

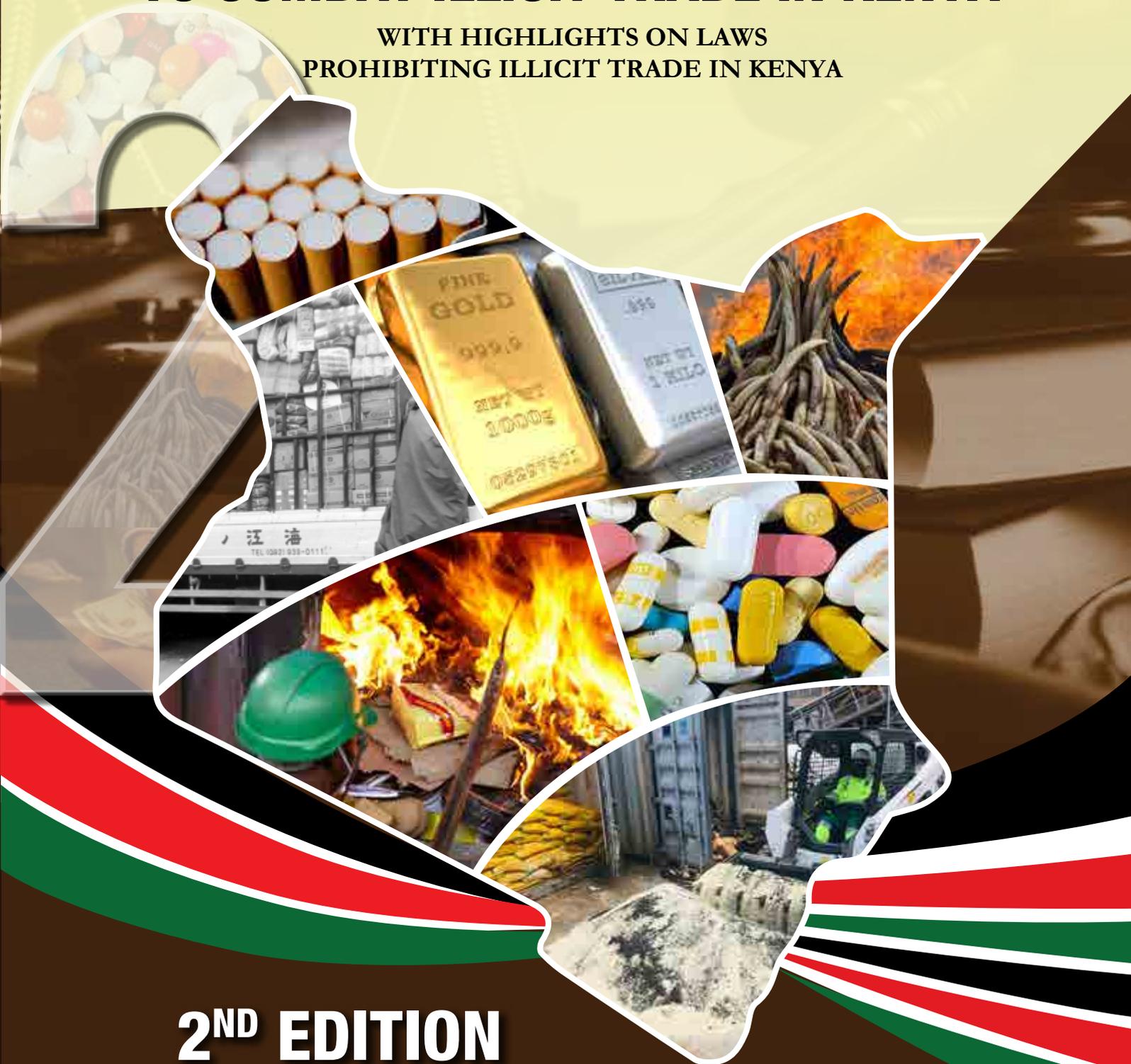


REPUBLIC OF KENYA



ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA

WITH HIGHLIGHTS ON LAWS
PROHIBITING ILLICIT TRADE IN KENYA



2ND EDITION



REPUBLIC OF KENYA



ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA

WITH HIGHLIGHTS ON LAWS PROHIBITING ILLICIT TRADE IN KENYA

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MAIN PARTNERS



SUPPORTING PARTNERS

GOVERNMENT OF KENYA



OFFICE OF THE ATTORNEY GENERAL
AND
DEPARTMENT OF JUSTICE





ABOUT THE NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE (NCAJ)

The NCAJ is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a policy making, implementation and oversight coordinating mechanism composed of State and Non-State Actors from the justice sector. The NCAJ was officially launched on 11th August 2011 and is constituted by high level members, with the authority and power to make decisions relating to the administration of justice.

The NCAJ mandate as stipulated under Section 35 of Judicial Service Act is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system. The Council is mainly a policy making and coordinating mechanism and not a service delivery organ. It is mandated to create or develop institutional linkages with all bodies engaged in the chain of justice.

Strategic Objectives

Based on the identified strategic issues, NCAJ resolved to focus on the attainment of the following strategic objectives over the Strategic Plan period:

- To review legal and policy frameworks for NCAJ and the entire justice sector;
- To strengthen the institutional operation framework for NCAJ and its membership;
- To mobilise resources for efficient and effective administration of justice;
- To coordinate, monitor and evaluate strategies on the administration of justice; and
- To operationalize Court Users Committees

The membership of NCAJ is comprised of State and Non-State Actors. The State Actors include the Judiciary, Office of the Attorney General, Office of the Director of Public Prosecutions, National Police Service, Kenya Prisons Service, Ministry of Public Service, Youth and Gender, Ministry of Public Service, Youth and Gender, Ministry of Labour and Social Protection, Ministry of Environment and Forestry, Ministry of Lands and Physical Planning, Witness Protection Agency, Probation and After Care Services.

Other State and Non-State Actors who have been co-opted into the NCAJ over the years include among others, the Legal Resources Foundation, Ministry of Defence, Kenya Law Reform Commission, Commission on Administrative Justice, Kenya National Commission of Human Rights, Community Service Orders Programme, National Council for Law Reporting, Independent Electoral and Boundaries Commission (IEBC) and the Kenya Association of Manufacturers (KAM).

FOREWORD

Great effort is expended every day around the world to organise trade in order to protect citizens, raise their standards of living and enforce codes of ethics.

Despite numerous legislative and regulatory efforts to streamline commerce in Kenya, illicit trade continues to plague the country. There are those who choose not to play according to the rules, circumventing, infringing and violating laws, regulations, licensing regimes, taxation systems and embargoes. Sometimes, illicit trade in Kenya is treated as a victimless crime that law enforcers regard as petty.

Yet, illicit trade poses a serious socio-economic challenge not only in Kenya but also in the East African region and the world at large. It undermines the concept of a free and open market, which is fundamental to improving competitiveness, increasing investment, creating jobs and improving the economic situation. It also poses health risks to consumers, sabotages tourism, stunts innovation and breeds lawlessness. A country's ability to grow its gross domestic product and improve the standard and quality of life for its citizens can be severely compromised by the vice.

Organised crime is only the famous sibling of illicit trade, however, it is important to note that not all transnational organised crime is about illicit trade. Organised crime is only one dimension of illicit trade. Illicit trade does occur through normal business, and often results in greater harm than that caused by organised crime. Every day, it grows in its reach and sophistication, requiring urgent but effective responses.

Trends in illicit trade suggest that there remains a vast field for law enforcement agencies to explore in seeking to enhance their understanding of this problem and the existing legal framework in order to effectively respond to it.

The 2014 Enforcement Manual was developed against the backdrop of escalating incidences of illicit trade in Kenya and the region. The revision of the Manual has been necessitated by the changes in the laws dealing with illicit trade. It is intended as an aid for law enforcement agencies, including those involved in the prosecution of crimes related to illicit trade and the enforcement of the laws against the trade offenders. It will act as a guide for prosecutors handling matters related to illicit trade to assist them to be more effective.

The Manual is also a useful resource for investigators, courts and the general public. It aims to create awareness of the problem and the existing mechanisms for reporting and handling cases when they occur. Perhaps, increased knowledge levels can reduce the misunderstanding that enables perpetrators of illicit trade continue to benefit unjustly by endangering communities and individuals.

The practical approaches to curbing crime contained in this Manual are expected to go a long way in increasing the knowledge, efficiency and success of those charged with the duty to administer the various legal instruments regulating illicit trade. It is an invaluable one-stop reference on the legal framework on illicit trade in Kenya. By relating to international perspectives and Conventions on illicit trade, the Manual will broaden our understanding of illicit trade and its negative impact on the global economy and trade.



Hon. Justice David K. Maraga, EGH
Chief Justice and President of the Supreme Court of Kenya
Chairperson of the National Council on the Administration of Justice (NCAJ).

ACKNOWLEDGEMENT

The ***Enforcement Manual to Combat Illicit trade in Kenya*** was revised through the collaborative efforts of several stakeholders, among them state agencies and non-state actors that are committed to eliminating illicit trade. The revision of the Manual is informed by the need to strengthen the legal framework for dealing with illicit trade in Kenya.

This Manual was reviewed and updated by CFL Advocates on behalf of the National Council on the Administration of Justice (NCAJ) and Kenya Association of Manufacturers (KAM). Specifically, NCAJ and KAM appreciate Ms Lorna Mbatia (team leader), Ms Brenda Vilita, Ms Jedidah Ngina and Ms Moreen Mwangi.

Special thanks to Hon. Chief Justice David Maraga for his wisdom and guidance in the revision of this Manual. We would also like to acknowledge the NCAJ for offering strategic direction in the review and update of the Manual.

Our gratitude goes to the NCAJ Technical Team comprising the Judiciary; the Office of the Attorney General and Department of Justice; the Kenya Bureau of Standards (KEBS); the Office of the Director of Public Prosecutions (ODPP); the Ethics and Anti-Corruption Commission (EACC); the Kenya Copyright Board (KECOBO); the Kenya Industrial Property Institute (KIPI); the National Police Service/Office of the Inspector General of Police; the Directorate of Criminal Investigations (DCI); the Anti-Counterfeit Authority (ACA); the Kenya Institute for Public Policy Research and Analysis (KIPPRA); the National Environmental Management Authority (NEMA); the Kenya Forest Service (KFS); the National Counter-Terrorism Centre; the Kenya Consumer Protection Advisory Committee; the National Intelligence Service (NIS); the Kenya National Chamber of Commerce and Industry (KNCCI); The Kenya Revenue Authority (KRA); The British American Tobacco – Kenya (BAT); Nairobi Importers and Small Traders Association (NISTA); Importers and Small Traders Association of Kenya (ISTAK); and the Kenya Association of Manufacturers (KAM) for their hard work in conceptualizing the updated Manual and reviewing the drafts.

A debt of gratitude is owed to the NCAJ Special Committee led by the Government representatives namely, Hon. AbdulQadir Lorot (Judiciary), Irene Omari (NCAJ Secretariat), Mr Isaac Gachoka (KRA), Mr Linstrom Kinoti (KRA), Mr Adan Shibia (KIPPRA), Ms Elvine Apiyo (KIPI), Mr James Macharia (ODPP), Ms Maureen Mwenesa (ODPP), Mr Ditim W.J. Musi (EACC), Ms Teresia Munyao (KPS), Ms Agnes Karingu (ACA), Mr Ibrahim Bulle (ACA), Mr Ephraim Ndiritu (KECOBO), Mr Simeon Kassim Adoyo (OP) and Private Sector representatives namely, Ms Phyllis Wakiaga (KAM), Mr Job Wanjohi (KAM), Mr Manaseh Oiro (KAM), Ms Victoria Kaigai (BAT/KAM), Mr Samuel K. Karanja (ISTAK), Mr Ben Mutahi (NISTA), Ms Caroline Mutuku (KAM), and Mr Joseph Wairiuko (KAM anti-illicit trade focal point & coordinator) for providing technical leadership and support.

Finally, we acknowledge that this great work and milestone would not have been possible without the continued financial support from the Business Advocacy Fund (BAF) through one of our most proactive Non-State Actors, the Kenya Association of Manufacturers (KAM). Kindly receive our most sincere gratitude for your continued commitment in taking responsibility in sustaining the fight against illicit trade in Kenya.

Hon. Anne A. Amadi, CBS

Chief Registrar of the Judiciary of Kenya

Secretary of the National Council on the Administration of Justice (NCAJ).



Hon. Anne A. Amadi, CBS
Chief Registrar of the Judiciary of Kenya

KAM CHAIRMAN'S STATEMENT

Countries are no longer depending on their productivity to prosper but on the strategic choice of trading partners. As a result, we are witnessing the signing of more bilateral and multilateral agreements as nations seek to expand their markets, at a regional and global scale.

The Government of Kenya has continued to develop policies that provide an enabling environment for industry to produce and trade competitively in the world. These initiatives are however hampered by the growing sophistication of illicit trade in the world. The vice has grown to great proportions in recent years, threatening global economies.

Illicit trade puts the lives of citizens at great risk as counterfeit and substandard goods, or worse, dangerous goods infiltrate the market. It also eats into the market of legit products, in turn, manufacturers either cut down their production or close down shop as they cannot compete. This additionally means that the governments lose huge portions of their national revenues as counterfeit products evade tax.

Illicit trade is not unique to Kenya. It takes away about \$2.2 trillion from the global economy, which is nearly 3% of the world's economy, according to the World Economic Forum.

We have seen continuous efforts by the government to tackle illicit trade in Kenya including the formation of the Multi-Agency Task Force to combat illicit trade and most recently, the National Action Plan for Combating Illicit Trade. The Action Plan seeks to progressively reduce the level of illicit trade.

Kenya Association of Manufacturers (KAM) has played a lead role in the war on counterfeits and other forms of illicit trade in Kenya and the EAC region. Our advocacy work started back in the year 2000 when manufacturers vocalised their loss of market share due to product imitations in the Kenyan market.

As part of this initiative, the Association approached the Judiciary in 2013 to develop a one-point reference guide to be used in all matters related to any form of illicit trade in Kenya. The collaboration led to the development and release of the 2014 *'Enforcement Manual to Combat Illicit Trade in Kenya'*. With the changes in legislation, more gaps present themselves in the justice chain against illicit trade. Thus KAM, in 2019, once again approached the Judiciary for collaboration in the reviewing and updating the Manual. We hope that the second edition of the Manual will be embraced by all stakeholders and will be used as a rich source of information for investigation, prosecution and court ruling on matters related to illicit trade.

We would like to thank the Chief Justice, Justice David Maraga, for his support and direction provided. We would also like to thank the National Council on the Administration of Justice (NCAJ) Anti-Illicit Trade Special Working Group, led by Hon. Abdul Qadir Lorot for effective coordination of this assignment. Special gratitude to the Business Advocacy Fund (BAF) for their continued support to our advocacy work on anti-illicit trade matters, among other pertinent issues facing the industry.

This vice will only be eliminated if we keep up the sustainable-spirited fight against its networks. Collaborative efforts amongst all stakeholders will increase our gains against this vice as we work towards growing our economies and having a safe, healthy population.

We remain committed to sustaining the fight against illicit trade in the country.



Mr. Sachin Gudka
Chairman, Kenya Association of Manufacturers

ABBREVIATIONS

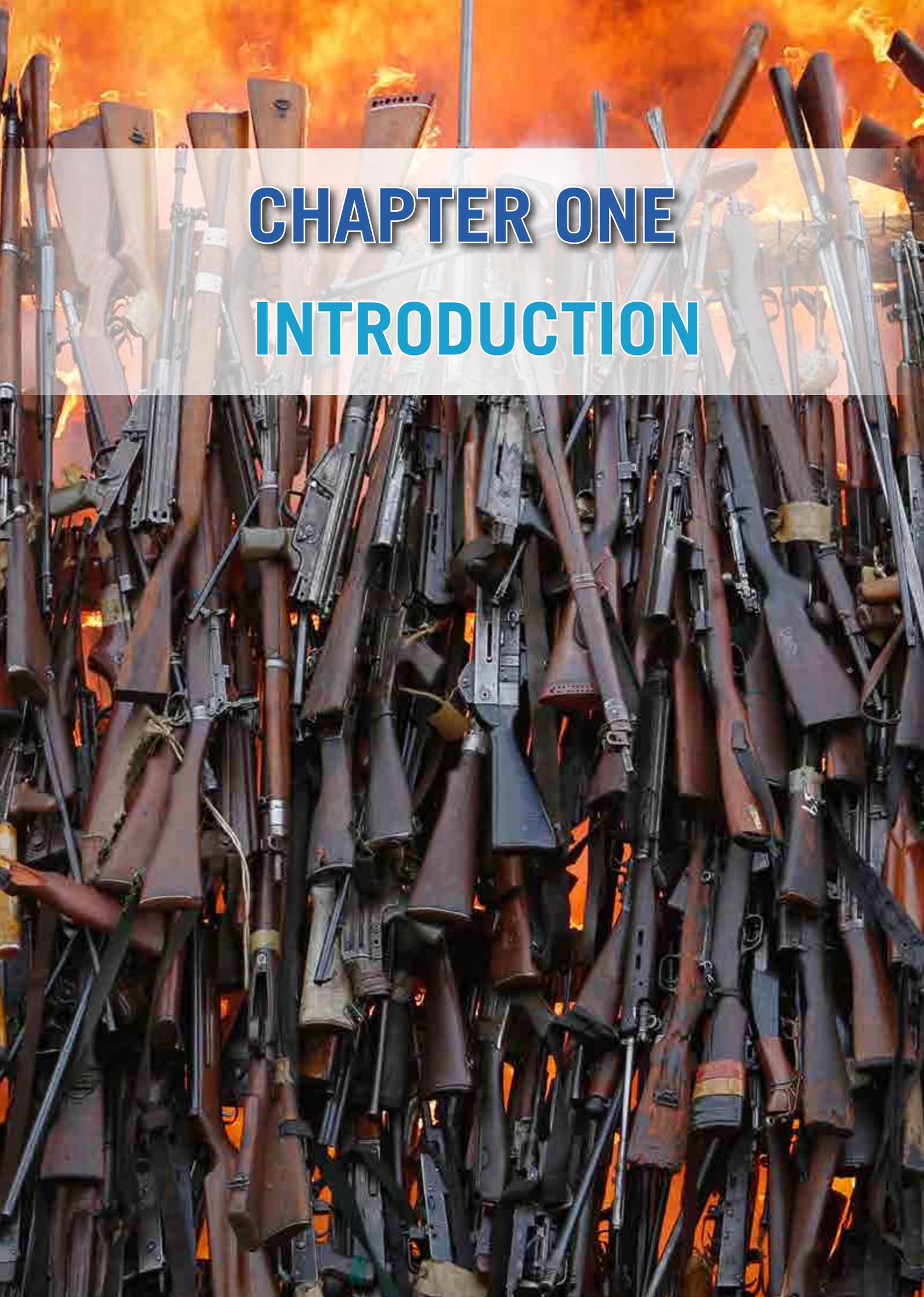
ACA	Anti-Counterfeit Authority	KeNIC	Kenya Network Information Centre
ACECA	Anti-Corruption and Economic Crimes Act	KFS	Kenya Forest Services
APPG	All-Party Parliamentary Group	KIPI	Kenya Industrial Property Institute
BASCAP	Business Action to Stop Counterfeiting and Piracy	KIPPRA	Kenya Institute for Public Policy Research and Analysis
CBCA	Consignment Based Conformity Assessment	KPS	Kenya Police Service
CoC	Certificate of Conformity	KWS	Kenya Wildlife Services
CoI	Certificate of Inspection	NAFTA	North America Free Trade Agreement
COMESA	Common Market for Eastern and Southern Africa	NBFI	Non-Bank Financial Institution
CPC	Criminal Procedure Code	NCAJ	National Council on the Administration of Justice
DCI	Directorate of Criminal Investigations	NEMA	National Environmental Management Authority
DPP	Director of Public Prosecutions	NISTA	Nairobi Importers and Small Traders Association
EAC	East African Community	OB	Occurrence Book
EACC	Ethics and Anti-Corruption Commission	ODPP	Office of the Director of Public Prosecutions
EGMS	Excisable Goods Management System	OECD	Organisation for Economic Co-operation and Development
EU	European Union	OP	Office of the President
FATF	Financial Action Task Force	PVoC	Pre-Export Verification of Conformity
FBI	Federal Bureau of Investigation	SME	Small and Mid-size Enterprises
GAT	Global Assessment Tool	SSA	Sub-Saharan Africa
GDP	Gross Domestic Product	TMEA	TradeMark East Africa
ICC	International Chamber of Commerce	TRACIT	Transnational Alliance to Combat Illicit Trade
IFF	Illicit Financial Flow	UNCTAD	United Nations Conference on Trade and Development
INTA	International Trademark Association	UNODC	United Nations Office on Drugs and Crime
INTERPOL	International Criminal Police Organization	WCO	World Customs Organisation
IP	Intellectual Property	WEF	World Economic Forum
IT	Information Technology	WHO	World Health Organisation
ISTAK	Importers and Small Traders Association of Kenya	WIPO	World Intellectual Property Organisation
KAM	Kenya Association of Manufacturers	WTO	World Trade Organisation
KEBS	Kenya Bureau of Standards		
KECOBO	Kenya Copyright Board		

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The Constitution of Kenya, 2010
Agricultural Produce (Export) Act, Cap 319
Anti-Counterfeit Act, No. 3 of 2008
Anti-Doping Act, No. 5 of 2016
Alcoholic Drinks Control Act, No. 4 of 2010
Anti-Corruption and Economic Crimes Act, No. 3 of 2003
Bribery Act, No. 47 of 2016
Competition Act, No. 12 of 2010
Consumer Protection Act, No. 46 of 2012
Copyright Act, No. 12 of 2001
Copyright Amendment Act, No. 20 of 2019
Counter-Trafficking in Persons Act, No. 8 of 2010
Customs and Excise Act, Cap 472
East African Community Customs Management Act, 2004
East African Community Customs Management (Amendment) Act, 2009
Excise Duty Act, No. 23 of 2015
Environmental Management and Co-ordination Act, No. 8 of 1999
Environmental Management and Co-ordination (Amendment) Act, No. 5 of 2015
Fisheries Management and Development Act, No. 35 of 2016
The Fertilizers and Animal Foodstuffs Act, Cap 345
Forest Conservation and Management Act, No. 34 of 2016
Firearms Act, Cap 114
Kenya Coast Guard Service Act, No. 11 of 2018
Health Act, No. 21 of 2017
Industrial Property Act, No. 3 of 2001
Kenya Plant Health Inspectorate Service Act, No. 54 of 2012
Kenya Trade Remedies Act, No. 32 of 2017
Merchant Shipping Act, No. 4 of 2009
Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994
Narcotic Drugs and Psychotropic Substances (Control) Restraint and Forfeiture) Regulations, 1997
Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations, 2006
Natural Resources (Classes of Transactions Subject to Ratification) Act, No.41 of 2016
Panel Code, Cap 63
Persons Deprived of Liberty Act, No.23 of 2014
Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009
Protection of Traditional Knowledge and Cultural Expressions Act, No. 33 of 2016
Prevention of Terrorism Act, No. 30 of 2012
Prevention of Organized Crimes Act, No. 6 of 2010
Sexual Offences Act, No.3 of 2006
Wildlife Conservation and Management Act, No.47 of 2013

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WIPO Copyright Treaty (20 December 1996)
Patent Law Treaty (01 June 2000)
Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (14 April 1891)
Berne Convention for the Protection of Literary and Artistic Works (24 July 1971)
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also known as “Palermo Protocol”
The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
The Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption
The Convention on the Elimination of All Forms of Discrimination against Women
The African Charter on Human and People’s Rights (1981) and its Protocol on Women’s Rights (2002)
The African Charter on the Rights and Welfare of the Child (1990)
Framework Convention on Tobacco Control, 2003 (WHO FCTC)
Protocol to Eliminate Illicit Trade in Tobacco Products, 2012 (WHO Protocol)
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973
Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol
The Convention on Psychotropic Substances of 1971
The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001 (Firearms Protocol)
International Convention for the Suppression of the Financing of Terrorism, 1999



CHAPTER ONE

INTRODUCTION

The Chapter focuses on the definition of illicit trade, its various forms and offers clarity on certain trade activities that do not amount to illicit trade in Kenya. It highlights the incidence and impact of illicit trade and the role that the public should play in the fight against the vice.

DEFINITION OF ILLICIT TRADE AND WHAT IT ENTAILS

There is no single definition for illicit trade because it encompasses a wide range of activities which are still growing.

The Ministry of Industry, Trade and Cooperatives of Kenya has the following definition for illicit trade:¹ *Generally, it may be defined as any form of trade that infringes the rules, laws, regulations, licenses, taxation systems, and all procedures that countries use to organise trade, protect citizens, raise standards of living and enforce codes of ethics. The concept extends to money, goods or value gained from illegal or otherwise unethical activity; and includes all actions or conduct intended to facilitate such activities.*

The TradeLab, in its report on Illicit Trade and the WTO suggests the following definition for illicit trade:²

“Illicit trade means any commercial practice or transaction related to the production, acquisition, sale, purchase, shipment, movement, transfer, receipt, possession or distribution of:

- i. any illicit product defined as such by international law; or*
- ii. any licit product for non-licit purposes as defined by international law*

Illicit trade also covers any conduct intended to facilitate such activities.”

Therefore, it is the trade and facilitation of trade that goes against the law.

Illicit trade includes but is not limited to:

- a) Smuggling
- b) Counterfeiting, Piracy and illicit manufacturing of goods
- c) Transit Fraud/ Dumping
- d) Trade in Prohibited and Restricted Goods or Products
- e) Illicit cash flows
- f) Human and wildlife Trafficking
- g) Trade in small arms and light weapons
- h) Illegal logging and illicit trade of charcoal

1 Frequently Asked Questions (FAQ) Brochure on the Multi Agency Anti-Illicit Trade Outreach https://www.kebs.org/images/news/August/FAQ-Brochure_09.08.2018.pdf

2 Illicit Trade and the World Trade Organization: Raising awareness, identifying limitations and building strategies https://tradelab.legal.io/guide/5942ae1fe93c1b021a000f89/Illicit+Trade+and+the+World+Trade+Organizaion+Raising+awareness+identifying+limitations+and+building+strategies#_ftn1 accessed on 22nd November, 2019

1. Smuggling

Smuggling refers to the illegal movement of goods across borders in order to circumvent taxes and other import and export restrictions. The World Bank defines smuggling as the evasion of excise taxes on goods by circumvention of border controls.³

Apart from smuggling of goods, there is smuggling of humans (migrant smuggling) which the UNODC has defined as a crime involving the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident.⁴

Smuggling of humans therefore is the process of facilitating illegal entry of a person into a country without abiding by the laws on entry into that country. It is not to be confused with human trafficking.

2. Counterfeiting, Piracy and illicit manufacturing of goods

The WTO defines counterfeiting as the unauthorized representation of a registered trade mark carried on goods identical or similar to goods for which the trade mark is registered, with a view to deceiving the purchaser into believing that he/she is buying the original goods.⁵

The WTO defines piracy as the unauthorized copying of materials protected by intellectual property rights (such as copyright, trade marks, patents, geographical indications etc.) for commercial purposes and unauthorized commercial dealing in copied materials.⁶

3. Transit Fraud/Dumping

This refers to fraud related to goods which are in the customs transit process. Customs transit is defined as a customs regime where goods are shipped from location A to location B without paying import taxes and duties. Subsequently, in location B the goods are placed under the customs procedures for which they are destined.⁷

These activities include the diversion of goods into a market other than the market they were destined for, the replacement of inferior and lower quality goods or the use of substituted and false documents.

There are three types of transit fraud and they begin with the arrival of foreign goods that are not intended to remain or be consumed in the arrival country, namely:

- a) Immediate exportation: foreign goods are exported from the port of arrival without payment of duty.
- b) Transportation and Exportation: foreign goods transiting the territory are stored in-bond for exportation to a destination port, without the payment of duty.
- c) Immediate Transportation: foreign goods arrive at a port of entry and are transported to another port where the initial entry in the port will be filed by the importer or broker in order to pay less or no duty.⁸

3 World Bank Economics of Tobacco Toolkit <http://documents.worldbank.org/curated/en/418961468163740317pdf/805800NWP070Sm0Box0379807B00PUBLIC0.pdf>

4 https://www.unodc.org/unodc/en/human-trafficking/smuggling-of-migrants.html#What_is_Migrant_Smuggling accessed on 22nd November, 2019

5 WTO Glossary of terms https://www.wto.org/english/thewto_e/glossary_e/counterfeit_e.htm accessed on 22nd November, 2019

6 WTO Glossary of Terms https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm accessed on 22nd November 2019

7 Customs Transit Fraud-Industry Update <https://insightsunboxed.com/customs-transit-fraud-industry-update-ziv-baida/> accessed on 22nd November 2019

8 WCO Illicit Trade Report of 2012 http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2012_en.pdf?db=web

Diversion occurs in the following ways:⁹

- a) goods that should have been exported from the country are illegally entered into the market of the country
- b) imported containers which are supposed to be in transit are removed before they reach their intended destination.
- c) a “turn around” between the initial port of entry and the alleged port.

The Kenya Trade Remedies Act defines dumping as the introduction of a product into the commerce of the country at an export price that is less than its normal value.¹⁰ Dumping is a form of illicit trade because in most cases, the persons responsible for dumping will evade anti-dumping duties.¹¹

The WTO defines dumping as follows: *Dumping is, in general, a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country.*¹²

4. Trade in Prohibited and Restricted Goods or Products

Trade in prohibited or restricted goods refers to trade in goods which are prohibited by the laws and regulations or whose possession is restricted by the laws and regulations.

Prohibited and restricted goods are listed in the Prohibited and Restricted Goods Under the Second and Third Schedules of the EAC Customs Management Act of 2004.¹³

Examples of goods prohibited in Kenya are narcotic drugs under international control, hazardous wastes and their disposal as provided for under the base conventions and all soaps and cosmetic products containing mercury. Examples of goods which are restricted in Kenya are unwrought precious metals and precious stones, genetically modified products and all psychotropic drugs under international control.

5. Illicit cash flows

The World Bank defines illicit cash flows as money illegally earned, transferred, or used that crosses borders.¹⁴

Illicit financial flows are generally in three categories:¹⁵

- Where the acts themselves are illegal (e.g., corruption, tax evasion); or
- Where the funds are the results of illegal acts (e.g., smuggling and trafficking in minerals, wildlife, drugs, and people); or
- Where the funds are used for illegal purposes (e.g., financing of organized crime).

