, meeting sustainable development goals or implementing any other social investment projects?

No requirements for specific fund allocation.

Justification for the rating

There are provisions on allocation of funds in the CARF regulations and they outline the following.

- The allocation of funds from CARF to various sectors, with a priority on projects that enhance governance, accountability, and development.
- The National Treasury, in consultation with relevant stakeholders, determines how the funds are allocated and utilized.
- There are provisions to ensure that the funds are used efficiently and for the intended purposes.

4.3.3 IMPLEMENTING STRATEGIES TO ENHANCE TRANSPARENCY IN THE MANAGEMENT OF RECOVERED ASSETS

A) Permitting monitoring the use of recovered assets by interested and relevant stakeholders, at their cost and in accordance with domestic laws

i) Is there a framework or provision in the existing policy that provides for the participation/involvement of citizens, media, private sector and CSOs in monitoring the use of recovered assets?

No framework for inclusion and participation.

Justification for the rating

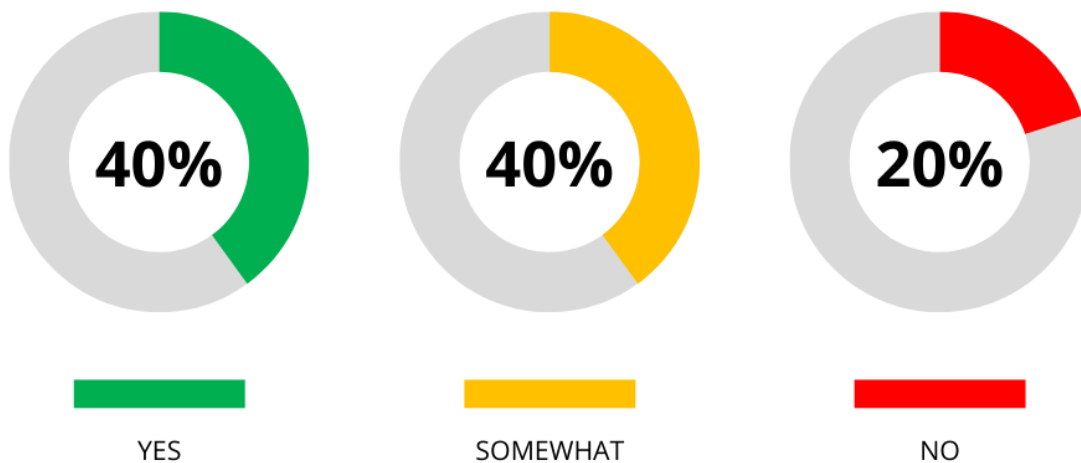
The current policies primarily focus on the recovery of assets and do not provide clear mechanisms for public or stakeholder involvement in the monitoring and transparency of how these assets are utilized.

PILLAR 4: COOPERATION AND PARTNERSHIPS

OVERVIEW

The fourth pillar emphasizes the importance of cooperation and partnerships at domestic, regional, and global levels to enhance asset recovery efforts. The report notes that Kenya has mechanisms in place to promote cooperation among various agencies, including participation in regional networks like the Asset Recovery Interagency Network - East Africa (ARIN-EA). However, there are challenges related to limited capacity and selective information sharing. The mechanisms for involving CSOs and the media in accountability processes are inadequate, and there is no established framework for whistleblower protection, which hampers public engagement and transparency.

Additionally, while Kenya has participated in several international agreements and regional networks to enhance asset recovery efforts, the practical coordination between domestic agencies remains insufficient. The FRACCK initiative and participation in networks like ARIN-EA illustrate Kenya's commitment to enhancing cooperation, but gaps in resource allocation and strategic coordination persist. Thus, while there are frameworks for cooperation and partnerships, their effectiveness is limited by inconsistent implementation and inadequate capacity.



4.4.1 PRIORITIZING COOPERATION AND PARTNERSHIPS THROUGH ADVOCACY AND ENGAGEMENT

A) Ensuring greater involvement of civil society and the media in accountability processes, in accordance with domestic laws, and enhanced international coordination and cooperation in this area

i) Is there a mechanism or channel for provision of information to CSOs and the media?

	There is a mechanism or channel for information sharing but it is selective or limited or irregular.
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Justification for the rating

There are mechanisms for civil society organizations (CSOs) and the media to access information on recovered assets. These include public reports, official websites, press releases, stakeholder events, and access to Information requests, promoting transparency and accountability in asset recovery and management. There is however a gap when it comes to the frequency and scope of information shared.

ii) Is there an accountability mechanism for whistleblowers, citizens, CSOs and the media to raise concerns over misappropriation and other misuse of returned funds?

	No channels for reporting concerns or seeking redress exist.
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Justification for the rating

There have been attempts at drafts of a whistleblower protection bill however they have not been successful at being tabled by parliament and assented to, so they can become acts of law.

4.4.2 ENHANCING COHERENCE AND COOPERATION BETWEEN DOMESTIC, REGIONAL AND GLOBAL SYSTEMS, FRAMEWORKS AND INSTITUTIONS

A) Encouraging and ensuring institutional, domestic, regional and global cooperation by: a) Ensuring that agencies and government departments are working together towards the goal of efficient and effective asset recovery, through information sharing and combatting corruption

i) Are the various asset recovery agencies mandated or able to become a member of/or participate in regional networks, such as ARIN- EA, ARIN-SA, ARIN-WA?

	Agencies are empowered to and do participate in regional asset recovery networks.
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Justification for the rating

The agencies mandated to undertake asset recovery in Kenya often participate in regional networks such as ARIN-EA (Asset Recovery Interagency Network - Eastern Africa) as well as ARIN-SA (Asset Recovery Interagency Network – Southern Africa) to which Kenya is also a member.³⁶ These networks facilitate collaboration, information sharing, and joint efforts among regional counterparts to enhance asset recovery initiatives and combat transnational financial crimes effectively.

iv) Is there a strategy in place and implemented for coordination between various institutions, bodies and agencies responsible for asset recovery?

	A strategy is in place but has only limited adoption or implementation or only coordinates between some relevant institutions, bodies and agencies.
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Justification for the rating

There is no strategy, however there are various national, regional and global arrangements. At a national level, the Multi-Agency Team (MAT) is one such arrangement. At a global level, the FRACCK (Framework for the Return of Assets from Corruption and Crime in Kenya) is a multilateral initiative led by the Kenyan government in collaboration with partners from the UK, Switzerland, and Jersey. It commits to principles aimed at enhancing asset recovery.

³⁶ <https://www.eaaaca.com/about-arinea>

v) Are there policy, and legal frameworks facilitating mutual legal assistance (MLA) in corruption cases published and accessible?

A comprehensive law or regulation exists and is published, a guide for other interested states in how this works in the country is published and both are easily accessible.

Justification for the rating

There are, laws, regulations, and guides related to mutual legal assistance in corruption cases are indeed published and accessible. The Mutual Legal Assistance Act of 2011 provides a framework for mutual legal assistance to be given and received by Kenya in investigations, prosecutions, and judicial proceedings related to criminal matters.³⁷

³⁷ Mutual Legal Assistance Act, 2011

<http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/M/Mutual%20Legal%20Assistance%20Act%20-%20No.%2036%20of%202011/docs/MutualLegalAssistanceAct36of2011.pdf>

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