



ORARO & COMPANY
ADVOCATES

Infrastructure, Projects & PPP Profile



Introduction to Oraro & Company Advocates

Oraro & Company Advocates is a full service market-leading African law firm established in 1977 with a strong focus on **dispute resolution** and **corporate & commercial law**. With a dedicated team of 12 partners, 13 associates and 41 support staff, the firm is highly respected for its dispute resolution practice in Kenya, and its strong bench of litigators.

We provide specialist legal services both locally and regionally in **Arbitration, Banking & Finance, Corporate & Commercial, Conveyancing & Real Estate, Dispute Resolution, Employment & Labour, Infrastructure, Projects and PPP, Restructuring & Insolvency** and **Tax**. Over the years, we have represented both local and foreign clients, governments, regulators, and not-for-profit organisations from target industry sectors including construction, education, energy, financial services, manufacturing & industries and the public sector.

We provide both local and cross-jurisdictional legal services, either directly or through the extensive relationships that we have established with leading firms across the globe, which enable us to offer cross-jurisdictional legal advice in a seamless manner while maintaining the highest professional standards.

The firm has a robust team of lawyers and has over the years been consistently ranked by **Chambers Global, IFLR 1000** and **Legal 500** as a top-tier firm in Kenya.

Oraro & Company Advocates prides itself in its **deeply rooted client relationships** by providing quality legal services through its **partner-led approach**, drawing from **local knowledge** and **global perspectives**.

"...all-round superior legal firm that can cover a client in all possible respects."

Chambers Global 2020

Our Infrastructure, Projects & PPP Experience

Our Infrastructure, Projects & PPP practice group is at the forefront of providing commercially focused advice in rapidly growing sectors in Kenya including **energy, power generation, Engineering & Construction, Mining & Metals, telecommunications, transport, Infrastructure and Public Private Partnerships.**

The practice area consists of a specialist team of lawyers who are experts in the energy field and deliver commercial and best practice advice across all areas of contentious and non-contentious matters backed by a deep understanding of the complexities of the industry. The practice has substantial expertise in advising on **project structuring, project financing, drafting & reviewing project contracts, contract negotiation, public procurement, and conducting extensive legal due diligence.** Our advocates have been involved in social infrastructure projects including roads and housing projects.

Our advocates have been ranked by international legal directory IFLR 1000 in their 2020 ranking in project development particularly in infrastructure, mining and **energy.** The directory said, *"...the firm has a knowledgeable and diverse team of lawyers who are experienced and competent in diverse field..."*

"They're very pleasant to work with. They have a very collegiate atmosphere and a great work ethos."

Chambers Global 2019

Our Key Competencies

Our practice area encompasses the full spectrum of contentious matters, including:

- structuring
- drafting & negotiating contracts such as Power purchase agreements, Engineering, Procurement and Construction (EPC) contracts, Long Term Service Agreements and Operation and Maintenance (O&M) Contracts
- project finance

"The practice has very seasoned and competent lawyers who proactively respond to their clients. The lawyers are knowledgeable in both local, regional and internal law."

IFLR1000, 2020

Our Market Recognition



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Our Experience

Our recent experience includes:

Energy, Oil & Gas

- Advising a private renewable energy company in Kenya focused on the development and operation of sustainable power generation and distribution projects in rural areas of Sub-Saharan Africa, in the development and operations of the **two hydropower plants**. Our role included incorporating a land SPV for purposes of acquiring Project land, reviewing the search results & survey report on the land to be acquired, drafting and preparing a sales agreement for execution between the landowners and the respective land SPVs, Registration and transfer of the Project land to the respective land SPVs, and/or providing any other recommendations for purposes of bringing the Client's project to financial close based on previous experience or changes in legal frameworks governing similar projects.
- Advising the government-to-government collaboration between the Government of Kenya and China National Petroleum Corporation on a proposed USD1.8 billion project to develop up to **350 MW of geothermal power**. We were actively involved in preparing the legal aspects of the proposed business plan of the Project and working together with the technical and commercial advisors for the Project. Our team further assisted the client in all legal aspects of project structuring, licensing and operationalisation of the Project.
- Advising on the salient legal aspects of the **Power Purchase Agreement (PPA)** presented to our client by the Kenya Power and Lighting Company (**KPLC**) and participating in PPA negotiations on behalf of the client to ensure that its key legal considerations in the PPA are maintained. We advised on legal aspects of a PPA regarding a 40MW solar power plant in Kibwezi. In so doing, we advised the client with the legal risks associated with the template form of the PPA. We further actively participated in PPA negotiations with KPLC with a view to ensuring the mitigation of such risks and the preservation of key issues for the client in the PPA. The negotiation came at a time when KPLC adopted a policy of scaling down tariffs and as such, we were able to advise the client on the legal issues related to the commercial viability of the project.
- Acting in a project financing of extensive petroleum facilities **for a multinational oil and gas company** with a Kenyan presence. Our role included conducting an extensive legal due diligence on the Borrower and issuing a detailed legal due diligence report.
- Providing legal counsel to an international mining company in a dispute with a Kenyan state corporation that has the responsibility of transporting, storing and delivering petroleum products through its pipeline system and oil depot network. The Court for the