9 Ibid

10 Kenya Trade Remedies Act, Act Number 32 of 2017 of the Laws of Kenya <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2032%20of%202017>

11 This was identified by the WCO as the one of the forms of origin fraud. WCO Illicit Trade Report of 2012 http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2012_en.pdf?db=web

12 Technical Information on Anti-Dumping https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

13 <https://www.kra.go.ke/images/publications/Prohibited%20and%20Restricted%20Goods%20Under%20the%20Second%20and%20Third%20Schedule%20of%20the%20Eac%20Customs%20Management%20Act,%202004.pdf> accessed on 22nd November, 2019

14 <https://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> accessed on 22nd November, 2019

15 Ibid

IFFs account for huge sums of money transferred out of SSA countries illegally, stripping these countries of resources that could be used to finance much-needed public services such as security, justice, education and health.¹⁶

It is estimated that Kenya has been losing about US\$400 million annually through illicit financial flows.¹⁷

6. Human and wildlife Trafficking

The Palermo Protocol defines human trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹⁸

Exploitation is defined to include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁹

The difference between human smuggling and human trafficking is that there is consent on the part of the person being smuggled.²⁰ Trafficking in persons, on the other hand, is committed for the purpose of exploiting the trafficked person.²¹

Wildlife trafficking is any environment-related crime that involves the illegal trade, smuggling, poaching, capture or collection of endangered species, protected wildlife (including animals and plants that are subject to harvest quotas and regulated by permits), derivatives or products thereof.²²

7. Trade in small arms and light weapons

The Nairobi Protocol defines small arms as those weapons designed for personal use²³ and light weapons are those designed for use by several persons serving as a crew.²⁴ Some examples of small arms are:²⁵

- a) revolvers and self-loading pistols,
- b) rifles and carbines,
- c) sub-machine-guns,
- d) assault rifles,
- e) light machine-guns.

16 Illicit Financial Flows In Kenya: Mapping of the Literature and Synthesis of the Evidence <https://www.pasgr.org/wp-content/uploads/2018/09/Kenya-Illicit-Financial-Flows-Report.pdf>

17 Ibid

18 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime <https://www.ohchr.org/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf>

19 Ibid

20 International Organisation for Migration, Trafficking in Human Beings and Smuggling of Migrants in ACP Countries: Key Challenges and Ways Forward https://www.iom.int/sites/default/files/our_work/DMM/MAD/traffi1.pdf

21 Ibid

22 World Wildlife Fund Fighting Illicit Wildlife Trafficking <https://www.traffic.org/site/assets/files/7455/dalberg-report-dec-2012.pdf>

23 The Nairobi Protocol For The Prevention, Control And Reduction Of Small Arms And Light Weapons In The Great Lakes Region And The Horn Of Africa <http://www.poa-iss.org/RegionalOrganizations/RECSA/Nairobi%20Protocol.pdf> Article 1

24 Ibid

25 https://ec.europa.eu/home-affairs/e-library/glossary/small-arms-and-light-weapons-salw_en

Some examples of light weapons are:²⁶

- a) heavy machine-guns,
- b) hand-held under-barrel and mounted grenade launchers,
- c) portable anti-aircraft guns,
- d) portable anti-tank guns, recoilless rifles,
- e) portable launchers of anti-tank missile and rocket systems,
- f) portable launchers of anti-aircraft missile systems,
- g) mortars of calibres of less than 100 mm,
- h) ammunition and explosives,
- i) cartridges (rounds) for small arms,

The illicit trade in small arms and light weapons occurs in all parts of the globe but is more prevalent in areas afflicted by armed conflict, violence, and organized crime, where the demand for illicit weapons is often highest.²⁷

It is classified as illicit trade because in most jurisdictions there are prohibitions and/or restrictions on the use and trade of weapons and some weapons are supplied in contravention of those laws. In the recent past, there has been a crackdown on illicit weapons in Kenya due to the proliferation and use of illicit weapons in crimes. As part of this crackdown, the government of Kenya in 2018 ordered the re-registration and vetting of all licensed firearm holders.²⁸

8. Illegal logging

Illegal logging refers to illegal practices related to the harvesting, processing and trade in timber and timber products.²⁹ In Kenya, illegal logging refers to any felling of trees that contravenes the provisions of the Forest Conservation and Management Act for example felling trees from a forest without a permit from the Kenya Forestry Service or felling or trading in protected tree species. In 2018, President Uhuru Kenyatta appointed a taskforce to look into, among other issues, the scale and effect of illegal logging in Kenya.³⁰ In its Report, the Taskforce highlighted the areas in which illegal logging is rampant and the species of trees which are targeted by illegal loggers.

Illegal logging is related to the illegal sale of timber and charcoal because most of the times, the products from illegal logging are sold through illicit channels.

INTERCONNECTIVITY BETWEEN THE VARIOUS FORMS OF ILLICIT TRADE

The system of illicit trade is like a web; different forms of illicit trade feed into each other to create a worldwide menace.

The UNODC reports that the proceeds of illicit trade in narcotics are used to fund counterfeiting.³¹ In turn, the networks which are used to transport counterfeit goods are also used to smuggle drugs, firearms and humans.³²

²⁶ Ibid

²⁷ <http://www.smallarmssurvey.org/weapons-and-markets/transfers/illicit-trafficking.html> accessed on 22nd November, 2019

²⁸ <https://www.standardmedia.co.ke/article/2001305138/private-gun-holders-to-be-vetted-issued-with-electronic-identification-card>

²⁹ <https://www.illegal-logging.info/TOPICS/What-ILLEGAL-logging>

³⁰ <http://www.environment.go.ke/wp-content/uploads/2018/05/Task-Force-Report.pdf>

³¹ UNODC The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime https://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf

³² Ibid

The networks in the illicit trade of wildlife are reported to be linked to transnational organized crime groups; illegal wildlife and illegal drug trade is said to be linked because of the use of shared routes for trafficking and the exchange of wildlife products for drugs.³³

In a study conducted on poaching in the Central African Republic, Democratic Republic of Congo, Uganda, Kenya and Tanzania, it was established that illicit trade in small and light weapons led to an increase in poaching which then leads to the increase of armed groups which use proceeds from poaching to fund their activities.³⁴

CONTRIBUTING FACTORS TO ILLICIT TRADE

According to research carried out by various bodies such as the WCO, WHO, COMESA Business Council, the OECD among others, there are many reasons why illicit trade continues to thrive:

- a) Weak border controls such that goods/people move into a territory without the necessary scrutiny being carried out.
- b) Corruption by officials who are mandated to prevent illicit trade.
- c) Consumer demand for cheaper products.
- d) Inadequate laws, regulations and policies.
- e) Inadequate training for officials who are tasked with curbing illicit trade.
- f) Differences in taxes (and ultimately process) in different jurisdictions.
- g) Poor collaboration between relevant agencies.
- h) Presence of informal distribution channels through which illicit goods are sold.

Socio-economic status, trade in illicit goods thrives because there is a market for them; human smuggling thrives because there are people who are desperate to immigrate but would otherwise not meet the threshold for legal immigration.

COMMODITIES MOSTLY AFFECTED BY ILLICIT TRADE

The Ministry of Trade of Kenya states that goods which are most prone to counterfeiting are electronics, motor-vehicle spare parts, stationeries, food and beverages, LPG, movies and music DVD's, and petroleum products, Luxury Goods and Fashion Apparels, Phones and Computer Accessories among others.³⁵

In its last two (2) reports on illicit trade,³⁶ the WCO focused on illicit trade in the following categories:

- a) Drugs
- b) Medical goods subject to intellectual property rights
- c) Non-medical goods subject to intellectual property rights
- d) Cultural objects
- e) Flora and fauna

33 Reeve, R., Policing International Trade in Endangered Species: The CITES Treaty and Compliance, (London: Earthscan Publican Limited, 2002)

34 Regional Centre on Small Arms The Nexus Between Poaching And Proliferation Of Illicit Small Arms And Light Weapons Regional Report <https://recsasec.org/wp-content/uploads/2018/08/POACHING-pdf.pdf>

35 Supra note 2

36 WCO 2016 Report on illicit trade http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2016_en.pdf?la=en
WCO 2017 Report on illicit trade http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2017_en.pdf?db=web

The OECD report on illicit trade focuses on the following sectors:³⁷

- a) Trafficking and smuggling of persons
- b) Illicit trade in wildlife
- c) Counterfeit medicines
- d) Illegal narcotics
- e) Tobacco products
- f) Alcoholic beverages
- g) Sports manipulation as economic crimes

A report from the COMESA Business Council sheds light on some of the goods that are prone to illicit trade in some countries in the COMESA region namely Kenya, Ethiopia, Rwanda, Zambia and Zimbabwe.³⁸ Some of the goods that are common across all these countries in COMESA are:

- a) Pharmaceuticals
- b) Cosmetics
- c) Electronics
- d) Alcoholic beverages

COMMON MODES OF COUNTERFEITING PRODUCTS

The Anti-Counterfeit Act of Kenya defines counterfeiting as taking the following actions without the authority of the owner of intellectual property right subsisting in Kenya or outside Kenya in respect of protected goods:

- a) the manufacture, production, packaging, re-packaging, labelling or making, whether in Kenya, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods;
- b) the manufacture, production or making, whether in Kenya, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or any goods manufactured, produced or made under his licence;
- c) the manufacturing, producing or making of copies, in Kenya, in violation of an author's rights or related rights;
- d) in relation to medicine, the deliberate and fraudulent mislabelling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging.³⁹

The ACA has identified various methods through which counterfeit products are made including; labelling, packaging, adulterations, direct imports, transit goods, and even locally manufactured counterfeit goods.⁴⁰

³⁷ OECD (2016), *Illicit Trade: Converging Criminal Networks*, OECD Reviews of Risk Management Policies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264251847-en>.

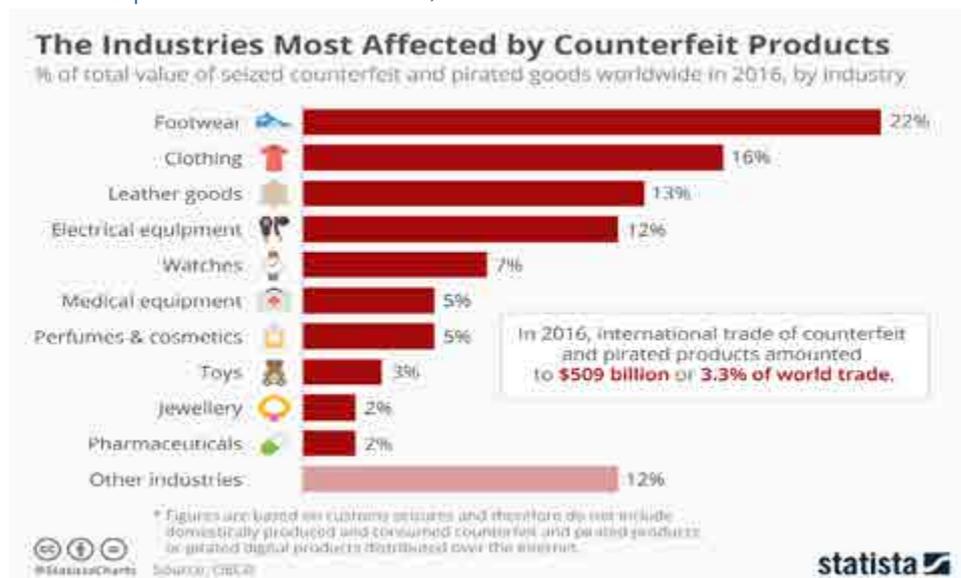
³⁸ COMESA Business Council, Promoting manufacturing competitiveness in COMESA <http://comesabusinesscouncil.org/wp-content/uploads/2019/02/Comesa-Illicit-Trade-Report-21.pdf>

³⁹ Section 2 of the Anti Counterfeit Act

⁴⁰ Kenya Association of Manufacturers (KAM), Survey on Counterfeiting in Kenya Report, December, 2012, page 19

These come in different forms as listed below.

- i. Printing of fake labels that occur mostly with alcoholic beverages, soft drinks and juices and mineral water where genuine packaging materials are used to depict the original cover while the content of the product is fake, although in some cases bearing similar content of the genuine product.
- ii. Direct import goods are those coming into the country already counterfeited from their sources of origin either in neighbouring countries or overseas. Here, packaging and labelling are mostly used to cheat the unsuspecting consumer.
- iii. Adulteration of products is mostly found in cosmetics and beauty products, cooking oil, pens, rice, and branded stationery.
- iv. Transit goods to neighbouring countries play a vital role in counterfeits' proliferation in the domestic market. Counterfeits find their way to the market through different points at the borders while in transit
- v. Locally manufactured goods: Cases have been reported and police raids undertaken to apprehended unlawful production of goods which resemble legally manufactured goods by registered companies in various parts of the country.
- vi. Counterfeiters can be subcontractors of the original producers and may illegally use original production equipment, models and infrastructure. In such a case, counterfeit goods may share the very same quality of the original ones (e.g. when subcontractors overproduce in order to sell part of the production on their own)



Industries most affected by Counterfeit products⁴¹

ILLICIT TRADE IN KENYA

According to the various studies by the bodies concerned with illicit trade in Kenya, the impact of illicit trade in Kenya is notable and it is a threat to all sectors of the economy. Indeed, President Uhuru Kenyatta has stated before that illicit trade is a threat to the achievement of goals under the Big 4 agenda. There are a number of forms of illicit trade that are common in Kenya namely production and sale of counterfeit goods, illicit trade in wildlife and wildlife products and illicit financial flows.

KAM estimates that Kenya loses approximately US\$42 million annually to illicit trade while the government loses approximately \$80 million annually in revenue.⁴² Further, it is estimated that Kenya loses about US\$ 400 million a year through illicit financial flows.

41 OECD 2016, figures based on customs seizures

42 <http://kam.co.ke/high-level-regional-anti-illicit-trade-conference-held-in-nairobi/> accessed on 10th December, 2019

KAM estimates that the governments in the EAC region lose about US\$ 500 million in revenue from counterfeit and substandard products.⁴³ Similarly, KAM also estimates that if the software piracy rate in Kenya were reduced by ten percent (10%), the multiplier effect would have generated over 1,100 additional jobs, US\$12 million more in tax revenues and US\$163 million spending in the local IT sector over the four years.

The use of counterfeit fertilizers, chemicals and seeds in Kenya has resulted in decreased agricultural productivity⁴⁴ the impact of which is continued food security issues in the country and decreased revenues for farmers.

The sale of counterfeit drugs is also rampant in Kenya and this endangers the health and safety of Kenyans. In the year 2017 alone, counterfeit drugs worth US\$ 60 million were impounded at the port of Mombasa.⁴⁵ In the alcohol sector, it is estimated that about 50% of the alcohol that is consumed in Kenya is illicit.⁴⁶

Due to the negative effects of illicit trade on the Kenyan economy, Kenya has passed a number of laws which contain provisions to combat illicit trade such as the Anti-Counterfeit Act, POCAMLA, ACECA among others. There are also a number of agencies which are responsible for combating illicit trade is done such as the ACA, KECOBO, KWS as well as non-governmental organisations such as KAM.

All the laws regarding illicit trade contain offences regarding illicit trade which have been expounded upon in chapter 4 of this Manual. Illicit goods are often destroyed publicly in order to serve as a deterrent to people intending to be involved in illicit trade. In September 2019, the ACA destroyed confiscated smuggled goods worth about US\$ 50,000 in a move which the KAM chair said was aimed at 'planting the seed of fear and uncertainty in the hearts and minds of counterfeiters'.⁴⁷ In 2014, the President of Kenya supervised the destruction of a ship which was carrying heroin worth about US\$ 13 million while it was at sea; the public destruction was done in order to demonstrate Kenya's tough stance against drug trafficking. In the same breath, illicit goods are destroyed because most of them are harmful and their proliferation in the market would lead to adverse effects to consumers and the environment. In Chapter 6, we elaborate on the various debates surrounding the environmental impact of destruction of illicit goods and the alternatives to destruction.

Despite the existing laws to combat illicit trade, there are still a number of gaps in the fight against illicit trade in Kenya. One of the ways in which illicit trade is carried out is by foreigners who are in a country legally. For example, there are foreigners who have work permits or business permits to carry out legal business and they use that as a cover to conduct illegal business such as drug and wildlife trafficking. There is therefore need for immigration authorities in Kenya to exercise vigilance on the foreigners who have been granted permits and visas to ensure that they are abiding by the terms of their permits.

Another gap is the lack of a specialized court to deal with illicit trade. There is a need to have such a court in Kenya in order to ensure that illicit trade matters are given due attention by judges who have been specially trained. Similarly, there is need for the ODPP to have specialized prosecutors who have been trained on illicit trade who can work alongside the prosecutors from KRA, KEBS and ACA.

Illicit trade is also fueled by middlemen who receive illicit money in cash and use it to invest in other business, whether legal or illegal. Since the transactions are done in cash, it is not possible to trace the money trail; therefore, there is need to examine whether the existing regulations in the financial sector (such as the regulation to provide proof for transactions of US\$ 10,000 and above) sufficient in curbing illicit trade.

43 ACA 5th edition of the Anti-Counterfeit Newsletter <https://www.aca.go.ke/images/downloads/newsletters/aca-newsletter-fifth-edition.pdf>

44 International Chamber of Commerce, Promoting and protecting Intellectual Property in Kenya, 2012

45 <http://www.nairobibusinessmonthly.com/fighting-illicit-trade-a-do-or-die-for-kenyas-economy/> accessed on 10th December, 2019

46 <http://kam.co.ke/illicit-trade-is-a-threat-to-our-nationhood-we-must-tackle-it-head-on/> accessed on 10th December, 2019

47 ACA, KSH 4.9 Million Counterfeit Goods Destroyed in Mombasa, Kenya <https://www.aca.go.ke/media-center/news-and-events/186-counterfeit-goods-destroyed-in-mombasa-kenya> accessed on 10th December, 2019

Illicit trade in Kenya is also facilitated by cartels in various sectors who create artificial shortages in goods in order to import substandard goods. In 2016, there was a shortage of sugar which was touted to have been created by rogue businessmen who wanted the relaxation of restrictions on importation of sugar in order to smuggle sugar into Kenya. Therefore, there is a need for enforcement authorities to take extra precautions in times of shortages.

IMPACT OF ILLICIT TRADE

1. Impact on the Economy and Business

Illicit trade leads to a depressed economy because of the loss of revenue in the form of taxes and loss of value for manufacturers whose goods are subject to illicit trade. It also leads to job losses.

The revenues which are lost through illicit trade could be used to improve public services, especially in developing countries. In turn, the revenues from illicit trade are used to finance other illegal activities such as terrorism which also impacts economies negatively.

In sum, illicit trade undermines the achievement of the economic goals for poverty reduction, decent jobs and economic growth.

In July 2019, the UNCTAD in conjunction with TRACIT released a report on the effects of illicit trade on the achievement of the Sustainable Development Goals from the United Nations. The report estimates that the leakages caused by illicit trade are in the region of US\$ 2.2 trillion.⁴⁸ The impact of illicit trade as identified by UNCTAD is detailed below:

Transnational Crime	Estimated Annual Value (US\$)
Counterfeiting	\$923 billion to \$1.13 trillion
Drug Trafficking	\$426 billion to \$652 billion
Illegal Logging	\$52 billion to \$157 billion
Human Trafficking	\$150.2 billion
Illegal Mining	\$12 billion to \$48 billion
IUU Fishing	\$15.5 billion to \$36.4 billion
Illegal wildlife Trade	\$5 billion to \$23 billion
Crude Oil Theft	\$5.2 billion to \$11.9 billion
Small arms & Light Weapons Trafficking	\$1.7 billion to \$3.5 billion
Organ Trafficking	\$840 million to \$1.7 billion
Trafficking in Cultural Property	\$1.2 billion to \$1.6 billion
Total	\$1.6 trillion to \$2.2 trillion

48 UNCTAD and TRACIT Mapping The Impact Of Illicit Trade On The Sustainable Development Goals https://unctad.org/meetings/en/Contribution/DITC2019_TRACIT_IllicitTradeandSDGs_fullreport_en.pdf

2. Impacts on Public health and safety

Illicit trade leads to the proliferation of goods which have not been subjected to safety standards thus risking the health and safety of consumers of illicit goods. In the UNCTAD report referred to above, the following types of illicit trade have an impact on health and safety:

- a) Illicit trade in foods threatens the health of consumers as they may consume toxic ingredients, disease-containing pathogens or contaminants;
- b) Illicit trade in agro-chemicals and pesticides jeopardize farmers' health and safety and leads to production of illegitimate crops which further exacerbate health problems;
- c) Illicit trade in alcohol and tobacco leads to health risks for consumers and in some cases, it leads to death;
- d) Illicit trade in counterfeit and pirated goods puts consumers of such goods at risk because manufacturers do not abide by quality and safety requirements like legitimate manufacturers;
- e) Illicit trade in substandard, unlicensed and falsified medicines leads to health complications because not only are consumers not healed from their illnesses, but also those illicit medicines may lead to other health complications;
- f) Illicit trade in gemstones and precious stones leads to health and safety risks for miners because they do not use protective gear;
- g) Disposal of raw materials used to manufacture illicit goods will in most cases be unsafe thus causing health risks to the people who may encounter such waste; and
- h) Trafficking in persons leads to health and safety risks for the persons being trafficked because in most cases, they will be held in deplorable conditions and they may even be subjected to sexual exploitation.

3. Impact on National Security

As a whole, the proceeds from illicit trade are often used to fund other illegal activities such as terrorism which threaten national and world security. The FATF in its 2012 report on illicit tobacco trade identified a number of instances where people who had been involved in the illegal tobacco business were using those proceeds to finance terrorist groups such as Al-Qaeda.⁴⁹

From the research carried out by bodies such as the WCO, OECD, UNCTAD among other bodies, the following are some of the other effects of illicit trade on security:

- a) Illicit trade in weapons has led to weapons being in the hands of criminals and rebel groups thus leading to national security problems.
- b) Illicit trade in goods meant for a legitimate supply chain leads to the use of those goods for negative purposes such as manufacturing arms and weapons.
- c) Human trafficking and smuggling leads to the phenomenon of undocumented immigrants who may pose a security threat to a country.

4. Impact of illicit trade on Wildlife

The illicit trade in wildlife is estimated to be worth between US\$ 70 million to US\$ 213 million annually⁵⁰. As per the UNCTAD report referred to above, the following are the effects of illicit trade on wildlife:⁵¹

- a) Illicit trade in wildlife and wildlife products has led to the extinction and near-extinction of various species of flora and fauna; and
- b) Illicit trade in forestry products endangers the habitats of wildlife which has led to the extinction of species of flora and fauna.

49 FATF Report on Illicit Tobacco Trade <http://www.fatf-gafi.org/media/fatf/documents/reports/Illicit%20Tobacco%20Trade.pdf>

50 Nellerman, C. et al. eds. The Environmental Crime Crisis-Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources, (UNEP: Nairobi, 2014) p. 7.

51 Supra note 46

IMPORTANCE OF COMBATING ILLICIT TRADE IN KENYA

Tackling illicit trade in Kenya is important for several reasons; financial, socio-economic and political. Kenya needs its major sectors to prosper in order for the country to be productive and for her citizens to have sustainable livelihoods.

However, Kenya also faces several challenges and needs to improve on how certain issues in the country are addressed in order for positive development to take place. In all cases, criminal influence of and money generated from illicit trade are having a significant impact on the livelihoods and quality of the life of citizens, particularly the poor, women and children all of whom are vulnerable.⁵²

Agriculture is one of the most important sectors of Kenya's economy since 75% of the Kenyan population is dependent on agriculture for food and income. Agriculture contributes 26% to the GDP and significantly to foreign exchange earnings.⁵³ Illicit trade of counterfeit fertilizers, chemicals and seeds has to be curbed if Kenya is to start rebuilding her capacity to produce food for consumption in the country and for export. Kenya faces a grave problem of unemployment and seeks to create employment opportunities for Kenyan job seekers, a majority of whom are the youth. It is estimated that SMEs employ about 80% of Kenya's workforce and contribute to 92% of new job creation in the country.⁵⁴

Many SMEs in both developed and developing countries rely heavily on IP rights.⁵⁵ It is a widely accepted view that IP rights drive innovation. However, where IP rights do not exist, companies, small businesses and individuals can capitalise unfairly on those who invest valuable resources in research and development of products. This acts as a disincentive to innovate and for these reasons, IP rights play a vital role in promoting innovation and stimulating the economy to foster growth,⁵⁶ while creating employment opportunities.

ROLE OF THE PUBLIC IN COMBATING ILLICIT TRADE

A multi-stakeholder approach to combating illicit trade will require public support and engagement. There are specific roles that members of the public can play in combating the vice and they are outlined below:

1. Shunning Illicit Trade

Members of the public can contribute to combating illicit trade by refraining from taking any part in or facilitating the trade by not purchasing illicit products or participating in illicit trade activities. Since demand fuels illicit trade, it is imperative that the public is educated on the illegality of illicit trade and its negative impact (especially on personal health and safety) in order for the public to shun illicit trade.

2. Reporting Illicit Trade

The public can contribute to the fight against illicit trade by reporting instances of illicit trade to relevant authorities who can then investigate and prosecute such crimes. This is dependent on the knowledge of the public not only on illicit trade but also on the agencies that are responsible for investigating the crimes such as the National Police Service and the ACA. Members of the public should be willing to volunteer information on suspected illicit trade activity to the authorities.

3. Cooperating with investigators and prosecutors

The public can also contribute to combating illicit trade by co-operating in investigations and ongoing prosecutions of illicit trade activity. Members of the public can provide information to investigators and act as prosecution witnesses in investigations and prosecution of illicit trade offences.

The legal regime regulating illicit trade is found in both international conventions and national statutes.

52 General Assembly of the United Nations, Thematic Debate of the 66th session of the United Nations General Assembly on Drugs and Crime as a Threat to Development On the occasion of the UN International Day against Drug Abuse and Illicit Trafficking, 26 June 2012

53 Kenya Institute for Public Policy Research and Analysis, Kenya Economic Report, 2013

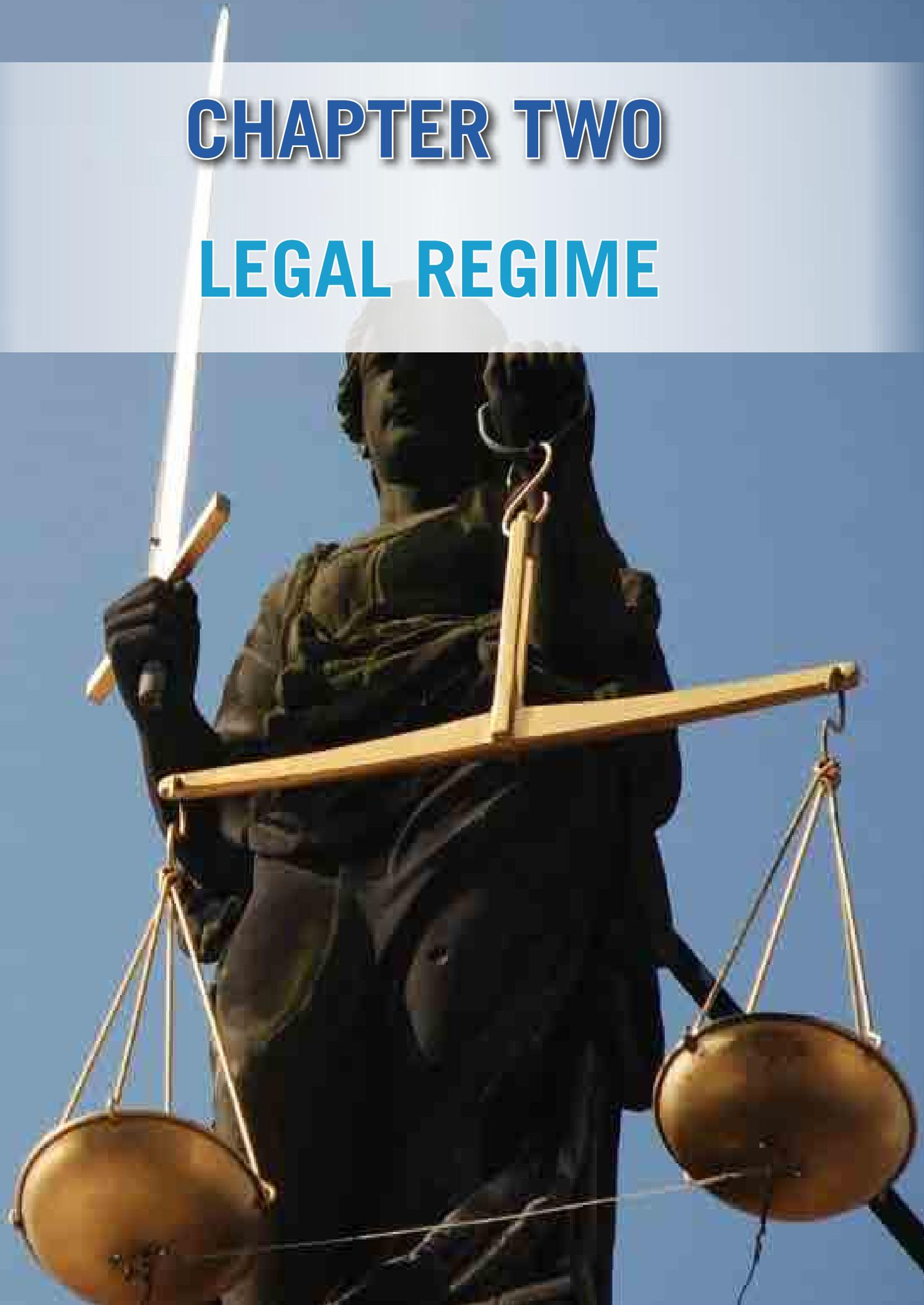
54 Capital Markets Authority, Capital Raising Opportunities for SMEs: The Development of Micro-Cap Securities Markets in Kenya, January 2010

55 International Chamber of Commerce, Intellectual Property: Source of innovation, creativity, growth and progress, August 2005

56 Ibid

CHAPTER TWO

LEGAL REGIME





The Constitution of Kenya in Article 2 provides that the international conventions and treaties ratified by Kenya, as well as the general rules of international law form part of the law of Kenya.

This Chapter therefore discusses both international and regional instruments that deal with the various forms of illicit trade as well as related offences such as terrorism. The Chapter also discusses the national laws and policies that govern the different forms of illicit trade and related offences. Lastly, the Chapter discusses the various international institutions tasked with combating illicit trade.

INTERNATIONAL INSTRUMENTS GOVERNING TRADE IN ILLICIT GOODS

The international community has made steps towards regulating trade in illicit goods through conventions and treaties tackling different aspects of illicit trade. Some of the international instruments that govern the various forms of illicit trade are set out below:

INTERNATIONAL INSTRUMENTS REGULATING INTELLECTUAL PROPERTY INFRINGEMENTS

1. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

TRIPs is an international agreement administered by the WTO that sets down minimum standards for most forms of intellectual property regulation.

The Agreement requires WTO members to provide copyright rights covering content producers including performers, producers of sound recordings and broadcasting organizations; geographical indications including appellations of origin; industrial designs; integrated circuit layout designs; patents; new plant varieties; trademarks; trade dress; and undisclosed or confidential information.

