

# Asset Recovery Successes and Challenges:

## The Framework for the Return of Assets from Corruption and Crime in Kenya

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# Outline



1. About Jersey
2. Case study
3. FRACCK
  - a. Principles
  - b. Processes
4. Lessons learned

# About Jersey



45 square miles in size



Population of around 107,000



British Crown Dependency



Agriculture, tourism and finance

Located near France, in the Bay of St Malo



# Jersey and asset recovery



## Legal framework

- Proceeds of Crime Law 1999
- Corruption Law 2006
- Money Laundering Order 2008
- Civil Asset Recovery (International Cooperation) Law 2007
- Proceeds of Crime (Enforcement of Confiscations Orders) Regulations 2008

## Institutions

- Jersey Financial Crime Strategy Group
- Jersey Financial Crime Unit
- Civil Asset Recovery Fund
- Criminal Offences Confiscation Fund

## Treaties

- UNCAC extended to Jersey in 2009
- Camden Asset Recovery Interagency Network (CARIN)
- EGMONT
- Core donor of the International Centre for Asset Recovery (ICAR)



# States of Jersey Police

IN AN EMERGEN

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## How can we help you?

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REPORT SOMETHING » LOST PROPERTY » FOUND PROPERTY »

## Financial Crime (JFCU)

The Joint Financial Crimes Unit's (JFCU) main purpose is to combat economic crime, including fraud, money laundering and terrorist financing.

The JFCU has three functions:

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## International mutual legal assistance (Law Office

- On this page:
- [Requests for mutual legal assistance](#)
  - [Guidelines](#)

### Requests for mutual legal assistance

The Law Officers' Department is the central authority for requests for mutual legal assistance, including requests made under the various Hague Conventions, such as the service of documents in civil and matrimonial cases.

Such requests should be addressed to HM Attorney General in the first instance and we will then arrange for service to be effected and a certificate of service returned to the requesting party.


Contact the Practice Manager if you need more help on approaching the department for advice (tel: [+44 \(0\) 1534 441444](tel:+44(0)1534441444)).

### Guidelines

The Attorney General has issued general guidance to investigatory authorities in other jurisdictions who require mutual legal assistance in their own investigations.

#### Guidelines In English

The mutual legal assistance guidelines, in English, can be downloaded below.

 [Mutual legal assistance guidelines 2017 \(English\)](#)

# Case study – Windward Trading Limited



- **May 2002** – SAR filed by trust company to Jersey Police
- **August 2003** – Notice issued under Investigation of Fraud (Jersey) Law 1990
- **2007** – Jersey Attorney General initiates domestic investigation of Gichuru and Okemo for money laundering offences leading to request for extradition
- **2007–2015** – Legal proceedings ongoing, but subject to significant delay. As a result, the Jersey AG subsequently instructs his team to charge Windward Trading (corporate entity) with several counts of money laundering
- **February 2016** – Windward Trading pleads guilty to four counts of money laundering. Jersey Royal Court subsequently confiscates assets totalling £3.6m
- **March 2017** – Preliminary Asset Sharing Agreement signed
- **December 2018** – Jersey adds signature to the FRACCK, and concludes bilateral MOU on Financial Cooperation with Kenya

# Evolution of the FRACCK

*Timeline*



**2016**

## **Smith & Ouzman**

*The UK returns £345,000 to Kenya for the purchase of ambulances through Crown Agents.*