first time dealt with the issue as to whether **the assignment of the price of Gasoil amounts to direct trading in Gasoil** and therefore requires the obtaining of a license in compliance with section 80 of the Kenyan Energy Act.

- Successfully representing the “Gulf Energy Consortium” (the preferred bidder for the development of a **960 MW coal-fired power plant** at Lamu County in Kenya).
- Representing the owners of land earmarked for a **Wind Power Generating Project** by a multinational company involved in the development of wind power projects and energy. We are involved in advising the landowners together with other energy consultants on their interests and benefits of entering into the deal with the Company, negotiating the agreements between the land owners and the Company, and ensuring that the interests of the Landowners are fully protected throughout and after the transaction.
- Acting the owner of five (5) Special Purpose Vehicles (**SPVs**) entitled to generating **40 MW of solar energy each** in a transaction to sell the SPVs as well as all the rights and licenses required to generate such power, as well as transferring the land which is subject to the licenses.
- Working with an American firm to review and recommend an appropriate **legal and institutional framework in the energy sector** and thereafter overseeing the legal aspects of the restructuring of Kenya Power Company and Kenya Power & Lighting Company Limited (KPLC) in particular, the assets and liabilities transfer in respect of power generation and transmission/distribution.
- Part of the review team that reviewed **legislation affecting the energy sector** on instructions by the Government of Kenya.
- Assisting a team advising the developer of a **250 MW onshore wind farm** in Kenya which was in part financed by the forward sale of Clean Development Mechanism credits.
- Giving Kenyan law advice and representing a **Canadian based energy company** as co-counsel in the International Centre for Settlement of Investment Disputes (ICSID) proceedings brought against the Government of Kenya in respect of the unlawful revocation of the company’s geothermal licence.
- Advising on the merits of pursuing a claim for USD 2.2 million under a right of subrogation, this arose under a contract for the provision of seismic services in respect of an oil exploration block in Kenya. We also advised on the lawful nature of the proposal settlement agreement and addressed various issues on insolvency law in Kenya.
- Advised an Independent Power Producer in respect of a USD 146 million power purchase agreement (involving a syndicated loan with international financiers).

- Advised an independent power producer in Kenya in relation to the establishment of a **360 MW dual diesel and solar generating plant**.
- Advising an **international energy company** on project structures, project documents as well as legal compliance issues in regard to a proposed 40 MW solar power project.

Mining

- Reviewed **the Mining Act, 1940** and recommended an appropriate legal and institutional framework for the Government of Kenya.
- Advising Tata Chemicals Magadi Limited, Africa's largest soda ash manufacturer, in relation to the **validity of its mining lease** in so far as it grants it extractive rights over Lake Magadi which is the mining area and **on the royalty rates payable**. Our role included drafting the legal opinion in relation to the mining lease, attending to negotiations meetings with the Ministry of Mining and generally engaging the Ministry on royalty issues payable.
- Advising Tata Chemicals Magadi Limited (the "Company"), Africa's largest soda ash manufacturer, in relation to a **community development agreement** that is required to be entered into between the Company and the representatives of the communities residing around the mining area where the Company operates. Our role included drafting the community development agreement as required by the Mining Act and generally advising the Company on its obligations as stipulated under the Mining Act. The matter has since progressed into a dispute.
- Advising a leading **carbon dioxide manufacturer**, processor and marketer, in relation to the **payment of royalties over natural carbon dioxide** as opposed to processed carbon dioxide. Our role included providing a legal opinion on whether the Mining Act provides a basis for the levying of royalties as provided in the Mining (Prescription of Royalties on Minerals) Regulations, 1961 and the Mining (Royalty on Carbon Dioxide) Regulations, 2013 on the gross sales value rather than the ex-mine gate value of carbon dioxide and whether under the current legal framework, processing and transportation costs ought not to form part of the amount for which royalties are payable.