TRIPs also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

2. Anti-Counterfeiting Trade Agreement

Article 6 imposes an obligation on Parties to ensure that enforcement procedures are available under their laws so as to permit effective action against any act of infringement of intellectual property rights covered by the Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

The above measures include civil and administrative enforcement as provided under Article 7. Remedies available under the above enforcement mechanism include injunctions, damages, destruction of infringing goods, and destruction or disposal outside the channels of commerce of the materials and implements, the predominant use of which has been in the manufacture or creation of such infringing goods.

Article 16 requires parties to adopt or maintain procedures with respect to import and export shipments under which their customs authorities may act upon their own initiative to suspend the release of suspect goods; and a right holder may request its competent authorities to suspend the release of suspect goods. Parties may also adopt or maintain procedures with respect to suspect in-transit goods or in other situations where the goods are under customs control under which their customs authorities may act

upon their own initiative to suspend the release of, or to detain suspect goods; and a right holder may request its competent authorities to suspend the release of, or to detain suspect goods.

Further remedies to be provided by Parties under Article 20 include the destruction of infringing goods, or their disposal outside the channels of commerce in such a manner as to avoid any harm to the right holder.

The Agreement, at Article 23, provides for criminal enforcement. Parties are required to provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale, including penalties to be applied in cases of willful importation and domestic use, in the course of trade and on a commercial scale, of labels or packaging. Parties are also at liberty to provide criminal procedures and penalties in appropriate cases for the unauthorised copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public. With regard to criminal penalties, Articles 24 and 25 require parties to provide for imprisonment as well as monetary fines sufficiently high to deter future acts of infringement, consistently with the level of penalties applied for crimes of corresponding gravity.

Further, parties should provide for seizure, forfeiture, and destruction of the infringing goods and/or materials and implements used in the commission of the alleged offence by their competent authorities; seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the allegedly infringing activity; and the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the infringing activity.

Article 26 calls upon parties to ensure that enforcement procedures are available under its law so as to permit effective action against an act of infringement of intellectual property rights which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements, including infringement of copyright or related rights over digital networks, e.g. the unlawful use of means of widespread distribution for infringing purposes.

3. Patent Cooperation Treaty (19 June 1970):

This treaty aims to facilitate co-operation among nations for the perfection and simplification of the legal protection of inventions in economically viable ways, facilitating and accelerating access by the public to the technical information contained in documents describing new inventions, providing easily accessible information on the availability of technological solutions, and facilitating access to the ever expanding volume of modern technology.

4. WIPO Copyright Treaty (20 December 1996):

This treaty seeks to effectively and uniformly develop and maintain the protection of the rights of authors in their literary and artistic works; providing rules for providing solutions to the questions raised by new economic, social, cultural and technological developments; and providing a balance between the rights of authors and the larger public interest, particularly education, research and access to information.

5. Patent Law Treaty (01 June 2000):

This treaty provides a unified procedure for formalities in patent applications to protect inventions in each contracting state by streamlining and harmonising formal requirements set by national or regional Patent Offices with respect to the filing of national or regional patent applications and the maintenance of patents and additional requirements related to patents or patent applications.

6. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (14 April 1891):

This agreement provides specific rules for the repression of false or deceptive indications of source on goods.

7. Berne Convention for the Protection of Literary and Artistic Works (24 July 1971):

This convention aims to effectively and uniformly protect the rights of authors in their literary and artistic works.

INTERNATIONAL INSTRUMENTS RELATING TO TRANSNATIONAL ORGANISED CRIME

1. United Nations Convention against Transnational Organised Crime Purpose and Scope

This Convention was adopted in 2000 and ratified by Kenya in 2004. The purpose of this convention is to promote cooperation and to prevent and combat transnational organised crime more effectively.⁵⁷ The Convention applies to the prevention, investigation and prosecution of the transnational offences involving organised groups, including participation in organised criminal groups, laundering of proceeds of crime, corruption, obstruction of justice in relation to the offences covered by the Convention, and serious crimes.⁵⁸ The Convention's definition of 'transnational crime' is *"an offence committed in more than one State; or committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; or committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or committed in one State but has substantial effects in another State."*

*'Serious crimes' on the other hand, is conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.*⁵⁹

Offences relating to illicit trade

The Convention requires state parties to adopt legislative and other measures as may be necessary to establish criminal offences including laundering of the proceeds of crime.⁶⁰ The specific offences under this head are:

- *Conversion or transfer of property, knowing that such property is the proceed of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
- *Concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- *Acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceed of crime;*
- *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

57 Article 1 United Nations Convention against Transnational Organised Crime

58 Article 3(1) United Nations Convention against Transnational Organised Crime

59 Article 2 United Nations Convention against Transnational Organised Crime

60 Article 6 United Nations Convention against Transnational Organised Crime

Combating Crime

In order to combat the crime of money-laundering through deterrence, detection and co-operation, the Convention obligates states parties to take the following measures:⁶¹

1. Institute comprehensive domestic regulatory and supervisory regimes for banks and NBFIs and other bodies susceptible to money laundering, with emphasis on requirements for customer identification, record-keeping and reporting of suspicious transactions;
2. Empowering authorities dedicated to combating money-laundering (administrative, regulatory, law enforcement, judicial) to cooperate and exchange information at the national and international levels through the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.
3. Implement feasible measures to detect and monitor the movement of cash and negotiable instruments across their borders, without impeding the movement of legitimate capital.

Mutual legal assistance and joint investigation: The Convention obligates states parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences.⁶² On investigations, state parties are encouraged to consider concluding bilateral or multilateral agreements/arrangements whereby the competent authorities concerned may establish joint investigative bodies.⁶³

Confiscation and seizure: States parties are called upon to adopt domestic measures to enable the identification, tracing, freezing, seizure, or confiscation of proceeds of crime derived from offences covered by the Convention or property, the value of which corresponds to that of such proceeds; and property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention.⁶⁴ Towards this end, the Convention calls for co-operation between competent authorities of the various states parties.⁶⁵ When confiscated, the Convention gives the domestic laws of the state party supremacy in the disposal of the proceeds, but the state party is obligated to give priority consideration to returning the confiscated proceeds of crime or property to the requesting state party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.⁶⁶

Extradition: To ensure that criminals do not escape justice by taking advantage of the non-existence of extradition treaties between states parties, the Convention encourages states parties to consider the Convention as the legal basis for extradition whenever it receives a request for extradition from another state party with which it has no extradition treaty.⁶⁷

Criminal Record: The Convention encourages states parties to adopt measures as may be necessary to take into consideration any previous conviction in another state of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention. This is intended as a deterrence mechanism for the notification to states parties of habitual transnational offenders.⁶⁸

61 Article 7 United Nations Convention against Transnational Organised Crime

62 Article 18 United Nations Convention against Transnational Organised Crime

63 Article 19 United Nations Convention against Transnational Organised Crime

64 Article 12 United Nations Convention against Transnational Organised Crime

65 Article 13 United Nations Convention against Transnational Organised Crime

66 Article 14 (2) United Nations Convention against Transnational Organised Crime

67 Article 16 United Nations Convention against Transnational Organised Crime

68 Article 22 United Nations Convention against Transnational Organised Crime

Training and Technical Assistance: The Convention obligates states parties to initiate, develop or improve specific training programmes for its law enforcement personnel, investigating magistrates and customs personnel and other personnel charged with the prevention, detection and control of offences under the Convention dealing with, among others:⁶⁹

- Routes and techniques used by suspected persons including in transit States, and appropriate countermeasures;
- Monitoring of the movement of contraband;
- Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money laundering and other financial crimes;
- Control techniques in free trade zones and free ports; and
- Methods used in combating transnational organised crime committed through the use of modern technology.

INTERNATIONAL INSTRUMENTS RELATING TO TRAFFICKING IN PERSONS

1. **UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also known as “Palermo Protocol”**

The main international instrument dealing with trafficking is the Palermo Protocol of 2003. Kenya acceded to the protocol on 5 January 2005. Each country that accedes to the protocol is required to provide measures to protect victims, train law enforcement and border officials and inform and educate victims and the general public on the menace.⁷⁰ Article 2 sets out the statement of purpose of the protocol to be to prevent and combat trafficking in persons, paying particular attention to women and children. The Palermo Protocol establishes an acceptable definition of trafficking and makes consent of a victim, for the intended purpose of exploitation, irrelevant. It seeks global response to global trafficking.

2. **Convention on the Rights of the Child (CRC)⁷¹ the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography** This Protocol, adopted in 2000, was signed by Kenya in the same year and entered into force in January 2002. Both the Convention and the Protocol prohibit the sale of children, child prostitution and child pornography.⁷²

3. **The Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption** was adopted in 1993; its preamble states that inter-country adoptions should be made in the best interest of the child to prevent the abduction, sale or traffic in children.

4. **The Convention on the Elimination of All Forms of Discrimination against Women**, adopted in 1979 and ratified by Kenya in 1984 in Article 6 provides that State parties shall take appropriate measures, including legislation to suppress all forms of trafficking in women.

5. **The African Charter on Human and Peoples’ Rights (1981) and its Protocol on Women’s Rights (2002)** under Article 4(2) obligates states to prevent and condemn trafficking in women, prosecute the perpetrators and protect those women most at risk.

6. **The African Charter on the Rights and Welfare of the Child (1990)** which obligates states to take appropriate measures to prevent the sale of or the trafficking of children for any purpose.⁷³

69 Article 29 United Nations Convention against Transnational Organised Crime

70 Article 6 Palermo Protocol

71 Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

72 See Articles 34 and 35 of the Convention and Article 1 of the Protocol

73 Article 29 (a) The African Charter on the Rights and Welfare of the Child (1990)

INTERNATIONAL INSTRUMENTS REGULATING ILLICIT TRADE IN MANUFACTURED PRODUCTS

1. Framework Convention on Tobacco Control, 2003 (WHO FCTC) and Protocol to Eliminate Illicit Trade in Tobacco Products, 2012 (WHO Protocol)

The WHO FCTC was adopted in 2003 and signed by Kenya on 25th June 2004. The WHO Protocol was adopted in 2012 and signed by Kenya on 29th May 2013.

The object and purpose of these WHO instruments is reducing concealed manufacture and traffic of tobacco products by imposing an obligation to excise every tobacco product. The WHO Protocol defines illicit trade of tobacco as:⁷⁴

“any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity’ related to the tobacco products (emphasis added)”

It provides tools for preventing illicit trade by securing the supply chain, including by establishing an international tracking and tracing system, by countering illicit trade through dissuasive law enforcement measures and a suite of measures to enable international cooperation.

INTERNATIONAL INSTRUMENTS RELATING TO ILLICIT TRADE IN NATURAL RESOURCES

1. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973

CITES was adopted in 1963 and open for signature in 1973. Kenya ratified the convention on 13th December 1978 and it became effective in Kenya on 13th March 1979.

CITES was adopted to protect endangered plants and animals by regulating worldwide commercial trade in wild animal and plant species. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.⁷⁵

CITES classifies plants and animals according to three categories based on how threatened they are.

Appendix I lists endangered species that are at risk of extinction. It also prohibits outright the commercial trade of these plants and animals; however, some may be transported internationally in extraordinary situations for scientific or educational reasons.⁷⁶

Appendix II species are those that are not threatened with extinction but that might suffer a serious decline in number if trade is not restricted; their trade is regulated by permit.⁷⁷

Appendix III species are protected in at least one country that is a CITES member and that has petitioned others for help in controlling international trade in that species.⁷⁸

In addition to plants and animals and their parts, the Agreement also restricts trade in items made from such plants and animals, such as clothing, food, medicine, and souvenirs.

74 Article 1.6 of the WHO Protocol

75 What is CITES? <https://www.cites.org/eng/disc/what.php> accessed 22nd November 2019

76 Article 3 CITES, 1973

77 Article 4 CITES, 1973

78 Article 5 CITES, 1973

INTERNATIONAL INSTRUMENTS RELATING TO ILLICIT TRAFFICKING IN DRUGS

1. Single Convention on Narcotic Drugs of 1954 as amended by the 1972 Protocol; The Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

The Convention on Psychotropic Substances was adopted and opened for signature in 1971. Kenya acceded to the Convention on 18th October 2000. This Convention defines “illicit traffic” as the “manufacturing or trafficking of the substances” that are contrary to the provisions of this Convention.⁷⁹ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted in 1988 and Kenya became a party in 1992. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension.⁸⁰ Under the Convention, parties are required to take the necessary measures to criminalise certain activities such as:⁸¹

- a. The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance;
- b. The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs;
- c. The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in a) above;
- d. The manufacture, transport or distribution of equipment, materials or of certain substances listed in Table I and Table II of the Convention, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
- e. The organization, management or financing of any of the offences enumerated in a), b), c) or d) above;

INTERNATIONAL INSTRUMENTS RELATING TO ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS

1. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, 2001 (Firearms Protocol)

The Firearms Protocol was adopted in 2001 and Kenya became a party in 2005. The Firearms Protocol supplements the United Nations Convention against Transnational Organized Crime. The Firearms Protocol provides for a framework for states to control and regulate licit arms and arms flows, prevent their diversion into the illegal circuit, facilitate the investigation and prosecution of related offences without hampering legitimate transfers.⁸²

The Firearms Protocol aims at promoting and strengthening international cooperation and developing cohesive mechanisms to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.⁸³

79 Article 1 The Convention on Psychotropic Substances of 1971

80 Article 2 The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

81 Article 3 The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

82 United Nations Office on Drugs and Crime <https://www.unodc.org/unodc/en/firearms-protocol/the-firearms-protocol.html> accessed on 22nd November 2019

83 Article 2 Firearms Protocol 2001

The Firearms Protocol defines “illicit trafficking” as “the import, export, acquisition, sale, delivery, movement or transfer of firearms without authorization of the export target State Party.”⁸⁴

The Firearms Protocol provides for the enactment of legislation by member states to criminalise:⁸⁵

- a. Illicit manufacturing of firearms, their parts and components and ammunition;
- b. Illicit trafficking in firearms, their parts and components and ammunition; and
- c. Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by Article 8 of the Firearms Protocol.

INTERNATIONAL INSTRUMENTS AGAINST TERRORISM

1. International Convention for the Suppression of the Financing of Terrorism, 1999

The Convention was adopted in 1999. Kenya signed the Convention in 2001 and it became effective on 27th June 2003.

Although terrorism is not a form of illicit trade, it is suspected that the proceeds of illicit trade are used in the promotion of terrorism. Article 2 of the Convention condemns trade in any goods (irrespective of their legality), as soon as they are used for the financing of terrorism. This is reflected by the use of the following terms, which aim at the incorporation of an all-inclusive prohibition:

“Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they will be used to conduct terrorism”.⁸⁶

It further defines funds in a broad way that includes any kinds of assets, whether tangible or intangible, movable or immovable.⁸⁷

OTHER INTERNATIONAL INSTRUMENTS

1. International Convention against the Taking of Hostages

The Convention was adopted by the General Assembly of the United Nations on 17 December 1979 and entered into force on 3 June 1983. Article 1(2) of the Convention provides that any person who:

- a. attempts to commit an act of hostage-taking, or
- b. participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

Article 9 of the Convention provides that a request for the extradition of an alleged offender, pursuant to the Convention, shall not be granted if the requested State Party has substantial grounds for believing:

- a. that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

⁸⁴ Article 3 Firearms Protocol 2001

⁸⁵ Article 5 Firearms Protocol

⁸⁶ Article 5, International Convention for the Suppression of the Financing of Terrorism

⁸⁷ Article 1, International Convention for the Suppression of the Financing of Terrorism

- b. that the person's position may be prejudiced:
 - i. for any of the reasons mentioned in subparagraph (a) of this paragraph, or
 - ii. for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

Article 10 of the Convention further provides that the offences set forth pursuant to the Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties.

2. International Convention for the Suppression of Acts of Nuclear Terrorism

The Convention was adopted by the General Assembly of the United Nations on 13 April 2005. The Convention entered into force on 7 July 2007.

The Convention seeks to prohibit environmental crimes under Article 2. The Article provides that any person who possesses or uses in any way, radioactive material with the intent to cause substantial damage to the environment, commits an offence within the meaning of the Convention.

BILATERAL, REGIONAL AND INTERNATIONAL INSTRUMENTS RELATING TO EXTRADITION

Introduction

It is important to note that in Kenya, the extradition process is governed by the Extradition (Contiguous and Foreign Countries) Act, Cap 76 and the Extradition (Commonwealth Countries) Act, Cap 77. The Extradition (Commonwealth Countries) Act, Cap 77 applies to any commonwealth country that the DPP has designated for the purpose of the Act. No separate Agreement with the country is required.⁸⁸

On the contrary, an application for extradition under the Extradition (Contiguous and Foreign Countries) Act, cannot succeed unless the requesting state has entered into an Agreement with Kenya.⁸⁹ Where there is no bilateral Agreement with a requesting state or, in the case of Commonwealth Countries, where the country has not been designated, extradition may still occur on the basis that the offence is an extraditable offence under an International Convention, Treaty or Agreement. The International Treaty or Agreement must be ratified by Kenya.

BILATERAL AGREEMENTS

1. Extradition Treaty between United States of America and Kenya

Kenya agreed to be bound to the United States of America by the 1931 U.S.A - United Kingdom Extradition Treaty). Article 3 of the Treaty lists some of the extraditable offences to include:

- (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;
- (b) Knowingly and without lawful authority making or having in possession any instrument, tool, or engine adapted and intended for the counterfeiting of coin;
- (c) Bribery, defined to be the offering, giving or receiving of bribes;
- (d) Forgery;
- (e) Crimes or offences or attempted crimes or offences in connection with the traffic in dangerous drugs; and
- (f) Dealing in slaves (Human trafficking).

⁸⁸ See the Extradition (Commonwealth Countries) Act, Cap 77, Subsidiary Legislation

⁸⁹ Gunter Grochowski v Attorney-General & Another – High Court at Nairobi Miscellaneous Criminal Application 282 of 2009.

REGIONAL AGREEMENTS

1. Organization of African Unity Convention on the Prevention and Combating of Terrorism

The Convention obliges State Parties to refrain from any acts aimed at organizing, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, directly or indirectly, including the provision of weapons and their stockpiling in their countries and the issuing of visas and travel documents.

Article 8(1) of the Convention requires State Parties to extradite any person charged with or convicted of any terrorist act carried out on the territory of another State Party and whose extradition is requested by one of the States Parties in conformity with the rules and conditions provided for in this Convention or under extradition agreements between the States Parties and within the limits of their national laws.

2. African Union Convention on Preventing and Combating Corruption

The Convention entered into force on 5 August 2006 in accordance with Article 23 of the Convention. One of the Objectives of the Convention is to promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.

Article 6 of the Convention obligates States Parties to adopt legislative and other measures as may be necessary to establish the laundering of the Proceeds of Corruption as a criminal offence. Additionally, Article 15 of the Convention provides that offences relating to corruption and illicit cash flows are extraditable offences. The Convention therefore requires State Parties to include such offences as extraditable offences in extradition treaties existing between or among them.

INTERNATIONAL INSTITUTIONAL INTERVENTION TO COMBAT ILLICIT TRADE

1. World Custom Organisation (WCO)

Due to the increasingly transnational nature of illicit trade and crime, effective crime prevention requires good collaboration and effective cooperation mechanisms at the international level. The WCO's mission is to improve the effectiveness and the efficiency of its members across the globe. While three-quarters of its members are developing countries, the WCO's combined membership is collectively responsible for managing and processing more than 98% of world trade. The responsibilities linked to the international movement of goods, people and means of transport have expanded and will continue to do so, ranging from traditional customs activities such as the collection of revenue to activities as diverse as environmental protection, combating drug trafficking and money laundering, and ensuring supply chain and revenue security.⁹⁰

In the spirit of the "Globally Networked Customs" initiative, the WCO has established an "Information and Intelligence Centre (I2C)" at its HQ to facilitate communication and coordination on customs compliance and law enforcement-related matters.⁹¹

The I2C operates under the auspices of the WCO Compliance and Enforcement Sub-Directorate to promote the following goals:⁹²

- Enable better operational law enforcement coordination at the international level.
- Provide Members with a help-desk function/interface for law enforcement subjects at international level.
- Collect and distribute open source intelligence and other non-restricted Customs-related intelligence to Members on regular basis.
- Support/co-host WCO law enforcement operations

⁹⁰ WCO profile 2017

⁹¹ OECD (2016), "World Customs Organization (WCO)", in International Regulatory Co-operation: The Role of International Organisations in Fostering Better Rules of Globalisation, Paris.

⁹² WCO Enforcement and compliance tools, <http://www.wcoomd.org/topics/enforcement-and-compliance/instruments-and-tools/i2c.aspx> accessed on 22nd November 2019

The WCO has also created a common space called the Customs Enforcement Network (CEN), where the customs authorities can report their enforcement measures (like seizures).⁹³

2. The International Criminal Police Organization (Interpol)

INTERPOL cooperates with several international organizations to deal with several aspects of illicit trade such as illegal logging, falsified medicines and illegal trade in cultural goods.⁹⁴ The INTERPOL also created the I-24/7 as a network for exchange of information between the police authorities around the world.

In the fight against illicit trade INTERPOL offers the following assistance to its member states and partners.⁹⁵

- Collecting data and disseminating intelligence (e.g. analytical reports and threat assessments);
- Coordinating transnational law enforcement operations;
- Supporting multi-agency task forces, to improve cooperation between police, customs, regulatory bodies and the private sector;
- Delivering national and regional training sessions and promoting the International IP Crime Investigators College (IIPCIC); and
- Raising public awareness and helping consumers to make informed choices. It also offers training to its member countries and partners worldwide to build the skills and knowledge of all agencies involved in the fight against illicit trafficking and pharmaceutical crime.

The training portfolio covers practical training as a precursor to operations, specialized courses in investigative techniques, train-the-trainer sessions and online learning courses.⁹⁶

3. The Organisation Economic Cooperation And Development (OECD)

With a comprehensive approach aimed at the prevention of illicit financial flows, the OECD has adopted several recommendations on current issues in illicit trade, such as money laundering, the financing of terrorism, and trade in illicit goods. To that end, it created a forum to enhance policy-oriented solutions on the subject matter: the OECD Task Force on Countering Illicit Trade.⁹⁷

One of the best examples that have been established by the OECD is the Information Sharing Platform to combat illicit trade of wildlife in Sub-Saharan Africa. The Task Force on Charting Illicit Trade created “a common space” where various stakeholders like government experts, non-governmental organizations, Industries and Academia, can participate in a near real-time crowd-based mobile reporting.⁹⁸ The initiative is not only managed to identify cooperative and uncooperative stakeholders or States, but also managed to gather geo-tagged data that has not been “historically available”.⁹⁹

93 WCO, CEN Suite information, <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/cen-suite.aspx> accessed on 22nd November 2019

94 WCO, WCO and INTERPOL reaffirm their commitment to work together against crime, 13 January 2016, <http://www.wcoomd.org/en/media/newsroom/2016/january/wco-and-interpol-reaffirm-their-commitment-to-work-together-against-crime.as> accessed on 22nd November 2019

95 <https://www.interpol.int/en/Crimes/Illicit-goods/Our-response-to-illicit-goods> accessed on 22nd November 2019

96 <https://www.interpol.int/en/Crimes/Illicit-goods/Training-to-fight-illicit-goods> accessed on 22nd November 2019

97 Charting Illicit Trade: Sharing Data and Information, available at: <http://www.oecd.org/gov/risk/chartingillicittradesharingdataandinformation.htm> accessed on 22nd November 2019