**2017**

## **Preliminary Asset Sharing Agreement**

*Signed by Jersey and Kenya, committed to the return of £3 million.*

**2018**

## **FRACCK signature**

*Switzerland, the UK and Jersey sign the FRACCK text with Kenya.*

**2019**

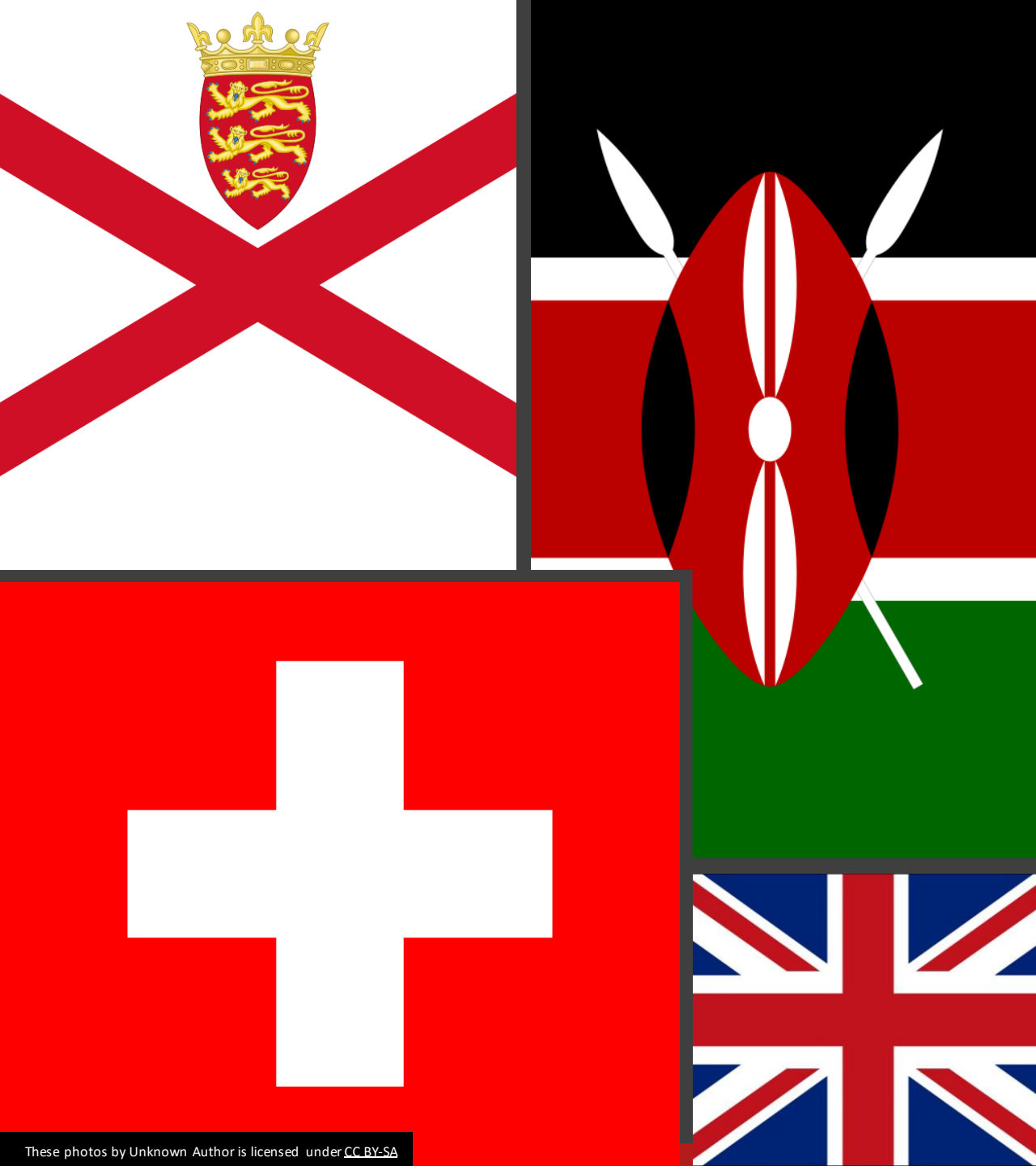
## **Development projects**

*Jersey and Kenya work together to identify a suitable development project to benefit from the return.*

**2020**

## **Steering Committee meetings**

*Representatives from Switzerland, the UK, Jersey and Kenya consider projects.*



# What is the FRACCK?

- The FRACCK is a multilateral initiative led by the Government of Kenya with partners from the UK, Switzerland and Jersey.
- It builds on existing anti-corruption norms such as **UNCAC** and the **Global Forum** by committing the Partners to a series of principles.
- Open and inclusive.



## United Nations Conventions Against Forum

- **57(5)** "...special consideration to concluding agreements or mutually acceptable arrangements, on a case-by case basis, for the final disposal of confiscated property."
  
- **59** "States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention."