Road Construction

- Advised Kenya Commercial Bank Limited in relation to an **annuity term loan facility** worth USD 60 million to facilitate the 75% direct cost of road construction of the Ngong-Kiserian-Isinya Road and Kajiado-Imaroro Road.
- Advising a bidder on the **proposed construction of a two thousand (2,000) km road** in Kenya via a PPP arrangement known as an annuity scheme. Our advice relates to local laws on among others, the legal framework on capacity to contract for the project, source of annuity funds, government guarantees and enforcement of a PPP contract.

- Acting for a consortium of an Indian Company and a Kenyan company. The Government of Kenya proposed to **upgrade ten thousand (10,000) km of road network** through a PPP programme known as an annuity scheme. The roads were packaged into forty-five (45) lots; over ten (10) were to be administered by the Kenya National Highway Authority which invited parties to submit bids for each lot. Our client's bid for lot six (6) was ranked second. We lodged proceedings challenging the evaluation and were successful with the Petitions Committee holding that the evaluation was conducted unlawfully. The value of the bids ranged from USD 69.5 million USD 81.3 million (though this was contested).
- Advising China Road and Bridge Corporation in undertaking a **toll road project** on the Nairobi Jomo Kenyatta International Airport to James Gichuru Road Expressway. Our role include, advising on the local law aspects of the Project including the process of Privately Initiated Investment Proposal (PIIP) under the Public Private Partnerships Act No. 15 of 2013, land acquisition, tolling legislation and regulatory requirements; and negotiation of the Project Agreement and other Project documents (excluding financing documents).

Construction/Housing

- Advising a leading international real estate and development company, the lead member of the consortium that won the bid to re-develop the Nairobi City County Old Housing Estate on Ngong Road. The project involves the re-development of an old housing estate belonging to the Government of Kenya of the Nairobi City County and will entail the development of low-cost housing on a parcel of land off Ngong Road. The deal value is USD 250 million.
- Advising on the construction of an international upscale hotel brand which was being funded by a leading multinational bank and a self-governing fund established by a European government whose key purpose is to enhance economic activity in collaboration with European country's trade industry.
- Advising East African Development Bank's on the financing and security documents in respect of financing of the construction and finishing of a 10 storey, 3 tower office complex in Westlands, Nairobi.
- Advising and drafting of financing and security documents for the construction of a Pan African Bank's head office complex in Kilimani, Nairobi.
- Advising a private limited liability company engaged in the business of advanced medical care that was undertaking the construction of a hospital on land in Kiambu County. For the purposes of financing the construction project, the Company entered into an arrangement with a development bank to grant it facilities amounting to USD 30.5 million. Our tasks involved a review of the following security documentation: the Facility Agreement, the Sponsor Support Agreement, the Recourse Agreement, the

Memorandum of Deposit of Shares, the Irrevocable Stand by Letter of Credit, the Consent Letter, the Charge and various Project Documents.

- Acting in a joint venture between the Developer and the landowner for the **development of 8,888 apartments**. The assignment involved undertaking due diligence on the land, the landowner and the Special Purpose Vehicle (the “SPV”); providing legal advice on the structure of the Joint Venture; preparation and negotiation of the Memorandum of Understanding, the Head of Terms and the Joint Venture Agreement. It also entails the acquisition of equity by the Developer in the Project SPV, preparing and negotiating the Shareholders Agreement and facilitating the exit of both the landowner and the Developer from the SPV on completion of the project.
- Acted for Cytonn Investments Limited in the acquisition of a 10-acre piece of land in Ridgeways, Kiambu. We advised on all aspects of the acquisition including preparation of a legal due diligence report, negotiating the sale and purchase contract and affect the transfer to our clients’ name. Our role also includes acting for the seller in selling the units.
- Acted for Cytonn Investments Limited in the purchase of a 5-acre property in Ruaka, where the firm is putting up a comprehensive mixed-use development consisting of 408 units. We are also acting in the sale of around 100 of the 3-bedroom units in the project.
- Advising to a major international NGO with offices globally in the acquisition of a property in Nairobi. We are representing the purchaser and our tasks include conducting major due diligence on corporate and land matters, advising the client on instructions to other external consultants, drafting a confidentiality agreement, drafting offers and transactional agreements, obtaining approvals from various government bodies and ensuring that the client is fully protected throughout the transaction.

Water

- Advising Netherlands Water Partnership and Cardano Development Services on the establishment of a capital markets structured water pool facility, to finance water infrastructure projects in Kenya. Advising on the establishment of a capital markets structured water pool facility and the subsequent incorporation of a Special Purpose Vehicle (SPV). We are also providing various legal opinions on the legal requirements of the Capital Markets Authority (CMA) and the Companies Act, reviewing of various policies and contracts for the operationalisation of the SPV and various contracts.