98 OECD (2016), Illicit Trade: Converging Criminal Networks

99 Ibid

NATIONAL STATUTORY PROVISIONS CRIMINALISING ILLICIT TRADE

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Agricultural Produce (Export) Act, Cap 319	<p>Exporting/ attempting to export agricultural produce (Section 3)</p> <p>Exporting, or causing or permitting to be exported, or attempting to export, any agricultural produce for which rules are made before such produce has been inspected, or inspected and branded, in manner prescribed by such rules.</p> <p>Penalty (Section 14)</p> <p>First conviction: Fine not exceeding two thousand shillings.</p> <p>Second or subsequent conviction: Fine not exceeding five thousand shillings.</p> <p>In default of payment in either case: Imprisonment for a term not exceeding six months.</p>	<p>Identify agricultural produce exported</p> <p>Show overt act made towards attempting to export produce.</p> <p>Demonstrate that exportation or attempt was made before produce was inspected</p>
	<p>Exporting or attempting to export produce of animal infected with disease(Section 4)</p> <p>Exporting, or causing or permitting to be exported, or attempting to export the produce of any animal intended for human consumption, which is infected with any disease rendering such produce unfit for such consumption; or agricultural produce intended for human consumption which at the time of presentation for export is unfit for such consumption; or agricultural produce which owing to its condition or for any other reason is unlikely to be brought to its destination in a sound or good marketable state.</p> <p>Penalty (Section 14)</p> <p>First conviction: Fine not exceeding two thousand shillings.</p> <p>Second or subsequent conviction: Fine not exceeding five thousand shillings.</p> <p>In default of payment in either case: Imprisonment for a term not exceeding six months.</p>	<p>Identify/ produce the animal produce.</p> <p>Show that produce is infected with disease.</p> <p>Show that person exported produce to a foreign country.</p> <p>Demonstrate overt act person took to attempt to export produce to a foreign country.</p>
	<p>Exporting meat from an unsanctioned abattoir (Section 6)</p> <p>1)Exporting, or causing or permitting to be exported, or attempting to export, any meat or any produce thereof where the abattoir or slaughtering place used for the slaughter of the animal from which such meat is to be taken is not a place sanctioned by the Director as fit for the purpose.</p> <p>2)Exporting, or permitting to be exported, or attempting to export, any milk products, compositions or substitutes thereof where the dairy, factory, creamery or premises where such products, compositions or substitutes are collected, prepared or stored are not premises sanctioned by the Director as fit for such purpose.</p>	<p>Identify/ produce the meat</p> <p>Demonstrate that abattoir is not sanctioned by Director</p> <p>Show that meat was exported (taken out of the country)</p> <p>Demonstrate that dairy, factory, creamery is not sanctioned by Director</p> <p>Show that produce was exported out of the country</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Penalty (Section 14)</p> <p>First conviction: Fine not exceeding two thousand shillings. Second or subsequent conviction: Fine not exceeding five thousand shillings.</p> <p>In default of payment in either case: Imprisonment for a term not exceeding six months</p>	
	<p>Interfering with work of inspector (Section 12(1))</p> <p>Obstructing, resisting or hindering an inspector in the lawful exercise of his powers or duties.</p> <p>Penalty</p> <p>Fine not exceeding one thousand shillings</p>	<p>Demonstrate how inspector was obstructed</p> <p>Show that inspector was performing his/ her duties</p>
	<p>Failing to remove any produce as directed by an inspector (Section 12(2))</p> <p>Failing, within the time required by an inspector, to remove any produce from any place of inspection, reception or shipment whenever such removal is so required.</p> <p>Penalty</p> <p>Fine not exceeding one hundred shillings for every day during which the offence continues</p>	<p>Demonstrate failure to remove produce from place of inspection when required to do so</p>
	<p>Forging a certificate (Section 13(1))</p> <p>Forging or uttering knowing it to be forged, any certificate or brand or label, or any writing or signature required by or provided in the Act, or any subsidiary legislation.</p> <p>Penalties prescribed by law for the crime of forgery. (Penal Code Section 349 Imprisonment for 3 years)</p>	<p>Show that person knew or ought to have known that certificate was forged</p> <p>Produce the certificate</p> <p>Demonstrate that certificate was forged</p>
	<p>Applying Forged certificate to agriculture produce (Section 13(2))</p> <p>Willfully applying to agriculture produce intended for export a certificate or invoice or label or warranty given in relation to any other agricultural produce.</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twelve months.</p>	<p>Show that the certificate/invoice was forged</p> <p>Demonstrate that the person willfully applied the forged certificate to the agriculture produce</p>
	<p>Issuing Forged Certificate (Section 13(3))</p> <p>Issuing a written warranty or invoice, label or certificate or notification in respect of agricultural produce intended for export with intent to deceive, if such written documents falsely describe such produce or are false in any other material particular.</p> <p>Penalties prescribed by law for the crime of cheating. (Penal Code Section 349 Imprisonment for 3 years)</p>	<p>Demonstrate falsity in the warranty or invoice, label or certificate</p> <p>Show that it was issued with intent to deceive</p>
	<p>Contravention of the Act or subsidiary legislation (Section 14)</p> <p>Penalty (Section 14)</p> <p>First conviction: Fine not exceeding two thousand shillings. Second or subsequent conviction: Fine not exceeding five thousand shillings.</p> <p>In default of payment in either case: Imprisonment for a term not exceeding six months</p>	<p>Demonstrate the provision of the Act/ subsidiary legislation contravened.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Anti-Counterfeit Act, No. 3 of 2008	<p>Willfully obstructing an inspector in the discharge of his duties (Section 24(1)(a))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both</p>	<p>Show that the person willfully obstructed an inspector in the discharge of his duties</p>
	<p>Willfully failing to comply with any requirement properly made to him by an inspector (Section 24(1)(b))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both.</p>	<p>Show that the requirement was properly made by an inspector.</p> <p>Show that person willfully failed to comply with the requirement.</p>
	<p>Without reasonable cause, failing to give assistance or information which an inspector may reasonably require in the discharge of his duties. (Section 24(1)(c))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both</p>	<p>Show that person was in a position to assist.</p> <p>Demonstrate that person was requested to assist</p> <p>Show that the person willfully failed to offer such assistance as requested by the Inspector</p>
	<p>Giving false information as mentioned in Section 24(1) (c) above (Section 24(1)(d))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both</p>	<p>Show that the person knew the information was false or ought to have known that information was false</p>
	<p>Without authority, breaking, damaging or tampering with a seal applied by an inspector (Section 24(2)(a))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both</p>	<p>Show the broken seal</p> <p>Demonstrate that seal was applied by inspector eg by sworn affidavit.</p>
	<p>Without authority, removing any goods, documents, articles, items, objects or things sealed off by an inspector at a counterfeit goods depot (Sec 24(2)(b))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both</p>	<p>Proof that the goods, articles or documents were removed</p> <p>Show that the goods, articles or documents were sealed off by an inspector at a counterfeit goods depot</p> <p>Demonstrate that it was done without authority</p>
	<p>Disclosure of any information on manufacturing process or trade secret obtained in premises entered by virtue of powers of entry conferred under the Act or any information obtained in the performance of functions under the Act¹ (Section 31 (1)(a))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both</p>	<p>Show entry into premises in fulfilment of the law eg by proof of search warrants</p> <p>Demonstrate the unlawful sharing of information to a third party</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Impersonating an inspector (Section 31 (1)(b))</p> <p>Penalty (Section 35(2))</p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both.</p>	<p>Show how person passed off as an inspector under the Act</p>
	<p>Having in possession or control in the course of trade, any counterfeit goods (Section 32 (a))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Identify the original products counterfeited</p> <p>Produce the counterfeit products</p> <p>Show that the person was in the course of trading</p>
	<p>Manufacturing, producing or making in the course of trade, any counterfeit goods² (Section 32 (b))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Demonstrate that the goods are counterfeit</p>
	<p>Selling, hiring out, bartering or exchanging, or offering or exposing for sale, hiring out, bartering or exchanging any counterfeit goods; (Section 32 (c))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the person was in the course of trading selling, hiring out, bartering or exchanging, or offering or exposing for sale, hiring out, bartering or exchanging any counterfeit goods</p> <p>Identify persons to whom goods sold or offered for sale</p>
	<p>Exposing or exhibiting for the purposes of trade any counterfeit goods (Section 32 (d))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the counterfeit goods were in public display</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both	
	<p>Distributing counterfeit goods for purposes of trade or any other purpose (Section 32 (e))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Identify persons to whom goods were distributed</p> <p>Show that counterfeit goods were distributed</p>
	<p>Importing into, transiting through, transshipping within or exporting from Kenya, except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods³ (Section 32 (f))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Identify the country where goods are originating or being exported to.</p> <p>Demonstrate that goods are counterfeits</p>
	<p>Disposing of any counterfeit goods in any other manner in the course of trade (Section 32 (g))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the person disposed counterfeit goods</p> <p>Show that the disposal was done in the course of trade</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Having in possession or control in the course of trade any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive (Section 32 (h))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the person had in his possession the labels, patches, wrappers etc. containing the counterfeit mark</p>
	<p>Aiding or abetting or conspiring in the commission of any offence under the Act (Section 32 (i))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the person assisted in the commission of any of the offences under the Act.</p>
	<p>Importing into Kenya, any goods or items bearing a trade mark, trade name or copyright that has not been recorded with the Authority (Section 32 (j))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the imported goods bore a trade mark, trade name or copyright that had not been recorded with ACA</p>
	<p>Importing into Kenya, in the course of trade, any goods or items except raw materials that is unbranded (Section 32 (k))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the goods imported were not unbranded raw materials (contain no trade mark)</p> <p>Show that the goods were imported</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failing to declare the quantity or the intellectual property right subsisting in any goods being imported into Kenya (Section 32 (l))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Show that the person failed to declare the quantity or the intellectual property right subsisting in any imported goods</p>
	<p>Falsely declaring the quantity or the intellectual property rights subsisting in any goods being imported into Kenya (Section 32 (m))</p> <p>Penalty (Section 35(1))</p> <p>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both</p> <p>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years. or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Demonstrate that the import documents contain a false declaration of quantity or the intellectual property rights subsisting in any imported goods.</p> <p>Show the correct (true) quantity or intellectual property rights subsisting in the imported goods.</p>
	<p>Importing into or transit through Kenya any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive. (Section 32 (n))</p> <p>Penalty Section 35(1)</p> <p>(a) First conviction: Imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both.</p> <p>(b) Second/subsequent conviction: Imprisonment for a term not exceeding fifteen years, or to a fine, not less than five times the value of the prevailing retail price of the goods, or both</p>	<p>Demonstrate that the labels, wrappers, stickers etc have been imported or are in transit through Kenya. Show that the mark applied is counterfeit and the likelihood of confusion due to the similarity between the counterfeit mark and the genuine mark.</p> <p>NOTE: <i>The counterfeit offences discussed under section 32 above do not require proof of the mental element necessary in proving offences. These are strict liability offences, a prosecutor merely needs to prove the act.</i></p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Anti-Counterfeit Regulations, 2010	<p>False Declarations (Regulation 17)</p> <p>(a) with intent to deceive or mislead, giving any false information in relation to any application made to the Authority or Commissioner</p>	<p>Identify the false information</p> <p>Show that it was false</p> <p>Show that the person knew or ought to have known that the information was false</p> <p>Show that the person was acting with intent to deceive</p>
	<p>(b) removing, adding to, altering, defacing, or rendering illegible any information on any Form prescribed under the Regulations in relation to any goods or tools</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding six months, or a fine not exceeding six thousand shillings, or both</p>	<p>Show that the person removed, added or altered information on any Form prescribed under the Regulations in relation to any goods or tools</p>
	<p>Dealing with suspected counterfeit goods (Regulation 20)</p> <p>Continuing to deal or trade in goods of similar description by owner of suspected counterfeit goods</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding six months, or a fine not exceeding six thousand shillings, or both</p>	<p>Show that the owner had previously been trading in counterfeit products (previous conviction)</p> <p>Demonstrate that the owner is still trading in counterfeit products</p>
Anti-Doping Act, No 5 of 2016	<p>Failing to produce any sample, document, papers or any other thing on the order of the Agency (Section 42(1)(b))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both</p>	<p>Show that the person was ordered by the Agency to produce any sample, document, papers etc.</p> <p>Show that the person failed to produce such sample, document, papers etc.</p>
	<p>Refusing to submit a sample or refusing it to be examined in furtherance of this Act (Section 42(1)(c))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both</p>	<p>Show that the person was ordered to submit a sample to be examined in furtherance of the Act</p> <p>Show that the person refused to comply with such order</p>
	<p>Presenting to the Agency a false document or making a false statement with the intent to deceive or mislead an investigating officer (Section 42(1)(e))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both</p>	<p>Identify the false statement</p> <p>Show that the person presented it to the Agency with the intent to deceive or mislead an investigating officer</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Willfully obstructs or hinders any person acting in the performance of any function or exercise of powers conferred by this Act (Section 42(1)(f))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both</p>	<p>Show that the person willfully obstructed an officer in the performance of any function under the Act</p>
	<p>Transfer or transport of prohibited substances (Section 42(2)(a))</p> <p>Unlawfully transporting or transferring prohibited substances, within or outside Kenya</p> <p>Penalty</p> <p>(a) Fine of not less than three million shillings or to imprisonment of not less than three years or to both such fine and imprisonment</p> <p>(b) In case of corporate bodies, in addition to the fine, the trading licence of the respective corporate body shall be withdrawn for a period of not less than one year.</p>	<p>Demonstrate that the substances are prohibited.</p> <p>Show that the substances were transported (including means of transport) or transferred within or outside Kenya (i.e. exported)</p>
	<p>Stocking prohibited substances (Section 42(2)(b))</p> <p>Stocking supplies of products containing prohibited substances in an unlawful manner</p> <p>Penalty</p> <p>(a) Fine of not less than three million shillings or to imprisonment of not less than three years or to both such fine and imprisonment</p>	<p>Demonstrate that the substance are prohibited.</p> <p>Show the lawful manner of stocking permitted.</p>
	<p>(b) In case of corporate bodies, in addition to the fine, the trading licence of the respective corporate body shall be withdrawn for a period of not less than one year.</p>	<p>Demonstrate that the stocking was unlawful.</p>
	<p>Causing use of prohibited substance (Section 42(2)(c))</p> <p>administering, applying or generally causing an athlete to use prohibited substances</p> <p>Penalty</p> <p>(a) Fine of not less than three million shillings or to imprisonment of not less than three years or to both such fine and imprisonment</p> <p>(b) In case of corporate bodies, in addition to the fine, the trading licence of the respective corporate body shall be withdrawn for a period of not less than one year.</p>	<p>Demonstrate that the substances are prohibited.</p> <p>Show that the substances were administered or applied to an athlete.</p>
	<p>Use of prohibited substance in recreational sport in a gym, fitness centre, private club or other similar facility (Section 42(3)(a))</p> <p>Using or causing another person to use a prohibited substance or method</p> <p>Penalty</p> <p>Fine of not less than one hundred thousand shillings or to imprisonment or for a term of not less than one year or to both such fine and imprisonment</p>	<p>Demonstrate that the substances are prohibited</p> <p>Demonstrate that the substance were used in a recreational facility</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Being in possession of a prohibited substance (Section 42(3)(b))</p> <p>Penalty</p> <p>Fine of not less than one hundred thousand shillings or to imprisonment or for a term of not less than one year or to both such fine and imprisonment</p>	<p>Demonstrate that the substances are prohibited</p> <p>Show that the accused was found in possession of the substance</p>
	<p>Administering or attempting to administer a prohibited substance (Section 42(3)(c))</p> <p>Penalty</p> <p>Fine of not less than one hundred thousand shillings or to imprisonment or for a term of not less than one year or to both such fine and imprisonment</p>	<p>Identify the prohibited substance</p> <p>Show that the substance is prohibited</p> <p>Demonstrate the accused administered or attempted to administer the prohibited substance</p>
	<p>Buying, selling, stocks, transporting or in any way dealing with a prohibited substance (Section 42(3)(d))</p> <p>Penalty</p> <p>Fine of not less than one hundred thousand shillings or to imprisonment or for a term of not less than one year or to both such fine and imprisonment</p>	<p>Demonstrate that the substance is prohibited.</p> <p>Show that the accused was dealing in the substances e.g. through selling, buying, transporting.</p>
	<p>Offences by medical practitioner, pharmacist, veterinary surgeon, dentist, nurse, physiotherapist, traditional herbalist, or any other health related professional (Section 42(4))</p> <p>a prescribing or dispensing prohibited substances or methods to an athlete with the intent of doping;</p> <p>b unlawfully administering prohibited substances or methods to an athlete;</p> <p>c acquiring, stocking or unlawfully possessing prohibited substances; or</p> <p>d aiding, abetting or in any way encouraging the unlawful use of prohibited substances in sport.</p> <p>Penalty</p> <p>Imprisonment for a term of not less than three years or to both such fine and imprisonment, and shall have his or her professional licence revoked for a period of not less than one year.</p>	<p>Demonstrate that the accused is a health related professional</p> <p>Demonstrate that the substance is prohibited</p> <p>Demonstrate that the accused had in their possession the prohibited substances</p> <p>Demonstrate that the accused issued or prescribed the prohibited substance</p>
<p>Alcoholic Drinks Control Act, No. 4 of 2010</p>	<p>Failure to display license (Section 20)</p> <p>1) Failing or neglecting to prominently and conspicuously display licence on the premises to which it relates.</p> <p>3) Person causing or permitting to be on his premises or on premises under his control any words, letters or sign falsely importing that he is a licensee.</p> <p>Penalty (Section 62)</p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both</p>	<p>Show failure to display licence on Premises</p> <p>Demonstrate that premises were used to sell alcohol</p> <p>Set out the words displayed</p> <p>Demonstrate that person is not a licensee</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Allowing a minor to access area where alcohol is sold (Section 24)</p> <p>Licensee allowing a person under the age of eighteen years to enter or gain access to the area in which alcoholic drink is manufactured, stored or consumed.</p> <p>Penalty (Section 62)</p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both</p>	<p>Show that a minor accessed alcohol sale/ manufacture or store area</p> <p>Show that licensee was aware of minor accessing the area</p>
	<p>Dealing in alcoholic drink that does not conform to Act (Section 27 (4))</p> <p>Manufacturing, importing or distributing or being in possession of an alcoholic drink that does not conform to the requirements of the Act.</p> <p>Penalty</p> <p>Fine not exceeding two million shillings, or to imprisonment for a term not exceeding five years, or to both.</p>	<p>Produce the alcoholic product</p> <p>Set out how the product does not conform to requirements of the Act</p>
	<p>Selling/supplying alcoholic drink to a person below 18 years (Section 28)</p> <p>2) Selling, supplying or knowingly providing an alcoholic drink to a person under the age of eighteen years.</p> <p>5) Manufacturing or selling objects including sweets, snacks and toys that resemble or imitate alcoholic drinks.</p> <p>Penalty</p> <p>Fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both</p>	<p>Demonstrate that alcoholic drink was sold/supplied or provided to a minor</p> <p>Identify the minor to whom alcoholic drink was supplied (can be identified by initials)</p> <p>Produce the objects (sweets, snacks etc)</p> <p>Demonstrate how the objects imitate alcoholic drinks</p>
	<p>Failing to post that sale of alcohol is prohibited to minors⁴ (Section 29)</p> <p>Retailer failing to post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of an alcoholic drink to a person under the age of eighteen years is prohibited by law</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both</p>	<p>Show that person engages in business of sale of alcohol</p> <p>Demonstrate that person failed to post signs with prescribed content.</p>
	<p>Selling alcohol by way of an automatic vending machine (Section 30)</p> <p>Permitting an alcoholic drink to be sold by way of an automatic vending machine.</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.</p>	<p>Produce the machine</p> <p>Demonstrate that alcohol was sold through the machine</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Dealing in alcoholic drink in sachets (Section 31)</p> <p>Selling, manufacturing, packing or distributing an alcoholic drink in sachets or such other form as may be prescribed.</p> <p>Manufacturing, packing, distributing or selling an alcoholic drink in a container of less than 250 milliliter.</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both</p>	<p>Produce the sachets</p> <p>Produce the container that is less than 250 milliliter</p>
	<p>Package not bearing statement of constituents or health warning (Section 32)</p> <p>Manufacturing, importing, selling or distributing an alcoholic drink whose package, or at least 30% of the total surface area of the package, does not bear a statement as to its constituents; and/ or does not have at least two of the health warning messages prescribed in the Second Schedule, in English or Kiswahili.</p> <p>Penalty</p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both</p>	<p>Produce the package</p> <p>Demonstrate that person was selling, manufacturing, imported or distributing alcoholic drink not meeting specifications</p> <p>Show that package does not meet specifications</p>
	<p>Selling alcohol to an intoxicated person (Section 33(4))</p> <p>Licensee selling alcoholic drink to a person already in a state of intoxication or by any means encouraging or inciting him to consume an alcoholic drink.</p> <p>Penalty (Section 62)</p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>	<p>Show that person to whom alcohol sold was intoxicated (identify person)</p>
	<p>Selling alcoholic drink in contravention of conditions in licence (Section 34)</p> <p>Selling an alcoholic drink or offering or exposing it for sale or bottling an alcoholic drink in contravention of conditions specified in the licence issued under the Act.</p> <p>Penalty</p> <p>First offence: Fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding nine months, or to both;</p> <p>Second or subsequent offence: Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.</p> <p>Forfeiture of all alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drink.</p>	<p>Identify conditions in license that is contravened</p> <p>Demonstrate how condition is contravened</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offering alcoholic drink to officer in uniform (Section 35)</p> <p>Knowingly selling, supplying or offering an alcoholic drink to an authorized officer or to a police officer in uniform or harbouring or suffering to remain on licensed premises any such police officer except for the purpose of keeping or restoring order or otherwise in the execution of his duty.</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.</p>	<p>Show that person was aware of what he was doing</p> <p>Demonstrate that person sold, supplied or offered alcoholic drink to an officer or allowed an officer in premises</p> <p>Show that officer was not executing his/her duty at the time</p>
	<p>Allowing purchase and consumption of alcohol in premises⁵ (Section 37)</p> <p>1) Licensee allowing any person to purchase any alcoholic drink from the licensee whose licence does not cover the sale of that alcoholic drink for consumption on the premises, and drinks the alcoholic drink on the premises where it is sold, or in any premises adjoining or near to those premises, if belonging to the seller of the alcoholic drink or under his control or used by his permission, or on any highway adjoining or near any such premises.</p>	<p>ODemonstrate that the license did not allow for the consumption of alcohol in the premises</p> <p>Demonstrate that alcohol was sold and consumed in premises contrary to license conditions</p>
	<p>2) Licensee whose licence does not cover the sale of alcoholic drink to be consumed on his premises himself taking or carrying, or employing or suffering any other person to take or carry, any alcoholic drinks out of or from his premises for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any place other than the licensed premises, with intent to evade the conditions of the licence.</p> <p>Penalty (Section 62)</p> <p>Fine not exceeding ten million Kenya shillings or imprisonment for a term not exceeding ten years, or to both.</p>	<p>Demonstrate that licensee allowed another party to carry out alcohol from premises</p>
	<p>Selling adulterated alcohol (Section 38)</p> <p>Keeping for sale, offering for sale or selling any alcoholic drink which has been in any way adulterated, or diluted by any person; or any non-alcoholic drink which has been in any way adulterated with alcohol, or which contains any of the substances prohibited by Regulations.</p> <p>Penalty</p> <p>Fine not exceeding ten million Kenya shillings or imprisonment for a term not exceeding ten years, or to both.</p>	<p>Produce the adulterated alcohol</p> <p>Demonstrate the right chemical composition of the alcoholic drink and the manner of adulteration</p>
	<p>Promoting alcoholic drink or brand contrary to the Act (Section 43)</p> <p>Promoting an alcoholic drink or an alcohol related brand element except in accordance with the provisions of the Act.</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>	<p>Produce the promotional item of the brand</p> <p>Demonstrate how promotion contravene provisions of the Act</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Promoting alcoholic drinks by false means (Section 44)</p> <p>Promoting an alcoholic drink by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcoholic drink.</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.</p>	<p>Produce promotional item</p> <p>Demonstrate falsity of promotional item</p>
	<p>Exaggerated promotion of an alcoholic drink (Section 45)</p> <p>Promoting an alcoholic drink so as to create a false impression that a link exists between consumption of that drink and social or sexual success; or consumption of that drink is acceptable before or while engaging in driving, operating machinery, sports or other activities that require concentration in order to be carried out safely; or that the alcoholic drink has a therapeutic value or that it has the ability to prevent, treat or cure any human disease; or it is wrong or foolish to refuse that drink.</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.</p>	<p>Show the promotional item</p> <p>Demonstrate link with sexual or social success, promotion of drunk driving, operating machinery, or sports</p>
	<p>Promoting alcohol at an event of minors (Section 46)</p> <p>Promoting an alcoholic drink at any event or activity associated with persons under the age of eighteen years; or using such things or materials that are associated with persons under the age of eighteen years.</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shilling or imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>	<p>Show the promotion item</p> <p>Demonstrate that event was for minors</p>
	<p>Promoting alcoholic drink to win a prize (Section 47)</p> <p>Promoting any alcoholic drink in such a manner as to encourage more consumption of an alcoholic drink in order to win an award or prize.</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both</p>	<p>Show the promotional item</p> <p>Demonstrate that promotional item encourages people to consume and win an award or prize</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Publishing or broadcasting contrary to Act (Section 48)</p> <p>1) Publishing, broadcasting or otherwise disseminating any promotion that is prohibited on behalf of another person, with or without consideration.</p> <p>2) Promoting any product the promotion of which is regulated by the Act, or disseminating promotional material that contains an alcohol-related brand element in a manner that is contrary to the requirements of the Act by means of a publication that is published outside Kenya, or a broadcast that originates outside Kenya, or any other communication that originates outside Kenya.</p> <p>Penalty</p> <p>Fine not exceeding three million Kenya shillings or imprisonment for a term not exceeding three years, or to both</p>	<p>Show the promotional item</p> <p>Demonstrate that promotion is prohibited</p> <p>Identify the product</p> <p>Identify provision of the Act contravened</p> <p>Demonstrate how promotion contravened provision of the Act</p>
	<p>Failing to display that drinking of alcohol is prohibited for person under 18 years (Section 49)</p> <p>Manager or owner of a place where an alcoholic drink is sold failing to display therein, clear and prominent notices in English or Kiswahili and in the prescribed form and size stating that drinking of alcoholic drinks is prohibited for persons under the age of eighteen years and the prescribed penalty thereof.</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding six months, or to both.</p>	<p>Demonstrate that person failed to display notice prominently</p>
<p>Anti-Corruption and Economic Crimes Act, No. 3 of 2003</p>	<p>Disclosing the details of an investigation under the Act, including the identity of anyone being investigated without leave of the Director or without other lawful excuse (Section 33)</p> <p>Penalty</p> <p>Fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding three years, or both</p>	<p>Demonstrate that officer disclosed details of an investigation under the Act without Authority</p>
	<p>Corruptly receiving or soliciting, or corruptly agreeing to receive or solicit, a benefit that is an inducement or reward for, or otherwise on account of, an agent; or corruptly giving or offering, or corruptly agreeing to give or offer, a benefit that is an inducement or reward for, or otherwise on account of, an agent (Section 39(3))</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p>	<p>Demonstrate officer received, solicited or agreed to receive or solicit a benefit on behalf of agent</p> <p>Show that benefit was meant to induce or reward</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Receiving, soliciting a benefit to give advice (Section 40(2))</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p>	<p>Demonstrate act of receiving, soliciting or agreeing to receive or solicit a benefit</p>
	<p>Improper benefits to trustees for appointments (Section 43)</p> <p>(a) receiving or soliciting, or agreeing to receive or solicit, from a trustee of property a benefit to which this section applies; or</p> <p>(b) giving or offering, or agreeing to give or offer, to a trustee of property a benefit to which this section applies</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p>	<p>Identify the persons giving or receiving the improper benefits</p> <p>Demonstrate that an improper benefit was either given to or received by a trustee of property</p>
	<p>Bid Rigging (Section 44(2))</p> <p>(a) receiving or soliciting or agreeing to receive or solicit a benefit to which this section applies; or</p> <p>(b) giving or offering or agreeing to give or offer a benefit to which this section applies.</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p>	<p>Show that a benefit that is an inducement or reward was given for:</p> <p>(a) refraining from submitting a tender, proposal, quotation or bid</p> <p>(b) withdrawing or changing a tender, proposal, quotation or bid; or</p> <p>(c) submitting a tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to unlawful acquisition of property (Section 45(1))</p> <p>(a) Fraudulently or otherwise unlawfully acquiring public property or a public service or benefit;</p> <p>(b) mortgaging, charging or disposing of any public property;</p> <p>(c) damaging public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service;</p> <p>(d) failing to pay any taxes or any fees, levies or charges payable to any public body or effecting or obtaining any exemption, remission, reduction or abatement from payment of any such taxes.</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p>	<p>Demonstrate interference with computer or machinery and how it results in loss of public revenue</p>
	<p>Interfering with public revenue by Officers who administrate public revenue⁶ (Section 45(2))</p> <p>(a) fraudulently making payment or excessive payment from public revenues for substandard or defective goods, goods not supplied or not supplied in full, or services not rendered or not adequately rendered;</p> <p>(b) willfully or carelessly failing to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures;</p> <p>(c) engaging in a project without prior planning.</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p>	<p>Show that an unlawful/ excessive payment was made from public revenues for substandard or defective goods/ goods not supplied or not supplied in full/ or services not rendered or not adequately rendered</p> <p>Show failure to comply with any law or applicable procedures and guidelines relating to the procurement</p>
	<p>Conferring a benefit on oneself or another using ones office (Section 46)</p> <p>Using one's office to improperly confer a benefit on himself or anyone.</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p>	<p>Demonstrate how one used his/her office to confer benefit to another</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Committing an offence involving corruption or an economic crime (Section 47A)</p> <p>Penalty (Section 48)</p> <p>(a) Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and</p> <p>(b) An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p> <p>Note:</p> <p><i>(2) The mandatory fine referred to in subsection (1)(b) of the offences is to be determined as follows—</i></p> <p><i>(a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b);</i></p> <p><i>(b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.</i></p>	<p>Demonstrate that the action of the person were intended to commit an offence of corruption or an economic crime</p>
<p>Bribery Act, No. 47 of 2016</p>	<p>Giving a bribe (Section 5)</p> <p>Penalty (Sections 18(1) and (3))</p> <p>(a) Imprisonment for a term not exceeding ten years, or to a fine not exceeding five million shillings, or both; and</p> <p>(b) Additional mandatory fine if, as a result of the conduct constituting the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p> <p>Additional Penalties (Section 18(6) to (12))</p> <ol style="list-style-type: none"> 1. Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity 2. If the convicted person is a State officer or a public officer, such person shall be barred from holding public office, in accordance with the provisions of the Constitution, the ACECA, Public Officer Ethics Act, 2003 and the Leadership and Integrity Act, 2012 3. If the convicted person is a director of a company, such person shall be disqualified from holding the position of director in that or any other company in Kenya for a period of not more than ten years 4. If the convicted person is a partner in a firm, such person shall be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years 5. Disqualification from being elected or appointed to hold a state office or a public office for a period of not more than ten years after conviction 6. A person, other than a natural person, convicted of bribery, shall be disqualified from transacting business with the national or county government for a period of ten years after such conviction 	<p>Demonstrate the exchange of the financial or other advantage or the promise for the financial or other advantage. Show the improper performance of the function expected and the benefit expected by the giver of the financial benefit.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Receiving a bribe (Section 6)</p> <p>Penalty (Sections 18(1) and (3))</p> <p>(a) Imprisonment for a term not exceeding ten years, or to a fine not exceeding five million shillings, or both; and</p> <p>(b) Additional mandatory fine if, as a result of the conduct constituting the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p> <p>Additional Penalties (Section 18(6) to (12))</p> <ol style="list-style-type: none"> 1. Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity 2. If the convicted person is a State officer or a public officer, such person shall be barred from holding public office, in accordance with the provisions of the Constitution, the ACECA, Public Officer Ethics Act, 2003 and the Leadership and Integrity Act, 2012 3. If the convicted person is a director of a company, such person shall be disqualified from holding the position of director in that or any other company in Kenya for a period of not more than ten years 4. If the convicted person is a partner in a firm, such person shall be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years 5. Disqualification from being elected or appointed to hold a state office or a public office for a period of not more than ten years after conviction 6. A person, other than a natural person, convicted of bribery, shall be disqualified from transacting business with the national or county government for period of ten years after such conviction <p>Note:</p> <p><i>The mandatory fine referred to above shall be —</i></p> <p>(a) <i>equal to five times the amount of the benefit or loss described in subsection (1)(b);</i></p> <p>(b) <i>if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), equal to five times the sum of the amount of the benefit and the amount of the loss.</i></p>	<p>Demonstrate that the recipient was aware that the financial or other advantage was given to aid in the improper performance of a function for the benefit of the giver of the bribe.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failure to have in place procedures for the prevention of bribery (Sections 9)</p> <p>Penalty (Section 19)</p> <p>Fine not exceeding five million shillings, or to imprisonment for a term not exceeding ten years, or to both</p> <p>Additional Penalties (Section 18(6) to (12))</p> <ol style="list-style-type: none"> 1. Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity 2. If the convicted person is a State officer or a public officer, such person shall be barred from holding public office, in accordance with the provisions of the Constitution, the ACECA, Public Officer Ethics Act, 2003 and the Leadership and Integrity Act, 2012 3. If the convicted person is a director of a company, such person shall be disqualified from holding the position of director in that or any other company in Kenya for a period of not more than ten years 4. If the convicted person is a partner in a firm, such person shall be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years 5. Disqualification from being elected or appointed to hold a state office or a public office for a period of not more than ten years after conviction 6. A person, other than a natural person, convicted of bribery, shall be disqualified from transacting business with the national or county government for period of ten years after such conviction 	<p>Establish the duty as set out under the Act. Demonstrate that the directors or other officers consented to the failure of putting in place the procedures for prevention of bribery.</p>
	<p>Failure of private entity to prevent bribery (Sections 10)</p> <p>Penalty ((Sections 18(4) and 19)</p> <p>Fine not exceeding five million shillings, or to imprisonment for a term not exceeding ten years, or to both</p> <p>Additional Penalties (Section 18(6) to (12))</p> <ol style="list-style-type: none"> 1. Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity 2. If the convicted person is a State officer or a public officer, such person shall be barred from holding public office, in accordance with the provisions of the Constitution, the ACECA, Public Officer Ethics Act, 2003 and the Leadership and Integrity Act, 2012 3. If the convicted person is a director of a company, such person shall be disqualified from holding the position of director in that or any other company in Kenya for a period of not more than ten years 4. If the convicted person is a partner in a firm, such person shall be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years 	

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>5. Disqualification from being elected or appointed to hold a state office or a public office for a period of not more than ten years after conviction</p> <p>6. A person, other than a natural person, convicted of bribery, shall be disqualified from transacting business with the national or county government for period of ten years after such conviction</p> <p>Note: A fine imposed on a partnership on its conviction for an offence under this section shall be paid out of the partnerships assets. (Section 17(3))</p>	
	<p>Offences relating to activities intended to enable bribery (Section 13)</p> <p>(a) obtaining property intended for use in bribery;</p> <p>(b) using, having possession of or transferring property which was obtained as a result of or in connection with bribery; or</p> <p>(c) acquiring property which was obtained as a result of or in connection with bribery; or</p> <p>(d) recording property which was obtained as result of or in connection with bribery in the accounting records of any private entity.</p> <p>Penalty (Section 18(1))</p> <p>(a) Imprisonment for a term not exceeding ten years, or to a fine not exceeding five million shillings, or both; and</p> <p>(b) Additional mandatory fine if, as a result of the conduct constituting the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.</p> <p>Additional Penalties (Section 18(6) to (12))</p> <p>1. Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity</p> <p>2. If the convicted person is a State officer or a public officer, such person shall be barred from holding public office, in accordance with the provisions of the Constitution, the ACECA, Public Officer Ethics Act, 2003 and the Leadership and Integrity Act, 2012</p> <p>3. If the convicted person is a director of a company, such person shall be disqualified from holding the position of director in that or any other company in Kenya for a period of not more than ten years</p> <p>4. If the convicted person is a partner in a firm, such person shall be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years</p> <p>5. Disqualification from being elected or appointed to hold a state office or a public office for a period of not more than ten years after conviction</p> <p>6. A person, other than a natural person, convicted of bribery, shall be disqualified from transacting business with the national or county government for period of ten years after such conviction</p>	

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Note: Where an offence under this section is committed by a director or senior officer of a private entity the private entity shall be deemed to have committed the offence. (Section 13(2))</p> <p>Note: A fine imposed on a partnership on its conviction for an offence under this section shall be paid out of the partnerships assets. (Section 17(3))</p>	
	<p>Failure to report the commission/suspicion of the commission of an offence under this Act to the EACC (Section 14)</p> <p>Penalty (Section 19)</p> <p>Fine not exceeding five million shillings, or to imprisonment for a term not exceeding ten years, or to both</p> <p>Additional Penalties (Section 18(6) to (12))</p> <ol style="list-style-type: none"> 1. Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity 2. If the convicted person is a State officer or a public officer, such person shall be barred from holding public office, in accordance with the provisions of the Constitution, the ACECA, Public Officer Ethics Act, 2003 and the Leadership and Integrity Act, 2012 3. If the convicted person is a director of a company, such person shall be disqualified from holding the position of director in that or any other company in Kenya for a period of not more than ten years 4. If the convicted person is a partner in a firm, such person shall be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years 5. Disqualification from being elected or appointed to hold a state office or a public office for a period of not more than ten years after conviction 6. A person, other than a natural person, convicted of bribery, shall be disqualified from transacting business with the national or county government for period of ten years after such conviction. 	
	<p>Offences under sections 6 and 13 by bodies corporate and partnerships (Section 16)</p> <p>Penalty (Section 19)</p> <p>Fine not exceeding five million shillings, or to imprisonment for a term not exceeding ten years, or to both</p> <p>Additional Penalties (Section 18(6) to (12))</p> <ol style="list-style-type: none"> 1. Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity 2. If the convicted person is a State officer or a public officer, such person shall be barred from holding public office, in accordance with the provisions of the Constitution, the ACECA, Public Officer Ethics Act, 2003 and the Leadership and Integrity Act, 2012 	