## Global Forum

1. Partnership
2. Mutual interests
3. Early dialogue
4. Transparency and accountability
5. Beneficiaries
6. Strengthening anti-corruption and development
7. Case-specific treatment
8. Consider using an agreement under UNCAC Article 57(5)
9. Preclusion of benefit to offenders
10. Inclusion of non-government stakeholders

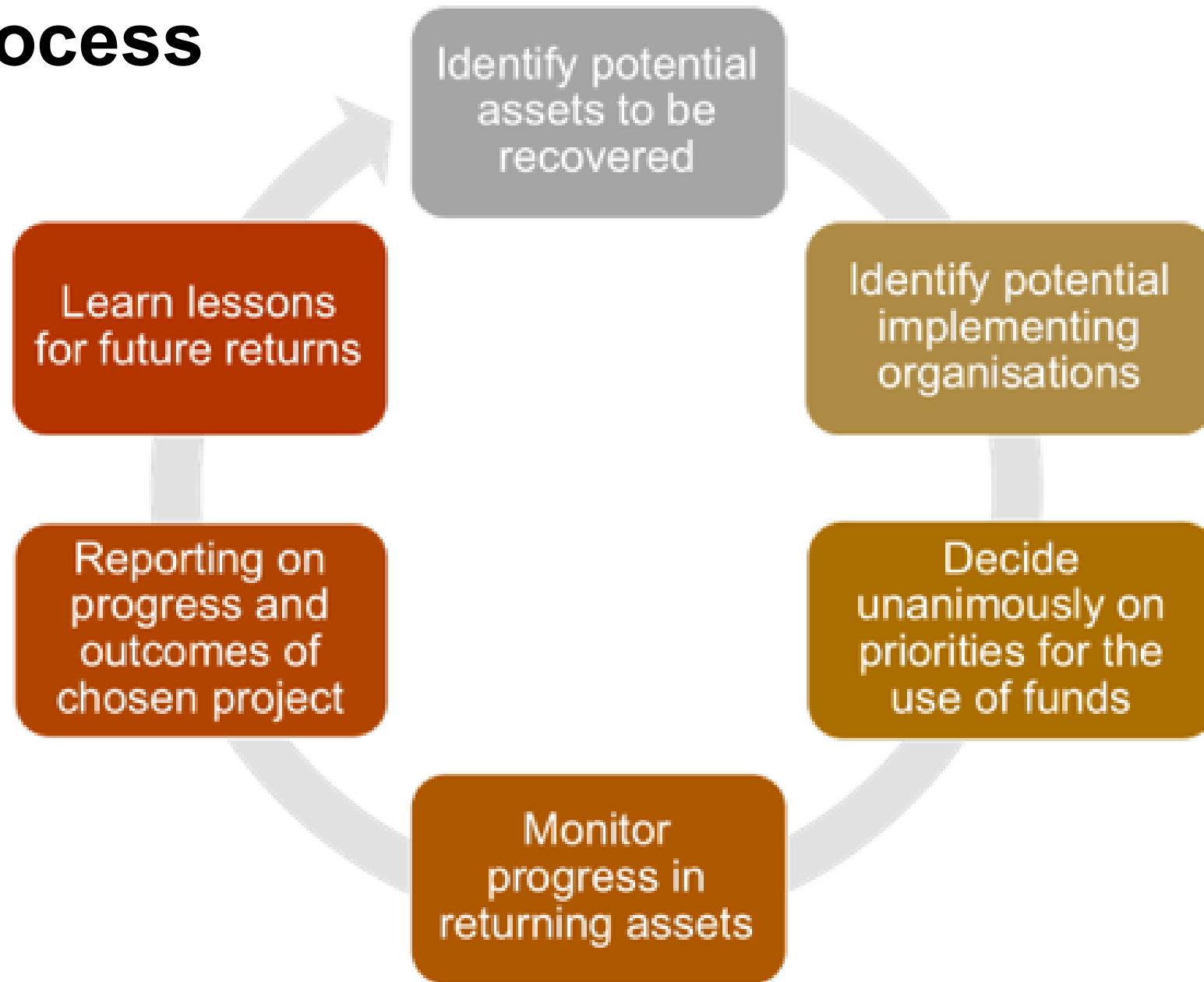




# FRACCK principles...

- Recovered state assets deriving from corruption should be returned by the Partners (less costs) to Kenya wherever possible following a final judgement
- Returns should be made in a transparent and accountable manner
- Returned assets should be used to pursue clearly identified development objectives
- Partners will mutually agree on the development projects to receive funding
- Return assets should be subject to an appropriate and ongoing monitoring and evaluation plan

# ...and process



# Lessons learned so far



## Benefits



Common set of principles for international asset recovery



Structure for discussions / central point of coordination



Network for sharing expertise



Accountability

## Challenges



Multiple stakeholders



Resources and capacity



Context

**Questions?**