Our Projects, Infrastructure and PPPs Lawyers

George Oraro SC, Senior Partner



George (goraro@oraro.co.ke) is the Senior Partner at Oraro & Company Advocates. With over 42 years of experience, he is held in high esteem for his arbitration, mediation and litigation expertise in Kenya. He specialises in administrative and judicial law, banking & commercial litigation, corporate & commercial law, employment and labour disputes, international trade and tax disputes.

He has practised in the International Criminal Court, the LCIA, ICC, the Supreme Court of Kenya, Court of Appeal, the High Court, Employment & Labour Court, and various Tribunals.

In 2012, George was conferred with the rank of Senior Counsel for his exemplary service to the legal profession. He was also appointed to serve as a Commissioner of Assize to assist in expediting and determining criminal and civil matters. Similarly, Chambers Global 2020 Guide ranked George in the Dispute Resolution practice as a **'Star Individual'**, an accolade given to lawyers with exceptional recommendations in their field. The directory also ranked him a Band 1 lawyer in Arbitration, quoting sources who praised him as *"a man of integrity and humility"*, and regarded as being *"wise, patient, extremely brilliant in all respects and very client-focused"*. Chambers Global also noted that multiple interviewees affirm his stature as a *"litigation powerhouse"* and *"one of the best lawyers Kenya has ever produced."*

Aside from his legal practice, George has served as a board member for the CMA in which he was instrumental in the development of the legal and regulatory framework for the Capital Markets in Kenya. He was also a member of the Nairobi Securities Exchange Technical committee. In 2015, George became the first Honorary Consul for the Republic of Lithuania.

Pamella Ager, Partner



Pamella (pamella@oraro.co.ke) is a Partner at Oraro & Company Advocates and heads the Banking & Finance and Conveyancing & Real Estate practice group. With over 18 years of experience, she has advised local and international clients in banking and finance, capital markets, conveyancing and real estate, M&A, and regulatory work but is well regarded for her capital markets and conveyancing expertise.

Pamella has been highly ranked by leading legal directories such as IFLR1000 and Legal 500 on several occasions. In 2018, for example, IFLR 1000 ranked Pamella as a leading lawyer for her banking, M&A expertise. The directory commended her saying *"[She has] superb quality, easily reachable with great*

communication skills and has the ability to get along well with all clients.”

Pamella has a Master of Laws (LLM) from Auckland University, New Zealand, an LLB from the University of Waikato, New Zealand and a Diploma in Law from the Kenya School of Law. Aside from her legal practice, Pamella lectures at the University of Nairobi School of Law. She also serves in her capacity as a Director on several boards.

Jacob Ochieng, Partner



Jacob (jacob@oraro.co.ke) is Partner at Oraro & Company Advocates in the corporate & commercial practice group. With over 8 years' experience, he has advised local and international corporates on infrastructure projects, commercial contracts, corporate advisory, corporate restructuring mergers & acquisition and privatisations.

Chambers Global ranked has ranked Jacob among the leading Corporate/M&A lawyers in Kenya in the 2020 rankings. The directory lauded Jacob's expertise in this area saying he is well regarded by peers for being *“commercially astute and always*

looks out for his clients in any transaction.”

Jacob holds an LLB from the University of Nairobi and a Postgraduate Diploma in Law from the Kenya School of Law.

Cindy Oraro, Partner



Cindy (cindy@oraro.co.ke) is a Partner at Oraro & Company Advocates in the corporate & commercial practice group. She has over 7 years' experience and has advised local and international clients on projects & infrastructure, corporate restructuring, commercial agreements, mergers & acquisition, and private equity.

Cindy has over the years taken a keen interest in Kenya's energy sector, particularly in geothermal, mining, oil & gas and solar. She recently advised the government-to-government collaboration between the Government of Kenya (**GoK**) and China National Petroleum Corporation (**CNPC**) on a proposed USD 1.8 billion project to develop up to 350 MW of geothermal power.

Cindy holds a Master of Laws in Commercial Law from University of Bristol, an LLB from Durham University from the United Kingdom respectively and a Postgraduate Diploma in Law from the Kenya School of Law.



ACK Garden Annex, 6th Floor, 1st Ngong Avenue
P.O. Box 51236 - 00200, Nairobi, Kenya.

T: +254 709 250 000

legal@oraro.co.ke

www.oraro.co.ke