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>3. If the convicted person is a director of a company, such person shall be disqualified from holding the position of director in that or any other company in Kenya for a period of not more than ten years</p> <p>4. If the convicted person is a partner in a firm, such person shall be disqualified from serving as a partner in that or any other firm in Kenya, for a period of not more than ten years</p> <p>5. Disqualification from being elected or appointed to hold a state office or a public office for a period of not more than ten years after conviction</p> <p>6. A person, other than a natural person, convicted of bribery, shall be disqualified from transacting business with the national or county government for period of ten years after such conviction</p> <p>Note: Where an offence is committed with the consent or connivance of a senior officer of the private entity or partnership, such officer shall be personally liable.</p>	
Competition Act, No. 12 of 2010	<p>Offences relating to the commission of any of the listed restrictive trade practices including: (Section 21)</p> <p>(a) collusive tendering;</p> <p>(b) using an intellectual property right in a manner that goes beyond the limits of fair, reasonable and non-discriminatory use.</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both.</p>	<p>Demonstrate existence of an agreement between the associations or undertakings (can be written or unwritten)</p> <p>Demonstrate how the agreement/ practices affect processes, divides markets or the particular aspect of competition the Act sets out to control</p>
	<p>Abuse of dominant position (Section 24)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years or a fine not exceeding ten million shillings or to both</p>	<p>Identify the dominant party</p> <p>Demonstrate that party has abused dominant position in the market</p>
	<p>Failing to comply with a condition of exemption (Section 27)</p> <p>Penalty (Section 91)</p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify condition of exemption</p> <p>Demonstrate failure to comply with that condition</p>
	<p>Implementing proposed merger without approval by Authority (Section 42)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both</p> <p>Additional Penalty ((Section 42(6))</p> <p>An amount not exceeding ten percent of the preceding year's gross annual turnover in Kenya of the undertaking or undertakings in question</p>	<p>Demonstrate that parties have implemented a proposed merger</p> <p>Show lack of approval by Authority</p> <p>Identify condition attached by Authority</p> <p>Demonstrate violation of that condition</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Having lodged no appeal within the time allocated for appeals contravenes or fails to comply with an order of the Authority/ an order of the Authority confirmed or modified by the Tribunal</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both</p>	<p>Produce the order</p> <p>Show failure to comply/contravention of the order</p> <p>Show failure to lodge appeal within prescribed time</p>
	<p>False representation in the course of trade (Section 55)</p> <p>(a) falsely representing:</p> <ul style="list-style-type: none"> (i) that goods/ services are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use (where applicable); (ii) that goods are new; (iii) that a particular person has agreed to acquire goods or services; (iv) that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have; (v) that the product has a sponsorship, approval or affiliation it does not have; (vi) the price of goods or services; (vii) the availability of facilities for the repair of goods or of spare parts for goods; (viii) the place of origin of goods; (ix) the need for any goods or services; or (x) the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy. <p>Penalty (Section 70)</p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both</p>	<p>Identify the false or misleading representations</p> <p>Demonstrate falsity of representation</p>
	<p>Engaging in unconscionable conduct (Section 56)</p> <p>Penalty (Section 70)</p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both</p>	<p>Identify the unconscionable conduct</p> <p>Show that person engaged in that conduct</p>
	<p>Engaging in unconscionable conduct in business transactions/ supply of goods (Section 57)</p> <p>Penalty (Section 70)</p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both</p>	<p>Identify the unconscionable conduct</p> <p>Demonstrate conduct and its connection to the supply of goods or services</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to the supply of unsafe goods contrary to Product safety standards (Section 59(1))</p> <p>Penalty (Section 70)</p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both.</p>	<p>Identify the unsafe goods</p> <p>Identify safety standards violated</p> <p>Demonstrate that goods are unsafe and how they violate standards</p>
	<p>Failure to comply with prescribed product information standards (Section 60)</p> <p>Penalty (Section 70)</p> <p>Imprisonment for a term not exceeding five years, or to a fine not exceeding ten million shillings, or both</p>	<p>Identify the goods/ produce goods</p> <p>Demonstrate that goods don't comply with standards prescribed</p> <p>Show the prescribed standards</p>
	<p>Obstructing a person performing duty under Act (Section 87)</p> <p>Penalty (Section 70)</p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both</p>	<p>Identify person obstructed, influenced or hindered</p> <p>Demonstrate that person was performing duty under the Act</p> <p>Demonstrate how person was obstructed, influenced or hindered</p>
	<p>Failing to comply with a lawful order issued by the Competition Authority (Section 89)</p> <p>Penalty (Section 70)</p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both</p>	<p>Identify the lawful order by the Authority</p> <p>Demonstrate failure to comply with the order</p>
<p>Consumer Protection Act No. 46 of 2012</p>	<p>Charging a consumer for assisting the consumer to obtain a benefit to which the consumer is entitled under this Act without prior disclosure (Section 8)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify the consumer</p> <p>Demonstrate that consumer was charged for assistance offered</p> <p>in obtaining a benefit, right or protection under Act</p> <p>Demonstrate failure to disclose to consumer in advance of paying the existence of the entitlement and cost if any</p>
	<p>Supplier demanding payment from consumer for unsolicited goods or services (Section 9)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify the goods</p> <p>Demonstrate that goods or services were unsolicited</p> <p>Show that supplier has demanded payment or made representations to suggest that consumer is to make payment in respect of goods</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Advertising an illegal internet gaming site (Section 11)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify the site</p> <p>Demonstrate that site is operated contrary to the law</p> <p>Demonstrate that person arranged or facilitated advertising on behalf of another</p>
	<p>Making false representations and pressuring consumer to renegotiate terms (Section 14)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify the false or misleading representation</p> <p>Demonstrate falsity in the representation</p> <p>Demonstrate use of custody or control of consumers goods to pressure consumer into renegotiating terms of a transaction</p>
	<p>Accepting personal payment for personal development services without a written agreement (Section 24)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Demonstrate that supplier accepted personal payment for development services from consumer</p> <p>Demonstrate lack of a written agreement</p>
	<p>Entering into personal development agreement with more than one consumer (Section 26)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify all the consumers supplier entered into personal development agreements with</p> <p>Demonstrate that agreements were for the supply of the same services</p>
	<p>Supplier of personal development services charging more than one initiation fee/ charging an initiation fee that is greater than twice the annual membership fee (Section 27)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Demonstrate that supplier charged more than one initiation fee or an initiation fee that is greater than twice the annual membership fee</p>
	<p>Providing an installment payment plan that exceeds the membership or initiation fee, if applicable, by more than twenty-five per cent (Section 28)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify instalment plan provided</p> <p>Demonstrate that instalment plan total amounts exceeds membership or initiation fee by more than twenty-five per cent</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Receiving payment from a consumer for personal development services not available at the time (Section 30)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Demonstrate that supplier received payment from a consumer for personal development services</p> <p>Identify consumer</p> <p>Demonstrate that the services were not available at the time payment was made</p>
	<p>Operator receiving payment before loan or credit becomes available (Section 40)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify the consumer</p> <p>Demonstrate that payment was received or required before the loan or credit became available</p> <p>Demonstrate that payment required or received before a material improvement to consumer report, credit information, personal information etc.</p>
	<p>Operator communicating or causing to be communicated any representation that is prescribed as a prohibited representation (Section 43)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Demonstrate that operator communicated</p> <p>Show that representation communicated was prohibited</p> <p>Identify the provisions prohibiting the communication</p>
	<p>Repairer charging before giving an estimate (Section 44)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Demonstrate that repairer charged consumer without giving an estimate that meets prescribed requirements</p> <p>Identify the consumer</p>
	<p>Repairer charging for works or repairs not authorised by consumer (Section 46)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Identify the works</p> <p>Demonstrate that works not authorised by consumer</p> <p>Show the estimates that were given</p> <p>Demonstrate that works exceed estimates by more than ten percent</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Repairer charging more because cost to be paid by insurance company (Section 52)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding three years, or both</p>	<p>Demonstrate that costs are to be paid by insurance company</p> <p>Show that costs are greater than the usual costs</p> <p>Demonstrate the usual costs for such work</p>
	<p>Lender making representations which do not comply with requirements (Section 63)</p> <p>Penalty (Section 92)</p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both</p>	<p>Identify the prescribed requirements Identify the representations</p> <p>Demonstrate that representations do not comply with requirements</p>
<p>Copyright Act No 12 of 2001</p> <p>Copyright (Amendment) Act No. 20 of 2019</p>	<p>Pirating Audio material (Section 28(6))</p> <p>Penalty</p> <p>Fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding four years or to both</p>	<p>Produce the audio recording</p> <p>Demonstrate failure to pay royalties</p> <p>Demonstrate that the copies were made available for commercial purposes</p>
	<p>Selling copyright work without authentication device (Section 36(6))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both</p>	<p>Produce the device sold or offered for sale</p> <p>Identify the original copyright holder</p> <p>Demonstrate lack of authentication device</p>
	<p>Possessing a reproduced security device without the permission of KECOBO (Section 36(8)(a))</p>	<p>Demonstrate that the device is not genuine and that it has been reproduced e.g. scanned, copied etc.</p>
	<p>Possessing machine intended to be used to produce a security device (Section 36(8)b))</p> <p>Penalty</p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both</p>	<p>Show that the person was in possession of the machine</p> <p>Produce the machine, instrument or contrivance</p> <p>Avail the reproduced security device(s)</p> <p>Demonstrate how the machine, instrument or contrivance would have be used to the reproduced security device</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Making for sale or hire any infringing copy (Section 38 (1) (a))</p> <p>Penalty</p> <p>(a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and</p> <p>(b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both</p>	<p>Produce the infringing copies</p> <p>Demonstrate that they were made for sale or hire</p>
	<p>Selling or letting for hire or by way of trade exposing or offering for sale any infringing copy (Section 38 (1)(b))</p> <p>Penalty</p> <p>(a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and</p> <p>(b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both</p>	<p>Demonstrate act of selling, offering for sale or letting for hire the infringing copies</p>
	<p>Distributing infringing copies (Section 38 (1)(c))</p> <p>Penalty</p> <p>(a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and</p> <p>(b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both</p>	<p>Identify persons distributed to</p> <p>Demonstrate that the accused was distributing infringing copies</p>
	<p>Possessing otherwise than for private and domestic use, any infringing copy (Section 38 (1)(d))</p> <p>Penalty</p> <p>(a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and</p> <p>(b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both</p>	<p>Produce the contrivance</p> <p>Show that the person was in possession of the infringing copy</p> <p>Demonstrate its use to infringe copyright (commercial use)</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Importing into Kenya otherwise than for private and domestic use any infringing copy (Section 38 (1)(e))</p> <p>Penalty</p> <p>(a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and</p> <p>(b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both</p>	<p>Produce the infringing copies</p> <p>Identify country of origin</p> <p>Demonstrate commercial use</p>
	<p>Making or having in possession a contrivance used or intended to be used for the purpose of making an infringing copy (Section 38 (1)(f))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both</p>	<p>Identify the contrivance</p> <p>Show that the person made/has in their possession the contrivance</p> <p>Demonstrate that the contrivance was used or intended to be used for the purpose of making an infringing copy</p>
	<p>Causing a broadcast to be rebroadcasted or transmitted in a diffusion service, knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright (Section 38 (1) (g))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both</p>	<p>Identify the broadcast</p> <p>Show that the broadcast was intended to be rebroadcasted or transmitted in a diffusion service</p> <p>Demonstrate that the person knew that the rebroadcast or transmission constituted an infringement of a copyright</p>
	<p>Causing a program carrying signals to be distributed by a distributor for whom they were not intended, knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright (Section 38 (1) (h))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both</p>	<p>Identify the program carrying signals</p> <p>Show that the program was distributed by a distributor for whom they were not intended</p> <p>Demonstrate that the person knew that copyright subsisted in the signals and that such distribution constituted an infringement of the copyright</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Circumventing a technological protection measure or manufacturing or distributing devices designed for circumventing technological protection measures (Section 38 (1)(i))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both</p>	<p>Show that the person circumvented a technological protection measure</p> <p>Show that the person manufactured or distributed devices designed for circumventing technological protection measures</p>
	<p>Removing or altering rights management information or importing or distributing, or making available to the public a copy of a work from which electronic rights management information has been removed or altered (Section 38 (1)(j))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both</p> <p>Note: Where a body corporate is convicted of an offence under this Act, every person who at the time the offence was committed was in charge of or was responsible to the body corporate for the conduct of its business and affairs is also deemed to have committed the offence and shall be liable to prosecution (Section 38A(1))</p>	<p>Show that the person removed or altered rights management information</p> <p>Show that the person imported or distributed, or made available to the public a copy of a work from which electronic rights management information had been removed or altered</p>
	<p>Possession of device without authority of the Board (Section 38(6))</p> <p>Penalty</p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years, or to both</p>	<p>Produce the security device or machine or contrivance</p> <p>Demonstrate the intended use</p>
	<p>Offences against an inspector (Section 41(4))</p> <p>(a) willfully obstructing an inspector in the discharge of the inspector's duties;</p> <p>b) willfully failing to comply with any requirement properly made by an inspector;</p> <p>c) without reasonable cause, failing to give to the inspector any assistance or information which the inspector may reasonably require for the purpose of the performance of their duties under this Act;</p> <p>d) in giving any such information as is mentioned in subparagraph (c), making any statement which the person knows to be false or does not believe to be true</p> <p>Penalty</p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both</p>	<p>Identify requirement made by inspector/ demonstrate failure to comply.</p> <p>Demonstrate failure to give assistance</p> <p>Identify assistance that ought to have been given</p> <p>Show lack of reason or excuse for not giving assistance</p> <p>Demonstrate the falsehood in the statement</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Purporting to collect royalties from users without the authority of the Board (Section 46 (12))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment to a term not exceeding four years, or both</p>	<p>Show that the person purported to collect royalties from users</p> <p>Show that the person acted without the authority of the Board</p>
	<p>Folklore offences (Regulation 20)</p> <p>Penalty</p> <p>Fine not exceeding six thousand shillings or for a term of imprisonment not exceeding six months or to both</p>	<p>Identify the folklore used/ demonstrate use for commercial purposes/ show lack of permission by Board</p> <p>Show mental intent to commit the offence</p>
	<p>Failure by Internet Service Provider to notify the person responsible for making available an alleged infringing content, of a valid takedown notice and to provide a copy of the same (Section 35B(7))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both</p>	<p>Demonstrate the infringing content</p> <p>Show that the ISP was given notice of the infringement and did not act as stipulated under the law</p>
	<p>Willfully failing to produce any books, accounts, records document, correspondence, statements, returns or other information within seven days or such longer times as he may direct in writing (Section 46E(3))</p> <p>Penalty</p> <p>Fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding three months or to both</p>	<p>Demonstrate that the person acted willfully</p> <p>Show that the person failed to produce any books, accounts, records document, correspondence, statements, returns or other information within seven days or such longer times as was directed in writing</p>
<p>Counter-Trafficking in Persons Act, No. 8 of 2010</p>	<p>Trafficking in persons (Section 3)</p> <p>(a) Trafficking another person, for the purpose of exploitation</p> <p>(b) Financing, controlling, aiding or abetting trafficking in persons</p> <p>Penalty</p> <p>Imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life</p>	<p>Identify person trafficked</p> <p>Demonstrate exploitation or intention to exploit</p>
	<p>Adopting/ initiating or attempting to initiate adoption of a child for purposes of trafficking (Section 4)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than thirty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life</p>	<p>Identify child</p> <p>Demonstrate adoption of child</p> <p>Demonstrate intention to traffic child</p> <p>Demonstrate an overt act or step towards realising this</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Premises used for trafficking (Section 5)</p> <p>(a) knowingly leasing, or being the occupier thereof, permitting to be used any house, building, or other premises for the purpose of promoting trafficking in persons;</p> <p>(b) publishing, exporting or importing, any material for purposes of promoting trafficking in persons;</p> <p>(c) managing, running or financing any job recruitment agency for the purposes of promoting trafficking in persons;</p> <p>(d) by any other means, promoting trafficking in persons.</p> <p>Penalty</p> <p>Imprisonment for a term of not less than twenty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life</p>	<p>Demonstrate knowledge that premises are used for purposes of trafficking</p> <p>Demonstrate trafficking of persons</p> <p>Produce the publication</p> <p>Show how publication aims to promote trafficking</p> <p>Demonstrate promotion of trafficking by agency</p> <p>Identify acts promoting trafficking in persons</p>
	<p>Knowingly misrepresenting any fact for purposes of facilitating the acquisition of travel documents to facilitate trafficking (Section 6)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than ten years or to a fine of not less than ten million shillings or both and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine</p>	<p>Establish mental element/ knowledge</p> <p>Demonstrate the misrepresentation made to obtain the travel document</p>
	<p>Facilitating, aiding and abetting trafficking (Section 7)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than thirty years without the option of a fine</p>	<p>Demonstrate act taken to facilitate, aid or abet trafficking of person</p> <p>Identify persons trafficked</p>
	<p>Confiscating, concealing or destroying identification, personal effects, or travel document in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies (Section 8)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than ten years or to a fine of not less than ten million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine</p>	<p>Identify the travel document or identification document confiscated, concealed, destroyed or altered</p> <p>Give particulars of concealment, alteration, destruction or confiscation of document demonstrate that owners of document are trafficked persons</p> <p>Identify the personal effect or confiscated, concealed or destroyed give particulars of concealment, alteration, destruction or confiscation of personal effects demonstrate that owners of effects are trafficked persons</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences by employees of the government to facilitate issuing of travel documents to aid in trafficking (Section 26)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than <i>(this part of the Section is incomplete in the Act available on eKLR)</i> shillings or to both</p> <p>Note: Life threatening circumstances or death (Section 9):</p> <p>Where in the course of commission of an offence under the Act</p> <p>a) <i>a victim of trafficking in persons suffers any permanent or life- threatening bodily harm; or</i></p> <p>b) <i>by reason of the act of trafficking in persons, the victim of trafficking in persons dies, or is afflicted with any other life threatening or terminal health condition, a person convicted of the act of trafficking in persons shall be liable to imprisonment for life</i></p> <p>Note: Trafficking in persons for organized crime (Section 10):</p> <p>Where in the course of the prosecution of a person under this Act it emerges that, the person being prosecuted engaged in trafficking in persons as part of the activities of an organized criminal group or that person organized or directed other persons to commit an offence as an activity of an organized group, that person is liable to imprisonment for life</p> <p>Note: Additional Penalties (Section 26)</p> <p>1) <i>Where a person who is not a citizen has been convicted of an offence under this Act, the person shall be deported immediately after serving the sentence and shall stand barred permanently from re-entering Kenya.</i></p> <p>3) <i>Where an offender had adopted, fostered or had a child in guardianship who is the subject of an offence under this Act, the court seized of the matter shall rescind the adoption, fostering or guardianship of the child and the child shall be dealt with in accordance with the provisions of the Children Act, 2001</i></p>	<p>Show that offender is an officer of the government</p> <p>Demonstrate particulars of act that facilitated the issuance of travel documents</p> <p>Demonstrate intention to assist trafficking in persons</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Customs and Excise Act, Cap 472	<p>Transit goods (Section 9(4))</p> <ol style="list-style-type: none"> a) Depositing transit goods in a place other than one appointed by the Commissioner; b) Failing to comply with, or contravening, any of the conditions prescribed by the Commissioner with respect to the operation of transit sheds; c) Depositing or allowing any person to deposit prohibited goods in the transit shed; d) Involvement in fraudulent activity with respect to the goods deposited in a transit shed <p>Penalty</p> <p>Fine not exceeding one million, five hundred thousand shillings, and the Commissioner may revoke the appointment of the transit shed to which the offence relates</p>	<p>Identify the transit goods and their intended destination</p> <p>Demonstrate transit goods deposited in country</p> <p>Identify condition imposed by commissioner/ give particulars of breach of condition</p> <p>Identify transit goods/ demonstrate depositing in the country</p> <p>Demonstrate fraudulent act</p>
	<p>Entering or leaving port through un appointed area (Section 11)</p> <ol style="list-style-type: none"> 1) Person or vehicle entering or leaving a customs area, port or airport, or bringing goods, whether dutiable or not, into or out of any such area, port or airport through an area other than an appointed entrance or exit. 2) Person entering any part of a customs area, port or airport when forbidden to do so by an officer, or remaining in such an area or port, or any part thereof, when requested to leave the area or port, or part thereof, by an officer <p>Penalty</p> <p>Fine not exceeding twenty thousand shillings and any goods in respect of which the offence has been committed shall be liable to forfeiture</p>	<p>Identify point of entry/ exit</p> <p>Identify goods brought or removed</p> <p>Demonstrate entry into the port area/ forbidden area</p> <p>Demonstrate request to the person to leave by an officer</p> <p>Demonstrate failure to leave the area</p>
	<p>Interfering with goods subject to customs control without lawful authority (Section 12(4))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years, or to both, and forfeiture of any goods in respect of which the offence has been committed</p>	<p>Identify the custom goods</p> <p>Give particulars of interference with custom goods</p>
	<p>Master of aircraft of vessel contravening procedure as to entry and arrival in Kenya (Section 17)</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Identify vessel</p> <p>Identify procedure contravened</p> <p>Give particulars of contravention</p>
	<p>Boarding a vessel before a proper officer without permission (Section 19)</p> <p>Penalty</p> <p>Fine not exceeding twenty thousand shillings</p>	<p>Identify vessel boarded</p> <p>Demonstrate lack of permission to board</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Dealing with goods on board any aircraft or vessel⁷ (Section 20(5))</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which the offence has been committed</p>	<p>Identify vessel</p> <p>Demonstrate failure to report, throwing of goods, destruction of goods, breaking of bulk</p>
	<p>Using premises for manufacturing/ Breach of terms of a licence (Section 58A(6))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both</p> <p>Additional Penalty</p> <p>Forfeiture of goods in respect to which an offence has been committed</p>	<p>Identify premises</p> <p>Demonstrate manufacturing at premises</p> <p>Identify terms of license contravened</p>
	<p>Manufacturer failing to provide facilities or comply with the Commissioner's directions as to facilities (Section 58E(3))</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Demonstrate failure to provide facilities</p>
	<p>Licensee contravening conditions on storage of raw materials and manufactured goods (Section 58F)</p> <p>Penalty</p> <p>Forfeiture of raw materials or manufactured goods in respect of which an offence has been committed</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention</p>
	<p>Licensee contravening conditions relating to stock registers (Section 58G)</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Identify conditions contravened</p> <p>Give particulars of contravention</p>
	<p>Failure to account for unexplained excesses or deficiencies of raw materials or manufactured goods (Section 58H(1))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or twice the ex-factory value (or c.i.f. value in respect of imports) of the deficiency or excess, whichever is the higher, or to imprisonment for a term not exceeding three years or to both;</p> <p>Additional Penalty</p> <p>Forfeiture of goods in respect of which an offence has been committed; and payment of the full duties on the excesses or deficiencies</p>	<p>Demonstrate failure to account for raw materials or manufactured goods</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Disposing of or allowing to be disposed of raw materials or manufactured goods from a bonded factory, within the Kenyan local market, whether on payment or not, or any person who acquires, keeps, conceals or has in his possession such raw materials or manufactured goods from a bonded factory (Section 58H(2))</p> <p>Penalty</p> <p>Fine not exceeding two hundred thousand shillings or three times the ex-factory value of the raw materials or manufactured goods, whichever is the higher, or imprisonment for a term not exceeding three years or to both;</p> <p>Additional Penalty</p> <p>The goods in respect of which the offence has been committed shall be deemed to be prohibited goods as from the date of such disposal or as acquisition</p>	<p>Demonstrate disposal of raw materials or manufactured goods without permission of Commissioner within Kenya</p> <p>Demonstrate that the licensee acted without the permission of the Commissioner</p>
	<p>Contravention of conditions as to importation items of plant, machinery, spares and imported raw materials for use in the manufacture of goods under bond and manufactured goods (Section 58I)</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or twice the exfactory value (or c.i.f. value in respect of imports); whichever is the higher, or to imprisonment for a term not exceeding three years or to both</p> <p>Additional Penalty</p> <p>Forfeiture of the goods</p> <p>The commissioner may revoke the licence</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention of condition</p>
	<p>Contravening conditions imposed by the Commissioner to permit goods to be removed from a bonded factory without payment of duty for such purpose, for such period and in such quantities as he may think fit (Section 58K)</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or twice the exfactory selling price (or c.i.f. value in respect of imports), whichever is the higher, or to imprisonment for a term not exceeding three years or to both</p> <p>Additional Penalty</p> <p>Forfeiture of the goods</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention</p>
	<p>Master or agent of vessel or aircraft in which goods are to be exported contravening provisions on entry outwards (Section 62)</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Identify vessel</p> <p>Set out provision contravened and the manner of contravention</p>
	<p>Owner of cargo for export on aircraft or vessel failing to furnish the proper officer with full particulars, supported by documentary evidence, of the goods referred to in the entry (Section 63)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which the offence has been committed</p>	<p>Identify the vessel</p> <p>Give particulars of goods missing from information furnished</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Contravening provisions and conditions as to loading of goods for export onto aircraft or vessel departing to foreign port (Section 64)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of any goods in respect of which the offence has been committed</p>	<p>Identify provisions contravened</p> <p>Give particulars of contravention of condition</p> <p>Identify goods loaded</p>
	<p>Contravening conditions on goods intended for sale or delivery to passengers, or members of the crew, and goods to be put on board an aircraft or vessel departing to a foreign port or place (Section 65)</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both; and forfeiture of the goods in respect of which the offence has been committed</p>	<p>Identify goods</p> <p>Identify condition contravened</p> <p>Give particulars of breach of conditions</p>
	<p>Unlawful discharge within Kenya of goods for export (Section 66)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of the goods in respect of which the offences has been committed</p>	<p>Identify goods</p> <p>Demonstrate that goods were export goods to a particular country</p> <p>Demonstrate discharge of goods in Kenya</p>
	<p>Contravention of provisions on export of warehoused goods, goods on which drawback is claimed, dutiable goods intended for transshipment, or restricted goods (Section 67)</p> <p>Penalty</p> <p>Forfeiture of the goods in respect of which the offence has been committed</p>	<p>Identify warehoused goods</p> <p>Identify provisions contravened</p> <p>Give particulars of contravention of provision</p>
	<p>Goods liable on export to duty found on examination by the proper officer, not to agree with the particulars of the entry, or application for shipment relating when are brought to a customs airport, customs area or other place to be put on board an aircraft or vessel (Section 71(3))</p> <p>Penalty</p> <p>Forfeiture of the goods in respect of which the offence has been committed</p>	<p>Identify goods and the entries made</p> <p>Demonstrate difference between goods and the entries made</p>
	<p>Contravening provisions on and conditions imposed on loading and unloading of goods for carriage coastwise (Section 83)</p> <p>Penalty</p> <p>Fine not exceeding forty thousand shillings</p> <p>Additional Penalty</p> <p>Forfeiture of any goods in respect of which the offence has been committed, and the coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid</p>	<p>Identify the goods</p> <p>Identify condition breached</p> <p>Demonstrate that goods loaded/ unloaded in breach of condition</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Master or agent of an aircraft or vessel, arriving at a port or place within Kenya carrying goods coastwise failing to deliver transpire to proper officer upon arrival, or unloading without permission of proper officer (Section 85)</p> <p>Penalty</p> <p>Fine not exceeding forty thousand shillings and forfeiture of any goods in respect of which the offence has been committed, and the coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid</p>	
	<p>Packing or selling an alcoholic beverage in a container the capacity of which is less than two hundred millilitres (Section 91(A))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both</p>	<p>Produce the container</p> <p>Demonstrate the packaging of alcoholic drink in the container</p>
	<p>A licensee whose licence has been revoked or suspended or has expired continuing to manufacture the excisable goods referred to in the licence; or failing to pay forthwith duty on the excisable goods manufactured under the licence; or failing to dispose of materials in the factory to which the licence relates (Section 94)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or a fine not exceeding five hundred thousand shillings or both</p> <p>Additional Penalty</p> <p>Forfeiture of any plant or excisable goods, or any materials, in respect of which the offence has been committed</p>	<p>Demonstrate that license is expired/ revoked/ suspended</p> <p>Produce the goods manufactured</p> <p>Demonstrate that licensee still manufactures goods</p> <p>Demonstrate failure to pay duty or dispose of materials in the factory</p>
	<p>Manufacturer of spirits failing to comply with direction by Commissioner (Section 99)</p> <p>Penalty</p> <p>Forfeiture of any plant, spirits or materials in respect of which the offence has been committed</p>	<p>Identify the direction given by Commissioner</p> <p>Demonstrate failure to comply with direction</p>
	<p>Delivering or procuring or attempting to procure the delivery of spirits from a distillery or a distiller's warehouse which have not been warehoused for a period of at least three years, not being those exempted under (Section 101(2))</p> <p>Penalty</p> <p>Forfeiture of any spirits the delivery of which has been procured by the offence</p>	<p>Produce the spirits delivered, procured or attempted to be delivered or procured</p> <p>Demonstrate delivery, procurement of spirit or an overt act towards delivery or procurement of spirit</p> <p>Demonstrate that spirits have not been warehoused for a period of less than 3 years</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Denaturing of spirits in a manner inconsistent with the formula provided (Section 106)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both</p> <p>Additional Penalty</p> <p>Forfeiture of any plant, spirit or materials in respect of which such offence has been committed</p>	<p>Produce the spirits</p> <p>Identify the formula provided</p> <p>Demonstrate that spirits were denatured in a manner inconsistent with formula provided</p>
	<p>Licensee contravening provisions on storage of excisable goods other than spirits after manufacture (Section 108)</p> <p>Penalty</p> <p>Forfeiture of any excisable goods in respect of which the offence has been committed</p>	<p>Identify the goods</p> <p>Identify the provision contravened</p> <p>Give particulars of contravention of provision</p>
	<p>Licensee failing to account for excisable goods (Section 110)</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Identify goods</p> <p>Demonstrate that goods are excisable and manufactured by licensee</p> <p>Demonstrate failure to account for goods</p>
	<p>Licensee contravening provision relating to manufacture of tobacco (Section 111)</p> <p>Penalty</p> <p>Forfeiture of any excisable goods or materials in respect of which the offence has been committed</p>	<p>Produce the goods manufactured</p> <p>Identify provision contravened</p> <p>Demonstrate contravention of provision</p>
	<p>Brewer contravening provisions relating to brewing (Section 114)</p> <p>Penalty</p> <p>Forfeiture of any excisable goods and materials in respect of which the offence has been committed</p>	<p>Identify provision on brewing contravened</p> <p>Give particulars of contravention of the provision</p>
	<p>Brewer making false declaration of original gravity of beer (Section 115)</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Identify the false declaration</p> <p>Demonstrate the falsity of the declaration made by brewer</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Unregistered person importing excisable goods (Section 116B(3))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both</p> <p>Additional Penalty</p> <p>The licensee or importer will also be liable to have his licence cancelled, or registration under this Section revoked, as the case may be</p>	<p>Demonstrate that person not registered</p> <p>Produce the goods imported/ demonstrate that person imported goods subject to excise stamps</p> <p>Demonstrate that person offered such goods for sale</p>
	<p>Bank or financial institution failing to comply with a request of the Commissioner to submit details or any information in respect of the rates of exchange of foreign currency, for purposes of determining value of goods for import⁸ (Section 127(7))</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Show that a request was made by Commissioner in respect to exchange rate</p> <p>Demonstrate that request was not complied with</p> <p>Request was in regard to determining value of imported goods</p>
	<p>Diverting any goods manufactured for export for home use without payment of the duty due thereon (Section 141(4))</p> <p>Penalty</p> <p>Fine not exceeding the higher of one million five hundred thousand shillings or three times the value of the goods, or to imprisonment for a term not exceeding three years, or to both</p>	<p>Identify goods diverted and demonstrate intended for home use</p> <p>Demonstrate that goods were exported</p> <p>Show that duty not paid for goods</p>
	<p>Making a fraudulent claim for rebate of duty; or, with intent to evade payment of duty, giving false information or making a false statement in relation to any claim for rebate (Section 149(3))</p> <p>Penalty</p> <p>Fine not exceeding the higher of one million, five hundred thousand shillings or three times the amount of the claim, or to imprisonment for a term not exceeding three years, or to both</p>	<p>Show mental intent/ intention to defraud</p> <p>Demonstrate that the claim is fraudulent</p>
	<p>Knowingly disposing of or knowingly acquiring goods imported duty free but which are liable to certain duties on disposal without the duty thereon having been paid (Section 155(5))</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Show mental intent/ knowledge of the person or ought to have known that duty not paid for goods</p> <p>Identify the goods</p> <p>Demonstrate that goods are subject to duty</p> <p>Show that duty has not been paid in respect to the goods</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Knowingly disposing of, or knowingly acquiring, goods granted remission, rebate, or refund of duty but liable to duty on disposal without the duty thereon having been paid (Section 156(4))</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Show mental intent/knowledge that goods are subject to duty</p> <p>Identify the goods</p> <p>Show that goods are subject to duty on disposal</p> <p>Demonstrate disposal of goods and failure to pay duty</p>
	<p>A person, except by authority, opening, breaking, altering or in any way interfering with a lock, seal, mark or other fastening placed by an officer on any building, room, place, receptacle, item of plant, excisable goods, or materials (Section 175)</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Produce the lock</p> <p>Demonstrate interference or attempt to interfere with lock</p>
	<p>Possession of goods liable to forfeiture while being armed (Section 180(2))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding ten years</p>	<p>Produce the weapon and goods</p> <p>Demonstrate goods liable to forfeiture</p> <p>Show the disguise</p>
	<p>Possession of goods liable to forfeiture while being disguised (Section 180(3))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years</p>	<p>Demonstrate act of staving, breaking, destruction or throwing of goods from a vessel</p>
	<p>Using vessel or aircraft for smuggling or evasion (Section 184)</p> <p>Penalty</p> <ol style="list-style-type: none"> 1. In the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding three hundred thousand shillings; and any vessel and goods in respect of which the offence has been committed shall be liable to forfeiture 2. In the case of the master of an aircraft, or of a vessel of two hundred and fifty tons register or more, to a fine of such amount as the court deems just; and the aircraft or vessel in respect of which the offence has been committed may be seized and detained until the fine is paid or security therefor given, and any goods in respect of which the offence has been committed shall be liable to forfeiture 3. In the case of the person in charge of a vehicle, to a fine not exceeding one million five hundred thousand shillings; and the vehicle and goods in respect of which the offence has been committed shall be liable to forfeiture 	<p>Identify the vessel</p> <p>Give particulars of act of smuggling or evasion</p> <p>Identify items smuggled or subject to evasion</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Importing prohibited or restricted goods (Section 185)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years or a fine equal to three times the amount of duty and any other taxes payable on the goods in respect of which the offence is committed subject to a maximum of one million five hundred thousand or to both such fine and imprisonment</p> <p>Fine not exceeding one million shillings</p>	<p>Identify the goods</p> <p>Demonstrate that goods are restricted or prohibited</p> <p>Demonstrate that goods imported</p> <p>Identify the premises</p> <p>Demonstrate that goods were stored in the premises</p>
	<p>Importing or exporting goods concealed in a manner to deceive officer (Section 186)</p> <p>Penalty (Section 195(1))</p> <p>Fine not exceeding five million five hundred thousand shillings</p>	<p>Identify the goods</p> <p>Demonstrate how goods are concealed to deceive an officer</p>
	<p>Using false measures (Section 189)</p> <p>Penalty</p> <p>Forfeiture of any such scales, instruments weights, measures, goods and materials in respect of which the offence was committed</p>	<p>Identify correct measures</p> <p>Demonstrate falseness of measures</p>
	<p>Concealing in or, without the consent of the proper officer, removing from a distillery any wort, wash, low wines, feints or spirits; knowingly buying or receiving any wort, wash, low wines, feints or spirits so concealed or removed; knowingly buying or, without proper authority, receiving or being in possession of, any excisable goods which have been manufactured contrary to the provisions of the Act, or which have been removed from the place where they ought to have been charged with duty before the duty payable thereon has been charged and either paid or secured; without proper authority, being in possession of any low wines or feints; without proper authority, being in possession of any wort or wash fit for distillation; or having obtained any excisable goods in respect of which duty has been remitted for a particular purpose, failing to comply with any conditions imposed by the Commissioner concerning the use of those goods or using those goods for a different purpose without the approval in writing of the proper officer</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or to a fine not exceeding one million five hundred thousand shillings or to both</p>	<p>Show mental element/ knowledge or intention of person</p> <p>Produce the goods</p> <p>Demonstrate that person knew or ought to have known that goods were subject to duty</p> <p>Demonstrate that person had goods in his/her custody</p>
	<p>Failing to report uncustomed goods (Section 192)</p> <p>Penalty</p> <p>Fine not exceeding twenty thousand shillings and forfeiture of any goods in respect of which the offence has been committed</p>	<p>Demonstrate that person knew goods to be uncustomed or ought to have known goods to be uncustomed</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Mixing, or causing to be mixed, any refined petroleum products; or possessing or offering for sale, any mixture of refined petroleum products, or any refined petroleum product which does not meet the Kenya Standard (Section 194A)</p> <p>Penalty</p> <p>Fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and forfeiture of the products in respect of which the offence is committed</p>	<p>Identify the goods</p> <p>Demonstrate that goods do not meet the standards</p> <p>Show the correct standard</p>
	<p>Transporting custom goods in unlicensed aircraft (Section 228)</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings</p>	<p>Identify the aircraft</p> <p>Demonstrate that aircraft not licensed</p> <p>Demonstrate that goods were transported in aircraft</p>
<p>East African Community Customs Management Act, 2004</p> <p>East African Community Customs Management (Amendment) Act, 2009</p>	<p>Offences by Officers not to perform their duty in exchange of any payment or other reward whatsoever (Section 9(1))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years</p>	<p>Demonstrate the reward or benefit that will accrue to the officer</p> <p>Set out the agreement to abstain from doing an act, conceal, permit, connive</p> <p>Demonstrate the intention to defraud the Customs revenue</p>
	<p>Disclosure of Confidential Information (Section 9 (2))</p> <p>Penalty</p> <p>Fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding three years or both</p>	<p>Point out the confidential nature of the information</p> <p>Identify persons to whom information was disclosed</p>
	<p>Bribery of an officer (Section 9(3))</p> <p>Penalty</p> <p>Imprisonment of a term not exceeding three years</p>	<p>Prove the offer of a reward or payment to an officer</p> <p>Intention to induce officer not to perform his/her duty under the Act</p>
	<p>Failure to get a licence for an internal container depot (Section 14 (5))</p> <p>Penalty</p> <p>Fine not exceeding one thousand dollars</p>	<p>Show that the person owns an internal container depot</p> <p>Demonstrate that the person has not obtained a license for the depot</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Use of unappointed entrance or exit by (Section 15)</p> <p>(a) A person or vehicle entering or leaving any Customs area or Customs airport, and bringing goods into or out of any such area or airport, not being an appointed entrance or exit;</p> <p>(b) A person entering any part of a Customs area or Customs airport when forbidden to do so by any officer or remaining in such area or airport, or any part thereof when requested to leave such area or airport, or part thereof, by any officer.</p> <p>Penalty</p> <p>Fine not exceeding one thousand dollars, and forfeiture of any goods in respect of which such offence has been committed</p>	<p>Demonstrate that the person or vehicle entered or exited from a customs area through an unappointed point</p> <p>Identify the unappointed point of entry or exit</p> <p>Show that the person is not authorised to be in the area</p>
	<p>Interfering with goods subject to Customs (Section 16(4))</p> <p>Penalty</p> <p>Fine not exceeding one thousand dollars or imprisonment for a term not exceeding three years, or both, and forfeiture of any goods in respect of which such offence has been committed</p>	<p>Give the nature of interference with custom goods</p>
	<p>Master of Vessel not following procedure (Section 21)</p> <p>Master of aircraft or vessel, not being lost, wrecked or abandoned, failing to follow procedure on for arrival and reporting in a Partner State</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Show the procedure the Master failed to follow on arrival and reporting</p> <p>Indicate what the Master did at arrival</p>
	<p>Boarding a Vessel without authority (Section 23)</p> <p>Boarding a vessel without proper authority or permission before the proper officer.</p> <p>Penalty</p> <p>Fine not exceeding five thousand dollars</p>	<p>Show that the person was in a vessel</p> <p>Show that person did not have authority to be in vessel</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences by crew and agents of vessel (Section 24(6))</p> <p>(a) Failing to make a report of aircraft; vessel; cargo; stores; and packages without a bill of lading, to a proper officer</p> <p>(b) Making a false report</p> <p>(c) Causing or permitting bulk to be broken without knowledge and permission of proper officer</p> <p>(d) Causing or permitting any goods to be staved, destroyed, or thrown overboard, or any packages to be opened, after arrival without the knowledge and permission of the proper officer</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Demonstrate failure to disclose goods without a Bill of Lading</p> <p>Show the false entries in the document/ produce the document</p> <p>Show that bulk was broken without knowledge and consent of proper officer</p> <p>Identify the goods destroyed</p> <p>Set out the manner the goods were destroyed</p> <p>Show that proper officer was not aware of destruction of goods or gave permission</p>
	<p>Master/ Agent failing to answer questions or producing documents (Section 25)</p> <p>a) failing to answer fully and immediately all such questions relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, put to him or her by the proper officer</p> <p>b) failing to produce all such books and documents in his or her custody or control relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, as the proper officer may require</p> <p>Penalty</p> <p>Fine not exceeding five thousand dollars</p>	<p>Show that questions were asked by a proper officer</p> <p>Demonstrate that questions not answered</p> <p>Show that proper officer required the production of documents</p> <p>Show that the documents were not produced</p>
	<p>Failing to account for transit goods by owner or agent of an aircraft or vessel or a transit shed owner (Section 26(4))</p> <p>(4) Failing to account for any of the goods for which he is responsible to the satisfaction of the proper officer, within such prescribed period or such further period as the proper officer may allow;</p> <p>(6) Failing to meet the cost of reshipment or destruction of any condemned goods.</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Demonstrate failure by owner/agent not being able to account for all goods</p> <p>Show the failure to pay the cost of reshipment or destruction</p>
	<p>Failure by Master/ Agent to report accident or distress (Section 28)</p> <p>Penalty</p> <p>Fine not exceeding five thousand dollars</p>	<p>Show that vessel with cargo involved in an accident</p> <p>Show failure by Master/ Agent to report</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failure to Report arrival with goods into a Partner State from a place outside the Partner State⁹ (Section 29(1))</p> <p>Failing to:</p> <ol style="list-style-type: none"> report the person's arrival to the officer stationed at the frontier port at which the person entered the Partner State; furnish on the prescribed form such information as may be required concerning the vehicle or any such goods; make and subscribe a declaration as to the truth of all particulars contained in such form; fully and immediately answer all relevant questions put to the person by the proper officer; produce all consignment notes or other relevant documents demanded of him or her by the proper officer; save as otherwise provided in the Customs laws, make due entry of the vehicle and of any such goods. <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Show that the person arrived with goods and failed to report their arrival</p> <p>Show that the person failed to furnish information in the Form/ produce form as filled</p> <p>Show that the person failed to subscribe a declaration</p> <p>Demonstrate that the person failed to answer all questions. Show questions not answered</p> <p>Demonstrate the failure to produce documents</p> <p>Show that the person failed to make entry of vehicles or goods brought in the country</p>
	<p>Removal of uncustomed goods by a station master or other person in charge of a railway station at any port (Section 30(2))</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Show that goods were removed before delivery or without authorisation by the proper officer</p> <p>Show that the goods were subject to customs control and were required to be entered at a port of entry and conveyed to that station in any train from the transit shed or customs area appointed for such station¹⁰</p>
	<p>A station master or other person in charge of a railway station at any port delivering to the consignee or any person at the station any goods which are required to be entered at any other station without the written permission of the proper officer (Section 30(3))</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Demonstrate that there was lack of written permission from proper officer for goods to be entered</p> <p>Identify goods removed</p>
	<p>An owner or user of a private railway siding or any other person receiving railway wagons containing goods subject to customs control into a private railway siding without written permission of the Commissioner (Section 30(4))</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Demonstrate that the person received the goods</p> <p>Identify the goods received</p> <p>Demonstrate that goods were subject to customs control</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failure to declare goods in possession by a person arriving overland in a Partner State from a foreign place (Section 31)</p> <p>Failure to:</p> <ol style="list-style-type: none"> report the person's arrival to the officer stationed at the Customs house nearest to the point at which they crossed the frontier; furnish on the prescribed form such information as may be required concerning the goods; make and subscribe a declaration as to the truth of all particulars contained in such form; fully and immediately answer all relevant questions put to him or her by the proper officer; produce all consignment notes or other relevant documents demanded of him or her by the proper officer; save as otherwise provided in the Customs laws, make due entry of any such goods. <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Show that the person arrived at the frontier</p> <p>Show that the person failed to report his/her arrival</p> <p>Identify place person is arriving from</p> <p>Identify goods in possession of person</p> <p>Show failure to provide information in forms. If Forms are filled produce the incomplete Form(s)</p> <p>Show that the person failed to make and subscribe such declaration</p> <p>Show that the person failed to answer all questions fully and immediately</p> <p>Show that the person failed to produce consignment notes demanded</p> <p>List the consignment notes demanded of the person</p> <p>Show the failure to make entry of goods</p>
	<p>Illegal unloading of goods (Section 33(1))</p> <p>Without the written permission of the proper officer and subject to such conditions as they may impose:</p> <ol style="list-style-type: none"> unloading goods from any aircraft or vessel arriving from a foreign port unless such goods have been duly entered unloading or removing such goods at an unprescribed time unloading such goods at an unapproved unloading place <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Show lack of written permission from proper officer</p> <p>Identify the goods unloaded</p> <p>Identify the vessel goods are unloaded from</p> <p>Demonstrate that goods were unloaded</p> <p>Indicate the time when goods were unloaded</p> <p>Indicate the time when goods are supposed to be loaded</p> <p>Indicate the place approved for loading of goods</p> <p>Indicate the place where goods were unloaded</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failing to convey unloaded or landed goods to a Customs area; or to deposit in a transit shed or a Customs warehouse if so required by proper officer (Section 33(3))</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed.</p>	<p>Identify the goods</p> <p>Demonstrate that goods were not delivered to a customs area</p>
	<p>Removing goods from any part of a Customs area or a transit shed or a Customs warehouse without authority of proper officer (Section 33(4))</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed.</p>	<p>Identify the goods removed</p> <p>Show that goods removed without authorisation</p> <p>Identify the customs area where goods removed</p>
	<p>Failing to furnish entry within 48 hours of obtaining permission by owner of any bullion, currency notes, coin, or perishable goods in order to obtain permission to unload without entry (Section 36 (1) (e))</p> <p>Penalty</p> <p>Fine not exceeding five hundred dollars</p>	<p>Indicate when information was to be given</p> <p>Demonstrate failure to furnish information within given time</p>
	<p>Breach of conditions for security imposed by proper officer for the due return of any goods or the payment of the duties thereon, as condition for permitting removal of goods from any transit shed or Customs area without payment of the duty (Section 39)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify conditions set by proper officer</p> <p>Show which condition was breached</p> <p>Show the manner condition was breached</p>
	<p>Leaving a room with uncustomed goods without permission of proper officer by a person disembarking from any aircraft or vessel (Sections 44-45)</p> <p>Penalty</p> <p>Fine not exceeding five thousand dollars</p>	<p>Identify the vessel person disembarking from</p> <p>Identify the uncustomed goods</p> <p>Show that the person had uncustomed goods in his possession</p> <p>Demonstrate that person left baggage room without permission</p>
	<p>Failure to remove goods within fourteen days of release (Section 48(4))</p> <p>Failing to remove to and deposit to the warehouse into which they are entered, the entered goods, and in the package in which they were imported, within fourteen days of their release</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the goods</p> <p>Demonstrate that goods were not removed</p> <p>Show that fourteen days has lapsed since release</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Contravention of Conditions placed by Commissioner in respect to operations in a warehouse (Section 51)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the conditions contravened</p> <p>Give particulars of how such conditions were contravened</p>
	<p>Contravention of Conditions as to security for the return of goods or the payment of the duties thereon, as condition for permitting the goods to be removed from any warehouse without payment of the duty (Section 53)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify condition imposed by proper officer</p> <p>Demonstrate how condition was breached</p>
	<p>Owner of warehouse dealing with goods entered as stores for any aircraft or vessel¹¹ (Section 55)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify goods dealt with</p>
	<p>Unauthorised access by a person to a warehouse or gaining access to goods without the approval of the proper officer (Section 59(2))</p> <p>Penalty</p> <p>Fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years</p>	<p>Identify warehouse</p> <p>Show that person accessed warehouse or goods without permission</p>
	<p>Unauthorised entry by a person into any warehouse, or part thereof, contrary to the orders of a proper officer, or refusing to leave any warehouse, or part thereof, when directed to do so by the proper officer (Section 59(3))</p> <p>Penalty</p> <p>Fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding one year</p>	<p>Identify warehouse</p> <p>Show that the person refused to leave a warehouse</p>
	<p>Improper taking, destruction of warehouse goods (Section 61)</p> <p>a) taking, or causing or permitting to be taken, any goods from any warehouse otherwise than in accordance with this Act; or</p> <p>b) failing to carry into and deposit in the warehouse, any goods entered for warehousing; or</p> <p>c) willfully destroying or damaging any warehoused goods otherwise than in circumstances specifically provided for in this Act.</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding two years or a fine equal to twenty-five percent of the dutiable value of the goods</p>	<p>Demonstrate that goods were taken from warehouse</p> <p>Identify goods taken</p> <p>Show that goods taken were warehouse goods</p> <p>Identify the goods</p> <p>Show the failure to carry into and deposit the goods</p> <p>Identify the goods destroyed</p>
	<p>Abuse of warehouse licence¹² (Section 62(8))</p> <p>A warehouse keeper using, or permitting to be used, his or her warehouse in contravention of any of the terms of his or her licence</p> <p>Penalty</p> <p>Fine not exceeding five thousand dollars</p>	<p>Demonstrate the manner in which the warehouse was used</p> <p>Set out the manner use contravened the Act</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failure to keep a record of warehouse goods/stack goods to permit access¹³(Section 64)</p> <p>A warehouse keeper failing to provide necessary facilities, or keep record and accounts of warehoused goods, or stack and arrange goods to permit reasonable access, or provide necessary labour materials</p> <p>Penalty</p> <p>Fine not exceeding one thousand dollars</p>	<p>Demonstrate how warehouse keeper failed to provide records of goods</p>
	<p>Interference with marks or numbers of packages of any goods in a bonded warehouse without the approval of a proper officer by a warehouse keeper¹⁴ (Section 65)</p> <p>Penalty</p> <p>Fine not exceeding one thousand dollars, and forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the goods</p> <p>Demonstrate how marks or numbers on goods are interfered with</p> <p>Demonstrate that the interference was done without the approval of a proper officer</p>
	<p>Failure to produce warehoused goods to proper officer¹⁵(Sections 67(1) and (2))</p> <p>A warehouse keeper failing to produce to a proper officer on request, without satisfactory explanation, all goods deposited in his/ her bonded warehouse</p> <p>Penalty</p> <p>Fine of ten per cent of the dutiable value in respect of each package not so produced and, in addition, the warehouse keeper shall forthwith pay the duties in respect of each such package</p>	<p>Show request for production of goods by officer</p> <p>Show failure to produce goods as requested</p> <p>Demonstrate lack of satisfactory explanation</p>
	<p>A warehouse keeper taking, substituting, causing or permitting any goods in a bonded warehouse to be taken or substituted¹⁶ (Sections 67(3))</p> <p>Penalty</p> <p>Fine of twenty-five per cent of the dutiable value of the goods substituted or taken</p>	<p>Identify the goods substituted</p> <p>Demonstrate act of substituting of goods</p>
	<p>Failure to load goods for transit within time specified (Section 73)</p> <ol style="list-style-type: none"> 1. enter cargo to be loaded for export on any aircraft or vessel; 2. to furnish the proper officer with full particulars, supported by documentary evidence, of the goods referred to in the entry; 3. to export the above goods within thirty days from the date of entry or such further period as the Commissioner may allow <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the goods</p> <p>Show failure to load goods in vessel</p> <p>Show failure to furnish particulars of goods</p> <p>Show failure to export goods within specified time</p> <p>Indicate time when goods were to be exported</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Loading goods without filling entries¹⁷ (Section 74)</p> <ol style="list-style-type: none"> 1. Failing to make entry outwards to proper officer 2. making entry before the whole of the cargo reported in such aircraft or vessel for discharge has been discharged; 3. loading on such aircraft or vessel before entry outwards is made <p>Penalty (Section 209) Fine not exceeding five thousand dollars</p>	<p>Show failure to make an entry</p> <p>Demonstrate that entry was made before all goods were discharged</p> <p>Show that loading goods was done before entry outward form is filled</p>
	<p>Breach of conditions on loading goods on board of an aircraft or vessel departing to a foreign port (Section 75)</p> <p>Penalty Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the goods loaded</p> <p>Demonstrate the loading of goods</p> <p>Identify the condition breached</p>
	<p>Failing to pay export duty for personal baggage as condition for entry being given¹⁸ (Section 76)</p> <p>Penalty Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify undertaking given</p> <p>Show failure to pay and condition breached</p>
	<p>Dumping of personal baggage for export in the Community (Section 77)</p> <p>Discharging at any place within the Partner States of goods which have been put on board any aircraft or vessel for export, or for use as stores, or as passengers' baggage, without written permission of the proper officer</p> <p>Penalty Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify where goods are declared to be heading</p> <p>Identify use of the goods within the region</p>
	<p>False declarations of bonded goods (Section 78(5))</p> <p>Bonded goods for export subsequently found by proper officer on examination not to agree with particulars of entry, or not entitled to duty drawback when brought to any Customs airport, Customs area, or other place, to be put on board any aircraft or vessel</p> <p>Penalty Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the falsity in the declaration</p> <p>Identify the bonded goods for export</p>
	<p>Owner contravening conditions imposed on bonded goods for export (Section 78(6))</p> <p>Penalty Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify condition breached by owner</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Loading goods on board any aircraft or vessel for use as stores without approval of proper officer or in contravention of any conditions imposed by the proper officer when granting such permission (Section 79)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify goods loaded</p> <p>Show lack of approval by officer Identify condition breached</p>
	<p>Failure to notify proper officer within, 48 hours, of delay in shipping export goods (Section 80)</p> <p>Penalty</p> <p>Fine not exceeding five hundred dollars</p>	<p>Identify the export goods</p> <p>Demonstrate the failure to notify officer within prescribed time</p>
	<p>Disparity between goods and declarations made¹⁹ (Section 82(3))</p> <p>Where any goods liable on export to any duty are brought to any Customs airport, Customs area, or other place, to be put on board any aircraft or vessel and, on examination by the proper officer, are found not to agree with the particulars of the entry, or application for shipment relating thereto (owner of such goods commits an offence)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the disparity in the declaration made and the goods delivered to a Customs area</p>
	<p>Vehicles departing from an unappointed area (Section 83)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the vehicle used</p> <p>Identify the unappointed port of departure</p>
	<p>Departing with goods without making entry (Section 84)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the goods and the failure to make an entry of the goods</p>
	<p>Departing a Port without a Clearance Certificate²⁰ (Section 88)</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Demonstrate the lack of clearance certificate during departure</p>
	<p>Breach of undertaking in relation to grant of clearance certificate (Section 89)</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Proof of undertaking</p> <p>Breach of that undertaking</p>
	<p>Failure to produce certificate of clearance on demand by proper officer (Section 90)</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Show demand for certificate by officer</p> <p>Demonstrate failure by the party to produce the certificate</p>
	<p>Deficiency in Cargo or stores (Section 91)</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Proof of the deficiency in cargo</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Breach of loading provisions (Section 99)</p> <p>Penalties</p> <p>(a) Fine not exceeding two hundred and fifty dollars</p> <p>(b) Forfeiture of any goods in respect of which such offence has been committed</p> <p>(c) Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid</p>	<p>Proof of breach of provisions on loading and transfer of cargo</p>
	<p>Departing without transire by vessel or aircraft carrying goods coastwise (Section 100)</p> <p>Penalties</p> <p>(a) Fine not exceeding five hundred dollars</p> <p>(b) Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid</p>	<p>Proof of act of departure</p> <p>Lack of transire at the point of departure</p>
	<p>Failing to deliver Transpire to proper officer on arrival (Section 101)</p> <p>Penalties</p> <p>(a) Fine not exceeding five hundred dollars</p> <p>(b) Forfeiture of any goods in respect of which such offence has been committed</p> <p>(c) Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid</p>	<p>Proof of arrival at port</p> <p>Failure to deliver transpire to proper officer on arrival</p>
	<p>Master refusing to answer questions or giving incorrect reply on examination of coasting vessel and goods²¹ (Section 105)</p> <p>Penalties</p> <p>(a) Fine not exceeding two hundred and fifty dollars</p> <p>(b) Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid</p>	<p>Prove failure to respond or the incorrectness of response</p>
	<p>Failure to export temporarily imported goods at the end of specified period / import dumping (Section 117)</p> <p>Penalties</p> <p>(a) Fine equal to twenty percent of the dutiable value and any goods which are the subject of the offence</p> <p>(b) Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Prove goods were imported for purposes of re-export</p> <p>Failure by the importer to export the goods within specified time</p> <p>Act of selling, altering, replacing or modifying the imported goods</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Dealing with duty free goods (Section 119)</p> <p>Penalties (Section 209)</p> <p>(a) Fine not exceeding five thousand dollars</p> <p>(b) Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Prove that goods are duty free imports</p> <p>Show act of dealing with the goods</p> <p>Demonstrate knowledge that the goods were duty free and should be paid for at disposal</p>
	<p>Failing to land a vessel or aircraft (Section 149)</p> <p>Penalty</p> <p>(a) In the case of the master of a vessel of less than two hundred and fifty tons exceeding two thousand register, to a fine not exceeding two thousand dollars and the vessel in respect of which such offence has been committed shall be liable to forfeiture;</p> <p>(b) In the case of the master of an aircraft or of a vessel of two hundred and fifty tons register or more, to a fine not exceeding five thousand dollars and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security therefor given</p>	<p>Prove order to land a vessel or aircraft</p> <p>Failure by the in charge to land the vessel</p>
	<p>Master of an aircraft or vessel refusing to unload or remove goods in accordance with the provisions of this Section (Section 152(4)(a))</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Show failure to remove goods</p> <p>Prove order to remove the goods</p>
	<p>Master of an aircraft or vessel interfering with sealed or locked goods without the permission of a proper officer (Section 152 (4) (b))</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Prove interference with the goods</p>
	<p>Master of an aircraft or vessel altering, breaking or opening seal placed on any place or goods in accordance with this Section (Section 152 (4) (c))</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Prove the breakage of lock, entry into the place where goods were sealed or alteration of locks</p>
	<p>Failing to stop or permit a vehicle to be inspected for uncustomed goods²² (Section 153)</p> <p>Penalty</p> <p>Fine not exceeding five thousand dollars</p>	<p>Prove failure to stop the vehicle for inspection</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Interfering with locks, seals or marks placed by an officer (Section 157(4))</p> <p>A person, not being a proper officer, who opening, breaking, or in any way interfering with any lock, seal, mark or other fastening placed by an officer in accordance with provisions of this Section on any building, room or place</p> <p>Penalty</p> <p>Imprisonment not exceeding three years or a fine not exceeding two thousand five hundred dollars</p>	<p>Proof of interference with seal, lock or mark by an officer</p>
	<p>Interfering with locks, seals or marks placed by an officer (Section 157(5))</p> <p>Where the premises, room or place has been sealed with goods therein, and subsequently such goods or any part of the goods are no longer therein, the owner or occupier commits an offence</p> <p>Penalty:</p> <p>Fine equal to twenty-five per cent of the value of the goods or to imprisonment for a term not exceeding five years</p>	<p>Prove presence of goods at time of locking</p> <p>Prove subsequent loss of goods</p>
	<p>Using or permitting premises to be used for manufacturing without a license (Section 160 (6))</p> <p>Penalty</p> <p>(a) Fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both.</p> <p>(b) Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Prove act of manufacturing</p> <p>Prove lack of a license or contravention of terms of a license</p> <p>Offence against owners of premises</p>
	<p>Contravening entry provisions in bonded factories (Section 161)</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Prove act of entry</p> <p>Prove entry provision contravened</p>
	<p>Contravening conditions of importation of equipment, machinery or raw materials etc. (Section 164)</p> <p>Penalty (Section 209)</p> <p>Fine not exceeding five thousand dollars</p>	<p>Prove act of importation</p> <p>Identify condition contravened</p>
	<p>Disposal of raw materials or manufactured goods from a bonded factory (Section 166)</p> <p>Penalty</p> <p>Fine of five thousand dollars or fifty per cent of the ex-factory value of the raw materials or manufactured goods, whichever is the higher, or to imprisonment for a term not exceeding three years or both; and the goods in respect of which the offence has been committed shall be liable to forfeiture</p>	<p>Prove that goods or raw materials were from a bonded factory</p> <p>Show disposal of goods or raw materials</p> <p>Demonstrate lack of permission from Commissioner</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Removal of EPZ goods for home consumption (Section 168)</p> <p>Contravention of conditions imposed as condition for removal of goods from an EPZ for home consumption</p> <p>Penalty</p> <p>Fine of five thousand dollars or fifty per cent of the value of the goods, whichever is the higher, or to imprisonment for a term not exceeding three years or both; and the goods in respect of which the offence has been committed shall be liable to forfeiture</p>	<p>Prove that goods were from EPZ factory</p> <p>Show that goods were taken for home consumption</p> <p>Prove condition contravened</p>
	<p>Contravening condition imposed for permitting entry of goods in unaltered state or compensation products for home consumption (Section 175)</p> <p>Penalty</p> <p>Forfeiture of any goods in respect of which such offence has been committed</p>	<p>Identify the condition contravened</p> <p>Prove breach of the condition</p>
	<p>Conspiracies (Section 193)</p> <p>Conspiring to contravene provisions of the Act</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years</p>	<p>Identify the conspirators</p> <p>Identify the provision of the Act conspired to be breached</p> <p>Prove a positive step taken by the conspirators to contravene a provision of the Act</p>
	<p>Destruction of goods to avoid seizure (Section 194)</p> <p>(a) Breaking, destroying or throwing overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the seizure of the goods</p> <p>(b) Rescuing, staving, breaking, destroying, or throwing overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the securing of such goods after they have been seized</p> <p>Penalty</p> <p>Fine not exceeding five thousand dollars</p>	<p>Prove the act of destruction, or throwing overboard of goods</p>
	<p>Removal of a custom seal (Section 195)</p> <p>A person who willfully removes any customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer or in circumstances contrary to the regulations or who willfully alters, defaces, obliterates or imitates, any mark placed by an officer on any package commits an offence</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or to a fine not exceeding two thousand five hundred dollars or to both</p>	<p>Prove removal or interference with the custom seal</p> <p>Demonstrate the lack of authorisation from a proper officer</p> <p>Identify the regulations contravened</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Vessels used for smuggling purposes (Section 199)</p> <p>Penalty</p> <p>(a) In the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding seven thousand dollars and any vessel and goods in respect of which such offence has been committed shall be liable to forfeiture</p> <p>(b) In the case of the master of an aircraft or vessel of two hundred and fifty tons register or more, to a fine not exceeding ten thousand dollars ; and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security given, and any goods in respect of which such offence has been committed shall be liable to forfeiture</p> <p>(c) In the case of the person in charge of a vehicle, to a fine not exceeding five thousand dollars and the vehicle and goods in respect of which such offence has been committed shall be liable to forfeiture</p>	<p>Identify the vessel</p> <p>Demonstrate the act of use in smuggling</p>
	<p>Importation of uncustomed goods (Section 200)</p> <p>Importing or carrying coastwise; unloading after importation or carriage coastwise; exportation carrying coastwise or putting on board for exportation; acquiring, possessing, keeping, concealing, or procuring to be kept or concealed prohibited, restricted and uncustomed goods</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years or to a fine equal to fifty per cent of the dutiable value of the goods involved, or both</p>	<p>Identify the uncustomed goods</p> <p>Prove the act of importing, acquiring, possessing, concealing, keeping or procuring the uncustomed goods</p>
	<p>Import or export of Concealed weapons (Section 202)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years or to a fine equal to fifty per cent of the value of the goods involved</p>	<p>Identify the weapons</p> <p>Show that the weapons were imported or exported</p>
	<p>Making false customs documents in relation to Customs (Section 203)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars</p>	<p>Show the document</p> <p>Demonstrate falsity of the document</p>
	<p>Failing to report uncustomed goods to the to the nearest officer (Section 206)</p> <p>Penalty</p> <p>Fine not exceeding two thousand five hundred dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture</p>	<p>Demonstrate knowledge of goods</p> <p>Show failure by the person to report to an officer</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Excise Duty Act, No. 23 of 2015	<p>Undertaking certain activities without a license or registration by commissioner (Section 38(1) as read with Section 15)</p> <p>Penalty</p> <p>(a) double the excise duty that would have been payable if the person were licensed or five million shillings, whichever is higher in the case of a person to whom section 15(1)(a) applies; or</p> <p>(b) double the amount of excise duty payable in respect of the importation of excisable goods requiring an excise stamp, in the case of a person to whom section 15(1)(b) applies</p>	<p>Demonstrate the goods are excisable</p> <p>Show the accused did not have a licence or registration from commissioner</p> <p>Demonstrate the goods are excisable</p>
	<p>Deemed removal of excisable goods²³ (Section 38(3) as read with Section 27(1))</p> <p>A licensed manufacturer who cannot account, to the satisfaction of the Commissioner, for any quantity of excisable goods manufactured shall be deemed to have removed those goods from excise control in the month in which the discrepancy arose</p> <p>Penalty</p> <p>Penalty equal to double the excise duty payable on those goods</p>	<p>Show failure to account for any quantity of excisable goods manufactured in a particular month</p>
<p>Note: Section 38(4): The Tax Procedures Act, 2015 shall apply to penalties imposed under Section 38</p>		
	<p>Contravention of sections 17(3), 18(4), 25(1) or 26(1) (Section 39(1))</p> <p>Penalty (Section 41)</p> <p>Subject to subsection (2), a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment</p> <p>Additional Penalty</p> <p>Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of—</p> <p>(a) the maximum fine specified for the offence; or</p> <p>(b) three times the value of the excisable goods to which the offence relates</p> <p>Note: the value of excisable goods shall be determined in accordance with section 9</p>	<p>Show failure to comply with terms, conditions or restrictions imposed by the Commissioner in relation to the issuance of a licence under this section</p> <p>Demonstrate the manufacturing of excisable goods in a factory specified in a licence by a person other than the person specified as the licensed manufacturer</p> <p>Demonstrate that manufacturing was done by a person other than the person specified as the licensed manufacturer</p> <p>Show failure to comply with obligations of a licensed manufacturer listed under section 25(1)</p> <p>Show keeping or using a still by a person other than a licensed distiller or rectifier</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to licensing and excise control (Section 39(2))</p> <p>A licensed manufacturer commits an offence if he manufactures excisable goods in premises that are not specified on the manufacturer's licence as the factory in which such manufacture is permitted</p> <p>Penalty (Section 41)</p> <p>Subject to subsection (2), a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment</p> <p>Additional Penalty</p> <p>Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of—</p> <p>(c) the maximum fine specified for the offence; or</p> <p>(d) three times the value of the excisable goods to which the offence relates</p> <p>Note: the value of excisable goods shall be determined in accordance with section 9</p>	<p>Show premises approved under the licence</p> <p>Demonstrate goods manufactured in other premise</p>
	<p>Failure by a licensed person to comply with section 19 (1) or 19 (2)²⁴ (Section 39(3))</p> <p>Penalty (Section 41)</p> <p>Subject to subsection (2), a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment</p> <p>Additional Penalty</p> <p>Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of—</p> <p>(a) the maximum fine specified for the offence; or</p> <p>(b) three times the value of the excisable goods to which the offence relates</p> <p>Note: the value of excisable goods shall be determined in accordance with section 9</p>	<p>Show failure to display in a conspicuous place—</p> <p>(a) the original of the licence at the principal place of business; and</p> <p>(b) in case of excisable services, a certified copy of the licence at every other place of business</p> <p>Show failure to notify the Commissioner, in writing of—</p> <p>(a) cessation in carrying on the activity for which a licence is issued;</p> <p>(b) any change in the name, address, place of business, ownership, constitution, or nature of the principal activity or activities carried on by the licensed person;</p> <p>(c) any period in which the licensed person closed operations on a temporary basis; or</p> <p>(d) any change in the factory specified in a licence, or the plant and equipment used to manufacture excisable goods</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences excise control (Section 39(4))</p> <p>(a) removing excisable goods from excise control in contravention of section 24(3)(b);</p> <p>(b) entering any place where excisable goods are stored under excise control without authorisation; or</p> <p>(c) getting involved in the unauthorised removal, alteration, or interference with excisable goods under excise control</p>	<p>Show removal of excisable goods from a factory or otherwise interfere in any way with the goods</p> <p>Show entry into any place where excisable goods are stored under excise control</p>
	<p>Penalty (Section 41)</p> <p>Subject to subsection (2), a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment</p> <p>Additional Penalty</p> <p>Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of—</p> <p>(c) the maximum fine specified for the offence; or</p> <p>(d) three times the value of the excisable goods to which the offence relates</p> <p>Note: the value of excisable goods shall be determined in accordance with section 9</p>	<p>Show that the person was involved in the unauthorised removal, alteration, or interference with excisable goods under excise control</p> <p>Show acts done without the authority of the commissioner</p>
	<p>Buying, or, without proper authority, receiving or having in possession, any excisable goods that have been manufactured contrary to the provisions of this Act/ removed from the place where they ought to have been charged with excise duty before such duty has been charged, paid or secured (Section 39(5))</p> <p>Penalty (Section 41)</p> <p>Subject to subsection (2), a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment</p> <p>Additional Penalty</p> <p>Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of—</p> <p>(e) the maximum fine specified for the offence; or</p> <p>(f) three times the value of the excisable goods to which the offence relates</p> <p>Note: the value of excisable goods shall be determined in accordance with section 9</p>	<p>Show purchase/ receipt/ possession of any excisable goods that have been manufactured contrary to the Act</p> <p>Alternatively show that the goods were removed from the place where they ought to have been charged with excise duty before such duty has been charged, paid or secured</p> <p>Show that the acts were done without proper authority</p>
	<p>Note: (Section 39(6)): Additional Penalty</p> <p>Any plant or excisable goods or any materials, in respect of which an offence has been established in relation to sections 15,18,19, or 28 shall, in addition to any other penalty imposed under this Act, be forfeited to the Commissioner</p>	

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to excise stamps (Section 40)</p> <p>Any person who contravenes section 28 commits an offence</p> <p>Penalty (Section 41)</p> <p>Subject to subsection (2), a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment</p> <p>Additional Penalty</p> <p>Where an offence under this Part or the Tax Procedures Act has been committed in relation to excisable goods, the court may impose a fine not exceeding the higher of—</p> <p>(g) the maximum fine specified for the offence; or</p> <p>(h) three times the value of the excisable goods to which the offence relates</p> <p>Note: the value of excisable goods shall be determined in accordance with section 9</p>	<p>Show removal of excisable goods specified in section 28 from the place designated for affixing stamps without the goods having been affixed with stamps in accordance with the regulation</p> <p>Show failure to mark excisable goods manufactured for export with such inscriptions as the Commissioner may specify to facilitate the tracking and tracing of the goods</p>
<p>Environmental Management and Co-ordination Act, No. 8 of 1999</p>	<p>Refusing or failing to comply with any applicable requirements of the National Environmental Complaints Committee (Section 33(2)(a))</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings</p>	<p>Show the contravened requirement</p> <p>Demonstrate that the accused was in a position to comply and failed to do so</p>
<p>Environmental Management and Co-ordination (Amendment) Act, No. 5 of 2015</p>	<p>Obstructing or hindering the National Environmental Department in the exercise of their powers under this Act (Section 33(2)(b))</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings</p>	<p>Demonstrate the actions of the accused that hindered the exercise of the powers</p>
	<p>Furnishing information or making a statement to the National Environmental Complaints Committee which he knows to be false or misleading in any material particular (Section 33(2)(c))</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings</p>	<p>Demonstrate that the statement is false</p> <p>Show that the accused was aware of this fact</p>
	<p>Making a false or misleading statement when appearing before the National Environmental Complaints Committee for examination (Section 33(2)(d))</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings</p>	<p>Show that the statement was false/misleading</p>
	<p>Note: Additional Penalty (Section 33(4))</p> <p>Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable to a fine of one thousand shillings for each day during which the offence continues</p>	

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Contravening or failing to comply with any orders, regulations or standards issued under section 42 (Section 42 (5))</p> <p>Penalty</p> <p>Imprisonment for a term of not less than one year but not more than four years, or a fine of not less than two million shillings but not more than four million shillings, or both</p>	<p>Show failure to comply with any order relating to the protection of rivers, lakes, seas and wet lands</p>
	<p>Contravening any measure prescribed by the Authority for the sustainable use of hill tops, hill slides and mountainous areas under section 47/failing to comply with a lawful direction issued by a County Environment Committee under section 47 (Section 47 (4))</p> <p>Penalty</p> <p>Imprisonment for a term of not less than one year but not more than four years, or a fine of not less than two million shillings but not more than four million shillings, or both</p>	<p>Identify the measure</p> <p>Show that the measure was contravened</p> <p>Show failure to comply with a lawful order issued by the committee</p>
	<p>Contravention of any conservation measure prescribed by the Authority/ failing to comply with a lawful conservation directive issued by the Authority or its Environment Committee, in relation to the protection of forests, at the counties (Section 48 (4))</p> <p>Penalty (Section 144)</p> <p>Imprisonment for a term of not less than one year but not more than four years, or a fine of not less than two million shillings but not more than four million shillings, or both</p>	<p>Identify the conservation measure</p> <p>Show that the measure was contravened</p> <p>Produce the conservation directive</p> <p>Show failure to comply with the conservation directive</p>
	<p>Releasing or causing to be released into the coastal zone any polluting or hazardous substances contrary to the provisions of this Act (Section 55 (5))</p> <p>Penalty</p> <p>A fine of not less than one million shillings or imprisonment for a period not exceeding two years or both</p>	<p>Show that the person released or caused to be released into the coastal zone any polluting or hazardous substances</p>
	<p>Knowingly submitting a report which contains information that is false or misleading (Section 58 (10))</p> <p>Penalty</p> <p>Imprisonment of not more than three years, or a fine of not more than five million shillings, or both such</p> <p>Additional Penalty</p> <p>Revocation of licence</p>	<p>Demonstrate that the person acted knowingly</p> <p>Show that the report contained false/ misleading information</p>
	<p>Failing, neglecting or refusing to comply with the directions of NEMA to submit at the person's own expense a fresh environmental impact assessment study, evaluation or review report within such time as NEMA may specify (Section 64 (2))</p> <p>Penalty</p> <p>Imprisonment for a term of not less than one year but not more than four years, or a fine of not less than two million shillings but not more than four million shillings, or both</p>	<p>Produce the order</p> <p>Show that the person failed, neglected or refused to comply with the order</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Contravening any provisions relating to the Transfer of an Environmental Impact Assessment Licence under this section(Section 65(5))</p> <p>Penalty</p> <p>Imprisonment for a term of not less than one year but not more than four years, or a fine of not less than two million shillings but not more than four million shillings, or both</p>	<p>Demonstrate the provision contravened</p>
	<p>Discharging or applying any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants/ permitting any person to dump or discharge such matter into the aquatic environment in contravention of water pollution control standards (Section 72)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding two years or a fine not exceeding one million shillings or both</p> <p>Additional Penalty</p> <p>(a) pay the cost of the removal of any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants, including the costs of restoration of the damaged environment, which may be incurred by a Government agency or organ in that respect;</p> <p>(b) pay third parties reparation, cost of restoration, restitution or compensation as may be determined by a court of law on application by such third parties</p>	<p>Show that the person discharged or applied any poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants into the aquatic environment</p> <p>Alternatively Show that the person permitted another to dump or discharge such matter into the aquatic environment</p>
	<p>Discharging or disposing of any wastes, whether generated within or outside Kenya, in such manner as to cause pollution to the environment or ill health to any person (Section 87(1))</p> <p>Penalty</p> <p>Imprisonment for a term of not more than two years or a fine of not more than one million shillings or both</p>	<p>Show that the person discharged or disposed any wastes, whether generated within or outside Kenya, in such manner as to cause pollution to the environment or ill health to any person</p>
	<p>Transporting any waste other than:</p> <p>(a) in accordance with a valid licence to transport wastes issued by NEMA; and</p> <p>(b) to a wastes disposal site established in accordance with a licence issued by NEMA (Section 87(2))</p> <p>Penalty</p> <p>Imprisonment for a term of not more than two years or a fine of not more than one million shillings or both</p>	<p>Show that the person transported waste other than as provided by the section</p>
	<p>Operating a wastes disposal site or plant without a licence issued by the Authority (Section 87(3))</p> <p>Penalty</p> <p>Imprisonment for a term of not more than two years or a fine of not more than one million shillings or both</p>	<p>Show that the person operated a wastes disposal site or plant without a licence issued by the Authority</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Contravening any provision of this section or withholding, falsifying or otherwise tampering with information relating to trafficking in hazardous or other waste (Section 91(6))</p> <p>Penalty</p> <p>A person found guilty shall be responsible for the removal of the waste from Kenya and for its safe disposal</p>	<p>Show that the person contravened any provision of this section</p> <p>Show that the person withheld falsified or otherwise tampered with information relating to trafficking in hazardous or other waste</p>
	<p>Discharging a hazardous substance, chemical, oil or a mixture containing oil into any waters or other segments of the environment (Section 93(2))</p> <p>Penalty</p> <p>Imprisonment for a term of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both</p> <p>Additional Penalty</p> <p>(a) pay the cost of the removal of the hazardous substance, chemical, oil or a mixture containing oil including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge; and</p> <p>(b) the costs of third parties in the form of reparation, restoration, restitution or compensation as may be determined by a competent court on application by such third parties</p>	<p>Show that the person discharged a hazardous substance, chemical, oil or a mixture containing oil into any waters or other segments of the environment</p>
	<p>Offences relating to pesticides and toxic substances (Section 98)</p> <p>(a) detaching, altering or destroying any labelling on a pesticide or toxic substance contrary to the provisions of this Act;</p> <p>(b) changing the composition of a pesticide or toxic substance, contrary to the provisions of this Act; or</p> <p>(c) using or disposing into the environment a pesticide or toxic substance in contravention of the provisions of this Act</p> <p>(d) distributing, selling, offering for sale, holding for sale, importing, delivering for importation to, or receiving from, delivering or offering to deliver to any other person any unregistered pesticide or toxic substance</p> <p>Penalty</p> <p>A fine of not more than one million shillings or imprisonment for a term of not more than two years or both</p>	<p>Show that the person detached, altered or destroyed any labelling on a pesticide or toxic substance</p> <p>Show that the person changed the composition of a pesticide or toxic substance</p> <p>Show that the person used or disposed into the environment a pesticide or toxic substance</p> <p>Show that the person distributed, sold, offered for sale, held for sale, imported, delivered for importation to, or received from, delivered or offered to deliver to any other person any unregistered pesticide or toxic substance</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to inspection (Section 137)</p> <p>(a) hindering or obstructing an environmental inspector in the exercise of their duties;</p> <p>(b) failing to comply with a lawful order or requirement made by an environmental inspector;</p> <p>(c) refusing an environmental inspector entry upon any land or into any premises, vessel or motor vehicle which he is empowered to enter;</p> <p>(d) impersonating an environmental inspector;</p>	<p>Demonstrate particulars of obstruction and demonstrate non-compliance with such requirement by the accused</p> <p>Demonstrate the particulars of refusal of entry. Demonstrate that the inspector had identified himself</p> <p>Show that the accused is not an environmental inspector. Demonstrate that the accused represented himself as an inspector</p>
	<p>(e) refusing an environmental inspector access to records or documents kept pursuant to the provisions of this Act;</p> <p>(f) failing to state or wrongly stating a name or address to an environmental inspector in the cause of their duties;</p> <p>(g) misleading or giving wrongful information to an environmental inspector;</p> <p>(h) failing, neglecting or refusing to carry out an improvement order</p> <p>Penalty</p> <p>Imprisonment for a term of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment</p>	<p>Demonstrate that the inspector identified himself. Demonstrate the particulars of denial of access</p> <p>Demonstrate the failure or that the information stated was incorrect</p> <p>Demonstrate that the statement is false</p> <p>Show that the accused was aware of this fact</p> <p>Show the order issued Demonstrate non-compliance with the order</p>
	<p>Offences relating to Environmental Impact Assessment (Section 138)</p> <p>(a) failing to submit a project report contrary to the requirements of section 58 of this Act;</p> <p>(b) failing to prepare an environmental impact assessment report in accordance with the requirements of this Act or regulations;</p> <p>(c) fraudulently making false statements in an environmental impact assessment report submitted under this Act or regulations</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twenty four months or to a fine of not more than two million shillings or to both such imprisonment and fine</p>	<p>Show the requirements under the Act</p> <p>Demonstrate the failure</p> <p>Demonstrate the requirements under the Act</p> <p>Show the failure to comply</p> <p>Demonstrate the intention of the accused and show that the statements are untrue.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to standards (Section 140)</p> <p>(a) contravening any environmental standard prescribed under this Act;</p> <p>(b) contravening any measure prescribed under this Act;</p> <p>(c) using the environment or natural resources in a wasteful and destructive manner contrary to measures prescribed under this Act</p> <p>Penalty</p> <p>A fine of not less than one year but not more than four years or a fine of not less than two million shillings but not more than four million shillings, or both</p>	<p>Show that the person contravened any prescribed environmental standards/ measures</p> <p>Show that the person the environment or natural resources in a wasteful and destructive manner</p>
	<p>Offences relating to hazardous wastes, materials, chemicals and radioactive substances (Section 141)</p> <p>(a) failing to manage any hazardous waste and materials in accordance with this Act;</p> <p>(b) importing any hazardous waste contrary to this Act;</p> <p>(c) knowingly mislabeling any waste, pesticide, chemical, toxic substance or radioactive matter;</p> <p>(d) failing to manage any chemical or radioactive substance in accordance with this Act;</p> <p>(e) aiding or abetting the illegal trafficking in hazardous waste, chemicals, toxic substances and pesticides or hazardous substances;</p> <p>(f) disposing of any chemical contrary to this Act or hazardous waste within Kenya;</p> <p>(g) withholding information or providing false information about the management of hazardous wastes, chemicals or radioactive substances</p> <p>Penalty</p> <p>A fine of not less than one million shillings, or imprisonment for a term of not less than two years, or both</p>	<p>Show that the person failed to manage any hazardous waste and materials</p> <p>Show that the person imported any hazardous waste</p> <p>Show that the person knowingly mislabeled any waste, pesticide, chemical, toxic substance or radioactive matter</p> <p>Show that the person failed to manage any chemical or radioactive substance</p> <p>Show that the person aided or abetted the illegal trafficking in hazardous waste, chemicals, toxic substances and pesticides or hazardous substances</p> <p>Show that the person disposed of any chemical/ hazardous waste contrary to this Act</p> <p>Show that the person withheld information or provided false information about the management of hazardous wastes, chemicals or radioactive substances</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to pollution (Section 142)</p> <p>(a) discharging any dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment;</p> <p>(b) polluting the environment contrary to the provisions of this Act;</p> <p>(c) discharging any pollutant into the environment contrary to the provisions of this Act,</p> <p>Penalty</p> <p>A fine not less than two million shillings but not more than five million shillings</p> <p>Additional Penalty</p> <p>(a) pay the full cost of cleaning up the polluted environment and of removing the pollution;</p> <p>(b) clean up the polluted environment and remove the effects of pollution to the satisfaction of the Authority</p> <p>(c) the court may direct the polluter to meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution</p>	<p>Show that the person discharged any dangerous materials into land, water, air, or aquatic environment</p> <p>Show that the person polluted the environment</p> <p>Show that the person discharged any pollutant into the environment</p>
	<p>Offences relating to Environmental restoration orders, orders of the Tribunal, easements, and conservation orders (Section 143)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than one year and not more than four years or a fine of not less than two million shillings and not more than four million shillings or both</p>	<p>Demonstrate the order given Demonstrate the failure to comply</p>
<p>Fisheries Management and Development Act, No. 35 of 2016</p>	<p>Importation of Live Fish/ releasing of any live fish imported into Kenya into the fishery waters without written approval of director general and in accordance with prescribed procedures (Section 54)</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or imprisonment for a term not exceeding ten years or both</p> <p>Additional Penalty</p> <p>Any fish or fish products involved in the transaction and those owned or controlled by such persons shall be forfeited and destroyed</p>	<p>Demonstrate the exportation or importation</p> <p>Show that the fish were released into the fishery waters</p> <p>Show that the acts were done without written approval from the Director General</p>
	<p>Exportation of any live fish from Kenya contrary to the regulations (Section 55)</p> <p>Penalty</p> <p>A fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both</p>	<p>Show that live fish was exported from Kenya contrary to the regulations</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Buying, selling, possessing or otherwise trading in fish, fish products, or other fisheries resources which that person believes has been obtained in contravention of this Act (Section 56)</p> <p>Penalty</p> <p>A fine not exceeding five hundred thousand shillings or a term of imprisonment not exceeding three years or both</p> <p>Additional Penalty</p> <p>Forfeiture of all fish or fish products in respect of which the offence is committed</p>	<p>Show that the person traded in in fish, fish products, or other fisheries resources which that person believes has been obtained in contravention of this Act</p>
	<p>Failure to comply with all applicable food quality, health and sanitation requirements for fish intended for human consumption (Section 60)</p> <p>Selling or exporting of fish or fish products which:</p> <p>(a) are adulterated;</p> <p>(b) are contaminated with or contains a poisonous or harmful substance or pathogenic micro-organisms;</p> <p>(c) have not met applicable inspection standards; or</p> <p>(d) are otherwise injurious to human health</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or imprisonment for a term not exceeding ten years or both</p> <p>Additional Penalty</p> <p>Forfeiture of any fish or fish products involved in the transaction and those owned or controlled by such person</p>	<p>Show the standards set for the sale or export of fish intended for human consumption</p> <p>Show the contravention to the standards</p> <p>Show that the person acted knowingly and willfully</p>
	<p>Engaging in commercial aquaculture activities contrary to the Act (Section 61)</p> <p>Penalty</p> <p>Fine not exceeding three hundred thousand shillings or to a term of imprisonment not exceeding five years or to both</p>	<p>Demonstrate the activities in contravention of the Act</p> <p>Show that the person engaged in such activities</p>
	<p>Depriving a local community of its traditional access to fishing grounds without good cause and without first consulting the affected community (Section 64)</p> <p>Penalty</p> <p>Fine not exceeding three hundred thousand shillings or to a term of imprisonment not exceeding three years or to both</p> <p>Additional Penalty</p> <p>Restoring to the local community its traditional access</p>	<p>Demonstrate the aquaculture activities carried out</p> <p>Identify the community</p> <p>Show how the activities deprive the community of its access to fishing grounds</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Using in a commercial aquaculture establishment any drug, pharmaceutical, antibiotic or other chemical for the treatment of fish diseases or for the enhancement of fish growth without the written approval of the Director-General (Section 70)</p> <p>Penalty</p> <p>A fine not exceeding five hundred thousand shillings or a term of imprisonment not exceeding five years or both</p>	<p>Show that the drugs were being used in a commercial aquaculture establishment</p> <p>Show that the drugs were being used for the treatment of fish diseases/ enhancement of fish growth</p> <p>Show that the above was done without the written approval of the Director-General</p>
	<p>Carrying out aquaculture activities without a valid licence (Section 71)</p> <p>(a) interfering with or harvesting the product of an aquaculture establishment without the written authority of the licensee;</p> <p>(b) placing any object in the water, or promoting or undertaking any activity in a manner so as to obstruct an aquaculture operation being carried out by another person;</p> <p>(c) destroying, damaging, displacing or altering the position of any equipment lawfully deployed in connection with an aquaculture licence; or</p> <p>(d) without lawful excuse, causing the release of any product of an aquaculture establishment</p> <p>Penalty</p> <p>Fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding five years or to both, and in addition shall fully compensate the relevant licensee for any damage which is the direct result of his/her contravention</p> <p>Additional Penalty</p> <p>Fully compensate the relevant licensee for any damage which is the direct result of his/her contravention</p>	<p>Demonstrate the aquaculture activities carried out</p> <p>Show the prescribed licence for such activity</p> <p>Demonstrate that accused did not have a valid licence</p>
	<p>Failing to label containers or packaging materials containing fish harvested in the Kenya fishery waters (Section 78)</p> <p>Penalty</p> <p>Fine of three hundred thousand shillings or imprisonment for a term not exceeding three years or both</p>	<p>Demonstrate the prescribed labelling requirements under the Act</p> <p>Demonstrate that the fish was harvested in Kenya</p> <p>Show the labelling is not per the prescribed requirements</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Human trafficking for the purpose of carrying out of any of the operations of a licensee²⁵ (Section 91)</p> <p>This includes:</p> <p>(a) importing unskilled labour; or</p> <p>(b) in any case use child labour</p> <p>Penalty</p> <p>A fine not exceeding three hundred thousand shillings</p>	<p>Show that the licensee imported unskilled labour/child labour</p>
	<p>Contravention of any of the conditions for industrial fishing vessels (Section 99(1)(i))</p> <p>Causing or allowing a fishing vessel to engage in fishing for, or take or carry on board or possess fish taken from a closed area or from any marine protected area</p> <p>Penalty</p> <p>A fine not exceeding fifty million shillings or a term of imprisonment not exceeding five years or both</p>	<p>Show that the person caused or allowed a fishing vessel to engage in fishing for, or take or carry on board or possess fish taken from a closed area or from any marine protected area</p>
	<p>Contravention of conditions for semi-industrial fishing vessels (Section 101)</p> <p>Penalty</p> <p>A fine not exceeding one million shillings or a term of imprisonment not exceeding five years or both</p>	<p>Show use of a semi-industrial fishing vessel during the period of validity of a licence for fishing or fishing related activities in areas under the national jurisdiction of other States</p>
	<p>Failure to adhere to the reporting requirements for semi-industrial fishing vessels (Section 102)</p> <p>Penalty</p> <p>A fine not exceeding five million shillings or to a term of imprisonment not exceeding three years or to both</p>	<p>Show failure to make such reports as may be prescribed or required by the Director-General</p>
	<p>Note: Banning order (Section 195)</p> <p>Where a person has been convicted of an offence under this Act, the Court may in addition to any other penalty or forfeiture, order that for a period not exceeding five years that person be banned from going on or remaining aboard any fishing vessel in the Kenyan fishery waters</p>	

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
<p>The Fertilizers and Animal Foodstuffs Act, Cap 345</p> <p>Fertilizers and Animal Foodstuffs (Amendment) Act, No. 20 of 2015</p>	<p>Dealing with unapproved fertiliser (Section 3)</p> <p>i. Importing, manufacturing, compounding, mixing or selling any fertilizer or animal foodstuff other than a substance declared by rules made under the Act to be an approved fertilizer or an approved animal foodstuff, as the case may be</p> <p>ii. Importing, manufacturing, compounding, mixing or sell any fertilizer or animal foodstuff in respect of which rules have been made under the Act unless the fertilizer or animal foodstuff conforms to the standard or specification prescribed by such rules</p> <p>Penalty (Section 16)</p> <p>First offence: Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one month</p> <p>Second or subsequent offence: Fine not exceeding one million shillings or imprisonment for a term not exceeding three months, or both</p>	<p>Identify the fertiliser</p> <p>Demonstrate importation, manufacture, compounding, mixing or selling or the fertiliser or animal foodstuff</p> <p>Demonstrate that substance does not conform to the standards prescribed</p> <p>Identify the prescribed standards</p>
	<p>Importing fertiliser containing bone or substance obtained from carcass (Section 4(1))</p> <p>1. Importing any fertilizer or animal foodstuff which contains bone or any other substance derived from an animal carcass; or bones or any other substance derived from an animal carcass for the purpose of manufacturing any fertilizer or animal foodstuff, without first submitting to the Director a certificate signed in the country of origin by a person designated by the Cabinet Secretary, certifying that such bone or substance has been effectively and completely sterilized in such manner as may be prescribed and is free from such pathogenic organisms as may be prescribed</p> <p>Penalty (Section 16)</p> <p>First offence: Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one month</p> <p>Second or subsequent offence: Fine not exceeding one million shillings or imprisonment for a term not exceeding three months, or both</p>	<p>Produce the fertiliser imported</p> <p>Demonstrate that fertiliser was imported</p> <p>Show that fertiliser contained bone or any substance derived from an animal carcass</p> <p>Show failure to submit to Director a certificate signed in country of origin showing sterilization of substance</p>
	<p>Manufacturing or selling any fertilizer or animal foodstuff containing bone or any other substance derived from an animal carcass unless such bone or substance has been sterilized in the prescribed manner (Section 4(2))</p> <p>Penalty (Section 16)</p> <p>First offence: Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one month</p> <p>Second or subsequent offence: Fine not exceeding one million shillings or imprisonment for a term not exceeding three months, or both</p>	<p>Demonstrate that substance is not sterilised</p> <p>Show that person was manufacturing or selling fertiliser</p> <p>Demonstrate that fertiliser has bone or other animal substance</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Using sterilizing plant for sterilizing bones or other substances derived from an animal carcass for the purpose of the manufacture or sale of any fertilizer or animal foodstuff, except in accordance with licence issued in respect of that plant (Section 5(1))</p> <p>Penalty (Section 16)</p> <p>First offence: First offence: Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one month</p> <p>Second or subsequent offence: Fine not exceeding one million shillings or imprisonment for a term not exceeding three months, or both</p>	<p>Identify the fertiliser manufactured</p> <p>Demonstrate use of sterilizing plant</p> <p>Show lack of licence</p>
	<p>Using bone or any substance derived from an animal carcass which has not been either imported or a certificate signed in the country of origin by a person designated by the Cabinet Secretary without certification to manufacture or Sale fertiliser (Section 7)</p> <p>Penalty (Section 16)</p> <p>First offence: Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one month</p> <p>Second or subsequent offence: Fine not exceeding one million shillings or imprisonment for a term not exceeding three months, or both</p>	<p>Produce the fertiliser manufactured</p> <p>Demonstrate fertiliser manufactured from bone or animal carcass not imported on a certificate signed in country of origin</p>
	<p>Using or permitting any copy of an analyst's certificate obtained under the Act to be used in any advertisement (Section 11)</p> <p>Penalty (Section 16)</p> <p>First offence: Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one month</p> <p>Second or subsequent offence: Fine not exceeding one million shillings or imprisonment for a term not exceeding three months, or both</p>	<p>Identify the certificate</p> <p>Demonstrate use of certificate in an advertisement</p>
	<p>Knowingly selling a fertilizer or animal foodstuff containing deleterious ingredients (Section 12)</p> <p>Penalty</p> <p>Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months</p>	<p>Show that person knew or ought to have known foodstuff contained deleterious ingredients</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Obstructing an officer (Section 13)</p> <ol style="list-style-type: none"> 1. Obstructing, hindering, deceiving or misleading an inspector in the exercise of his powers or the performance of his duties under this Act or any rules made thereunder; or 2. Knowingly making use of, issuing or maintaining any false or misleading records, statement, document, declaration, marking or label in connexion with the manufacture, importation, mixing, compounding or sale of any fertilizer or animal foodstuff <p>Penalty (Section 16)</p> <p>First offence: Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one month</p> <p>Second or subsequent offence: Fine not exceeding one million shillings or imprisonment for a term not exceeding three months, or both</p>	<p>Demonstrate how officer was obstructed in the execution of his/her duty</p> <p>Show that officer was performing their duty</p> <p>Show that person knew or ought to have known that statement/declaration/ document was false</p> <p>Demonstrate that person made statement/declaration/ document that was false</p>
	<p>Note: Supplementary orders on conviction (Section 17):</p> <p><i>A court convicting any person of an offence against the Act or against any rules made thereunder may make such order as the Court shall deem proper, as to the forfeiture or disposal of any fertilizer, animal foodstuff, bone or other product of an animal carcass; the payment by the defendant of all or any fees and other expenses incidental to the analysis of a fertilizer or animal foodstuff, in respect of which the conviction is obtained</i></p>	
<p>Forest Conservation and Management Act, 2016</p>	<p>Importing, exporting, re-exporting or introducing any forest products into or from Kenya without a permit issued by the Service under this Act (Section 60)</p> <p>Penalty</p> <p>Fine not exceeding one million or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment</p>	<p>Demonstrate that the person imported, exported, re-exported or introduced any forest products into or from Kenya without a permit issued by the Service under this Act</p>
	<p>Trading in any restricted forest produce (Section 61)</p> <p>Penalty</p> <p>Fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, or to both</p>	<p>Demonstrate that the person traded in restricted forest produce</p>
	<p>Felling, cutting, taking, burning, injuring or removing any forest products (Section 64(1)(a))</p> <p>Penalty</p>	<p>Demonstrate the felling, cutting, burning or removal of any forest products in contravention to the law</p>
	<p>Erecting any building or livestock enclosure, except where the same is allowed for a prescribed fee (Section 64(1)(c))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person erected any building or livestock enclosure, without paying a prescribed fee</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Smoking, where smoking is by notice prohibited, or kindling, carrying or throwing down any fire, match or other lighted material in a forest (Section 64(1)(d))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person was smoking, where smoking is by notice prohibited</p>
	<p>De-pasture or allow any livestock to be in the forest (Section 64(1)(e))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person de-pastured or allowed any livestock to be in the forest</p>
	<p>Clearing, cultivating or breaking up land for cultivation or for any other purpose in a forest (Section 64(1)(f))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person Cleared, cultivated or broke up land for cultivation or for any other purpose</p>
	<p>Collecting any honey or beeswax, or hanging on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax in a forest (Section 64(1)(h))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person collected any honey or beeswax, or hang on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax</p>
	<p>Constructing any road or path in a forest (Section 64(1)(i))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person constructed any road or path in a forest</p>
	<p>Setting fire to, or assisting any person to set fire to, any grass or undergrowth or any forest produce (Section 64(1)(j))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person set fire to, or assisted any person to set fire to, any grass or undergrowth or any forest produce</p>
	<p>Possessing, bringing or introducing any chain saw or logging tools or equipment in a forest (Section 64(1)(k))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person was in possession, brought or introduced any chain saw or logging tools or equipment</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Damaging, altering, shifting, removing or interfering in any way whatsoever with any beacon, boundary mark, fence notice or notice board (Section 64(1)(l))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Demonstrate that the person damaged, altered, shifted, removed or interfered in any way whatsoever with any beacon, boundary mark, fence notice or notice board</p>
	<p>Counterfeiting or unlawfully affixing marks to any forest produce (Section 65)</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both</p>	<p>Demonstrate that the marks affixed were counterfeits</p> <p>Demonstrate that the marks were affixed to forest produce without authority</p>
	<p>Offences in relation to activities in forest areas relating to quarrying or re-vegetation (Section 66)</p> <p>Penalty</p> <p>a Fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both</p>	<p>Show the requirements of the Act in relation to quarrying</p> <p>Demonstrate the contravention of the Act in relation to quarrying</p>
	<p>Illegal possession of charcoal (Section 67(1)(e))</p> <p>Penalty</p> <p>Fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both</p>	<p>Identify the charcoal, the national, county or provincial forest from which it was made</p> <p>Demonstrate that the accused had no licence or permit</p>
	<p>Wilfully or maliciously setting fire to any public, provisional, community or private forest (Section 67(2))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not less than one year, or to both such fine and imprisonment</p>	<p>Demonstrate that the accused wilfully or maliciously sett fire to any public, provisional, community or private forest</p>
	<p>Operating a sawmill in a manner contrary to that prescribed in the rules (Section 67(3))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment</p>	<p>Demonstrate that the accused operated a sawmill in a manner contrary to that prescribed in the rules</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Destruction of forests (Section 67(8))</p> <p>(a) introducing any exotic genetic material or invasive plants without authority from the forest manager;</p> <p>(b) dumping any solid, liquid, toxic or other wastes in a forest without authority of the forest manager;</p> <p>(c) growing any plant from which narcotic drugs can be extracted in a forest; or</p> <p>(d) extracting, removing, or causing to be removed, any tree, shrub or part thereof for export</p> <p>Penalty</p> <p>Fine not exceeding three million shillings or to imprisonment for a term not exceeding ten years, or to both</p>	<p>Demonstrate that the accused introduced any exotic genetic material or invasive plants without authority from the forest manager</p> <p>Demonstrate that the accused dumped any solid, liquid, toxic or other wastes in a forest without proper authority</p> <p>Demonstrate that the accused grew any plant from which narcotic drugs can be extracted</p> <p>Demonstrate that the accused extracted, removed, or caused to be removed, any tree, shrub or part thereof for export</p>
	<p>Capturing or killing any animal, setting or being in possession of any trap, snare, gin or net, or dig any pit, for the purpose of catching any animal, or using or being in possession of any poison or poisoned weapon in a forest without a valid license</p> <p>Penalty</p> <p>Fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, or to both</p>	<p>Demonstrate that the accused captured or killed any animal in a forest without a valid license</p>
	<p>Note: Compensation for loss or damage (Section 68)</p> <p>(1) Where a person is convicted of an offence of damaging, injuring or removing forest produce from any forest, the forest produce shall be forfeited to the owner. The court may in addition to any other ruling order—</p> <p>(a) that such person pay to the forest owner, by way of compensation, a sum equal to the determined value of the forest produce so damaged, injured or removed and where the value cannot be estimated, ten thousand shillings for each offence;</p> <p>(b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the forest owner, the value of the forest produce, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;</p> <p>(c) the vessels, vehicles, tools or implements used in the commission of the offence be forfeited to the Service</p>	

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Firearms Act, Cap 114	<p>Purchasing, acquiring, having in possession firearms or ammunition without firearm certificate (Section 4(1))</p> <p>Penalty</p> <ol style="list-style-type: none"> 1. If the firearm concerned is a prohibited weapon of a type or the ammunition is ammunition for use in any such firearm, imprisonment for a term of not less than seven years and not more than fifteen years; or 2. If the firearm is any other type or the ammunition for any weapon not being a prohibited weapon, imprisonment for a term of not less than five, but not exceeding ten years 3. When the offence for which the person is convicted (not being an offence in relation to a prohibited weapon or to any ammunition therefor) is failure by neglect to renew a firearms certificate such person shall be liable to pay a fine at the rate of five hundred shillings per day for every day or part hereof during which his default continues but so that no person shall be liable to pay a fine greater than the maximum provided by this subsection and if such fine is not paid then to imprisonment for a term not exceeding two years 	<p>Identify and produce the firearm/ammunition purchased</p> <p>Identify the person who purchased the firearm/ammunition</p> <p>Show that the person who purchased the firearm/ammunition did not have a firearm certificate</p>
	<p>Manufacturing, assembling, purchasing, acquiring or having in possession an armoured vehicle unless a person holds a certificate of approval issued under this Act (Section 4(1A))</p> <p>Penalty</p> <ol style="list-style-type: none"> 1. If the firearm concerned is a prohibited weapon of a type or the ammunition is ammunition for use in any such firearm, imprisonment for a term of not less than seven years and not more than fifteen years; or 2. If the firearm is any other type or the ammunition for any weapon not being a prohibited weapon, imprisonment for a term of not less than five, but not exceeding ten years 3. When the offence for which the person is convicted (not being an offence in relation to a prohibited weapon or to any ammunition therefor) is failure by neglect to renew a firearms certificate such person shall be liable to pay a fine at the rate of five hundred shillings per day for every day or part hereof during which his default continues but so that no person shall be liable to pay a fine greater than the maximum provided by this subsection and if such fine is not paid then to imprisonment for a term not exceeding two years 	<p>Identify/produce the specified firearm</p> <p>Show possession of the specified firearm</p> <p>Show the person in possession of the firearm did not have licence</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Purchasing, acquiring or having in possession any firearm or ammunition without holding a firearm certificate in force at the time/ In the case of ammunition, having them in quantities in excess of those authorized by a certificate (Section 4 (2)(a))</p> <p>Penalty</p> <ol style="list-style-type: none"> 1. If the firearm concerned is a prohibited weapon of a type or the ammunition is ammunition for use in any such firearm, imprisonment for a term of not less than seven years and not more than fifteen years; or 2. If the firearm is any other type or the ammunition for any weapon not being a prohibited weapon, imprisonment for a term of not less than five, but not exceeding ten years <p style="text-align: center;">:</p> <ol style="list-style-type: none"> 3. When the offence for which the person is convicted (not being an offence in relation to a prohibited weapon or to any ammunition therefor) is failure by neglect to renew a firearms certificate such person shall be liable to pay a fine at the rate of five hundred shillings per day for every day or part hereof during which his default continues but so that no person shall be liable to pay a fine greater than the maximum provided by this subsection and if such fine is not paid then to imprisonment for a term not exceeding two years 	<p>Identify the specified firearm</p> <p>Show the specified firearm belonged to a licensed person</p> <p>Show that the licensed person hired or permitted the use of the specified firearms to another party</p> <p>Identify the crime committed by this other party</p>
	<p>Failing to comply with any condition subject to which a firearm certificate is held (Section 4 (2)(b))</p> <p>Penalty</p> <ol style="list-style-type: none"> 4. If the firearm concerned is a prohibited weapon of a type or the ammunition is ammunition for use in any such firearm, imprisonment for a term of not less than seven years and not more than fifteen years; or 5. If the firearm is any other type or the ammunition for any weapon not being a prohibited weapon, imprisonment for a term of not less than five, but not exceeding ten years 6. When the offence for which the person is convicted (not being an offence in relation to a prohibited weapon or to any ammunition therefor) is failure by neglect to renew a firearms certificate such person shall be liable to pay a fine at the rate of five hundred shillings per day for every day or part hereof during which his default continues but so that no person shall be liable to pay a fine greater than the maximum provided by this subsection and if such fine is not paid then to imprisonment for a term not exceeding two years 	
	<p>Possessing any of the specified firearms without a licence or permit or other lawful justification (Section 4A (1)(a))</p> <p>Penalty</p> <p>Imprisonment for life</p> <p>Additional Penalty (Section 4A (3))</p> <p>Forfeiture to the State of any firearms, ammunition or other parts produced as exhibits in the trial</p>	<p>Demonstrate that the accused was in possession of any of the specified firearms without a licence or permit or other lawful justification</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Hiring or otherwise unlawfully permitting another person to take possession of or use that firearm or ammunition to advance the course of organized criminal activity²⁶ (Section 4A (1)(b))</p> <p>Penalty</p> <p>Imprisonment for life</p> <p>Additional Penalty (Section 4A (3))</p> <p>Forfeiture to the State of any firearms, ammunition or other parts produced as exhibits in the trial</p>	<p>Demonstrate that the accused hired or otherwise unlawfully permitted another person to take possession of or use that firearm or ammunition to advance the course of organized criminal activity</p>
	<p>Failure to surrender a firearm within fourteen days from the date a notice is issued, where a firearm certificate is revoked by a licensing officer (Section 5 (8))</p> <p>Penalty</p> <p>Fine not exceeding one thousand shillings</p>	<p>Demonstrate that the accused failed to surrender the firearm as prescribed</p>
	<p>Knowingly making a false statement for the purpose of procuring the grant of a firearm certificate or the variation or renewal of a firearm certificate</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding two months or to a fine not exceeding two thousand shillings or to both</p>	<p>Demonstrate that the accused made a false statement</p> <p>Demonstrate that the accused person acted knowingly</p>
	<p>Manufacture of firearms/ ammunition in contravention of the provisions of the Act (Section 9)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than ten, but not exceeding fifteen, years</p>	<p>Show that the person is manufacturing firearms on behalf of self/ another entity save for the Government; or</p> <p>Show that the person is manufacturing firearms on behalf of the Government but at a place not at an established and designated place in accordance with the instructions issued by the Minister</p> <p>Produce the instructions issued by the Minister</p>
	<p>Failing to produce any certificate or permit upon demand by an officer, without reasonable cause/ refusing to declare the person's name and address/declaring the wrong name and address (Section 10(4))</p> <p>Penalty</p> <p>Fine not exceeding ten thousand shillings</p>	<p>Demonstrate that the accused failed to produce any certificate or permit upon demand by an officer, without reasonable cause</p> <p>Demonstrate that the accused refused to declare their name and address</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Concealment of serial number (Section 11A)</p> <p>Penalty Imprisonment for a term of not less than five, but not exceeding ten years</p>	<p>Show that the accused person:</p> <p>(a) obliterated the serial number of any firearm in his possession; or</p> <p>(b) was found, without reasonable excuse, in possession of a firearm the serial number of which has been obliterated</p>
	<p>Sale, transfer and other dealings in firearms by way of business without a firearms dealer licence/Making false statement for the purpose of procuring such a licence (Section 12)</p> <p>Penalty Imprisonment for a term of not less than five, but not exceeding ten years</p>	<p>Show that the person exposed for sale or transfer or had in their possession for sale, transfer, repair, test or proof any firearm or ammunition; or</p> <p>Show that the person sold, transfer, repaired, tested or proved any firearm or ammunition</p> <p>Show that that person is not registered as a firearms dealer</p> <p>Where the person is an auctioneer, show that the person did not have a permit for the purpose of selling by auction from the licensing officer</p>
	<p>Making false statement for the purpose of procuring a firearms dealer licence (Section 13)</p> <p>Penalty Imprisonment for a term not exceeding one year or a fine not exceeding ten thousand shillings or both</p>	<p>Demonstrate that the person has made false statement for the purpose of procuring whether for himself or for any other person, a permit.</p> <p>Demonstrate that the person knew the statement to be false</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Carrying on business as a firearms dealer at a place of business which is not entered on the register (Section 15(4))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both</p>	<p>Show that the person, being a registered firearms dealer is carrying out a business as a firearms dealer at a place not entered on the register</p>
	<p>Sale, repair and other dealings in relation to firearms and ammunition contrary to the Act (Section 16)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than five, but not exceeding ten years</p>	<p>Demonstrate that the person intended to purchase, acquire, procure, repair, test or proof of firearm or ammunition using a false firearm certificate or a firearm certificate with a false entry</p> <p>Show the falsity on the firearm certificate or entry entered in the firearm certificate</p>
	<p>Failure to keep register of transactions on sale of transfer of firearms and ammunition (Section 17(1))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both</p>	<p>Demonstrate that the person in the trade or business of firearms or ammunition failed to provide and keep a register of transactions</p>
	<p>Failure to enter a transaction for sale or transfer/ammunition within 24 hours of the transaction taking place (Section 17 (2))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both</p>	<p>Demonstrate that the person in the trade or business of firearms or ammunition failed to make an entry within twenty-four hours after which the transaction to which it relates took place</p>
	<p>Failing to allow a police officer or licensing officer to enter and inspect all stock in hand/ failing to produce the register for inspection (Section 17 (3))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both</p>	<p>Demonstrate that the person failed to allow a police officer or licensing officer to enter and inspect all stock in hand</p> <p>Demonstrate that the person failed to produce the register for inspection</p>
	<p>Taking in pawn firearms or ammunition (Section 20)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than three, but not exceeding five years</p>	<p>Demonstrate that the person took in pawn firearms or ammunition</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Converting into a firearm anything which, though having the appearance of being a firearm, is so constructed as to be incapable of discharging any missile through the barrel (Section 21)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than seven, but not exceeding fifteen years</p>	<p>Demonstrate that the person converted into a firearm anything which, though having the appearance of being a firearm, was so constructed as to be incapable of discharging any missile through the barrel</p>
	<p>Failure to report loss of firearms or ammunition (Section 22)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or a fine not exceeding ten thousand shillings or both</p>	<p>Demonstrate that the person failed to report the loss of firearms or ammunition</p>
	<p>Sale, transfer, purchase, acquisition or possession of the firearms specified in section 26 contrary to the provisions of the Act (Section 26)</p> <p>Penalty</p> <p>Depends on the nature of the firearm/ammunition</p>	<p>Show that the person is not in the service of the Government acting in their capacity as such.</p> <p>Show that the person has not been authorized in writing in that behalf by the Minister or a person of a class</p> <p>Demonstrate further that the person sold, transferred, purchased or acquired in their possession the specified firearm, ammunition or weapon</p>
	<p>Unlawful use, etc., of firearms by public officers²⁷ (Section 26A(1))</p> <p>(a) using any Government firearm for any unlawful purposes</p> <p>(b) disposing of any Government firearm or ammunition to any person who is not under the person's immediate command without lawful authority</p> <p>(c) receiving otherwise than in the course of and for lawful duty from any person any ammunition</p> <p>(d) failing to account fully for all ammunition, issued to and used by that officer</p> <p>Penalty</p> <p>Imprisonment for a term of not less than seven years and not more than fifteen years</p> <p>Additional Penalty</p> <p>(a) Automatic dismissal from public service</p> <p>(b) Subject to section 113 of the Constitution, forfeiture of all rights to any pension, gratuity or other payment which may at the date of the person's conviction, may have accrued due to him</p>	<p>Demonstrate that the accused used any Government firearm for any unlawful purposes</p> <p>Demonstrate that the accused unlawfully disposed of any Government firearm or ammunition</p> <p>Demonstrate that the accused unlawfully received ammunition</p> <p>Demonstrate that the accused failed to fully account for all ammunition issued to him</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Unlawfully supplying by sale, gift, loan or otherwise, to any public officer, any Government or other firearm or any ammunition (Section 26A(1))</p> <p>Penalty</p> <p>Imprisonment for a term of not less than seven years and not more than fifteen years</p> <p>Additional Penalty</p> <p>(a) Automatic dismissal from public service</p> <p>(b) Subject to section 113 of the Constitution, forfeiture of all rights to any pension, gratuity or other payment which may at the date of the person's conviction, may have accrued due to him</p>	<p>Demonstrate that the person unlawfully supplied by sale, gift, loan or otherwise to any public officer any Government or other firearm or any ammunition</p>
	<p>Importation and exportation of firearms and ammunition without/contrary to an import or export permit (Section 27)</p> <p>Penalty</p> <p>Imprisonment for a term of not less than seven years and not more than fifteen years</p>	<p>Demonstrate that the person imported/exported firearms without the requisite permit</p>
	<p>Importation of firearms/ammunition at a place other than a designated place (Section 28)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding ten years</p>	<p>Show the places designated by the Minister for import of firearms and ammunition</p> <p>Show that place of import was not designated by the Minister</p>
	<p>Removal and transportation of firearms and ammunition within Kenya without a removal permit issued by a licensing officer (Section 29)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both</p>	<p>Demonstrate that the person removed or transported, or caused to be removed or transported, any firearm or ammunition from one place to another in Kenya</p> <p>Show that the person did not have a valid license</p>
	<p>A person under the age of twelve years possessing any firearm or ammunition to which Part II applies, and no person under the age of fourteen years shall have in his possession any firearm or ammunition to which Part II applies other than a miniature rifle not exceeding 0.22 calibre or a shotgun the bore of which is not larger than 20 gauge, and ammunition suitable/ parting with the possession of</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand shillings or to both</p>	<p>Demonstrate that the accused was under the age of twelve or fourteen</p> <p>Demonstrate that the accused was in possession any firearm or ammunition to which Part II of the Act applies</p> <p>Demonstrate that the accused parted with the possession of such firearm</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Health Act, No. 21 of 2017	<p>Removal of tissue or gametes from a human being for transplantation in contravention of the Act (Section 80(4))</p> <p>Penalty</p> <p>Fine not exceeding two million shillings or to imprisonment for a term of three months, or both</p>	<p>Demonstrate that the person removed tissue or gametes from a human being for transplantation</p> <p>Show that the person is not in a duly authorized health facility</p> <p>If in a duly authorized facility, demonstrate that the person did not have written authority of the medical practitioner in charge of clinical services in that facility</p>
	<p>Charging a fee for a human organ</p> <p>Penalty</p> <p>Fine not exceeding ten million shillings or to imprisonment for a period not exceeding ten years or to both</p>	<p>Demonstrate that the person charged a fee for a human organ</p>
Industrial Property Act, 2001	<p>Failing to comply with directions of MD/Cabinet Secretary (Section 27(9))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding two years, or to a fine not exceeding twenty thousand shillings, or to both</p>	<p>Set out the directions given by the MD or Cabinet secretary in relation to the defence of Kenya or public safety</p> <p>Demonstrate failure to comply with those directions</p>
	<p>Filing applications for patent in contravention of restrictions (Section 28(3))</p> <p>Penalty</p> <p>Fine not exceeding two hundred thousand shillings, or imprisonment for a term not exceeding two years, or both</p>	<p>Identify the application for patent</p> <p>Set out the restrictions contravened</p>
	<p>Infringement of patent or registered utility model or industrial design (Section 109)</p> <p>Penalty</p> <p>Fine of not less than ten thousand shillings, and not exceeding fifty thousand shillings, or imprisonment for a term of not less than three years, and not more than five years, or both</p>	<p>Produce the infringing patent</p> <p>Identify the original patent infringed</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Kenya Trade Remedies Act, No. 32 of 2017	Disclosure of information that has been declared confidential concerning the affairs of any person obtained by an authorized person in carrying out any function or exercising any power under the Act; or as a result of initiating a complaint or participating in any proceedings under the Act (Section 38) Penalty Fine not exceeding five million shillings or to imprisonment for a period not exceeding five years, or to both	Demonstrate that the disclosed information had been declared confidential
	Hindering administration of Act (Section 39) Penalty Fine not exceeding five million shillings or to imprisonment for a period not exceeding five years, or to both	Demonstrate that the accused person has hindered or obstructed the administration of the Act
	Failure to attend when summoned under the Act without sufficient cause Penalty (Section 40) Fine not exceeding five million shillings or to imprisonment for a period not exceeding five years, or to both	Demonstrate that the accused person failed to attend when summoned under the Act without sufficient cause
Merchant Shipping Act, No. 4 of 2009	Trading in Kenyan waters contrary to provisions of the Act (Section 14) Penalty Fine not exceeding one million shillings and the ship shall be liable to be detained until such time as the owner, agent or master shall each have paid their respective fines	Demonstrate that the ship is not Kenyan or does not have a certificate of foreign registry Demonstrate that the ship was in Kenyan waters
	Offences relating to dangerous goods Carriage of dangerous goods contrary to the provisions of the Act (Section 298 and 299) Penalty Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both	Demonstrate that the accused person did not comply with the provisions of the Act in relation to the packing, marking, storing and other precautions on dangerous goods
Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994	Being in possession of any narcotic drug or psychotropic substance, without license or authorisation (Section 3) Penalty a) in respect of cannabis, where the person satisfies the court that it was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years; and b) in respect of a narcotic drug or psychotropic substance, other than cannabis, where the person satisfies the court that the narcotic drug or psychotropic substance was intended solely for his own consumption, to imprisonment for twenty years and in every other case to a fine of not less than one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, or to imprisonment for life or to both such fine and imprisonment	Produce the narcotic drugs Demonstrate possession of drugs Show lack of licence or authorisation

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Trafficking in any narcotic drug or psychotropic substance or any substance represented or held out by the person to be a narcotic drug or psychotropic substance (Section 4)</p> <p>Penalty</p> <p>a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or</p> <p>b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years</p>	<p>Produce the narcotics trafficked</p> <p>Demonstrate mode of trafficking</p>
	<p>Production of narcotics²⁸ (Section 5(1)(c) and (d))</p> <p>e) Permitting the premises to be used for the purpose of preparation of opium for smoking or sale, or the smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or manufacture, production, sale or distribution of any narcotic drug or psychotropic substance in contravention of this Act; or</p> <p>f) being in possession of any pipe or other utensil for use in connection with the smoking, inhaling or sniffing or otherwise using of opium, cannabis, heroin or cocaine or any utensil used in connection with the preparation of opium or any other narcotic drug or psychotropic substance for smoking</p> <p>Penalty</p> <p>Fine of two hundred and fifty thousand shillings or imprisonment for a term not exceeding ten years or to both such fine and imprisonment</p>	<p>Identify the premises</p> <p>Identify the narcotic drug</p> <p>Demonstrate use, manufacture, production, sale or distribution of the narcotic drug in the premises</p> <p>Produce the pipe or utensil for use in inhalation</p>
	<p>Knowingly or having reason to believe that a parcel, package, container or other thing contains any narcotic drug or psychotropic substance, and without lawful authority, handling the parcel, package, container or other thing (Section 5(2))</p> <p>Penalty</p> <p>Fine of one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment</p>	<p>Demonstrate mental capacity/ knowledge or basis to know</p> <p>Produce the package or container</p> <p>Demonstrate act of handling the container, package or parcel</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Committing any offence referred to in subSection (2) in relation to any narcotic drug or psychotropic substance with a view to aiding, abetting or procuring the trafficking in the narcotic drug or psychotropic substance (Section 5(3))</p> <p>Penalty</p> <p>a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or</p> <p>b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years</p>	<p>Give particulars of assisting in the commission of the offence</p>
	<p>Cultivation of prohibited plants on land (Section 6)</p> <p>Penalty</p> <p>Fine of two hundred and fifty thousand shillings or three times the market value of the prohibited plant, whichever is the greater, or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment. In addition, the court may also order forfeiture of the land</p>	<p>Avail documents such as title deeds, lease agreements, licence agreements et al to demonstrate that the accused person is the owner of the land or holder of a lease, licence or permit</p> <p>Demonstrate that the plant grown on the said land is a prohibited plant</p>
	<p>Medical practitioner dealing with narcotic drugs or signing prescription for narcotic drugs unless the narcotic drug or psychotropic substance is required for the medical or dental treatment of the person, or in accordance with Regulations²⁹ (Section 13)</p> <p>Penalty</p> <p>Fine of not less than two hundred and fifty thousand shillings or imprisonment for a term not exceeding ten years or to both such fine and imprisonment</p> <p>Additional Penalty (Section 15)</p> <p>The practitioner or dentist, or veterinary surgeon will also be liable to have his name removed from the register of those licensed or registered to practise within Kenya as a medical practitioner, dentist or veterinary surgeon, as the case may be</p>	<p>Identify the drug supplied</p> <p>Demonstrate that drug not required for medical purposes</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failure to disclose receipt of narcotic drugs by patient to another medical practitioner³⁰ (Section 14)</p> <p>Penalty</p> <p>Fine of not less than fifty thousand shillings and, in addition, to imprisonment for a term not exceeding ten years</p>	<p>Demonstrate receipt of narcotic drugs from initial medical practitioner</p> <p>Show failure to disclose this to another medical practitioner</p> <p>Demonstrate receipt of additional drugs from another medical practitioner</p> <p>Identify the drugs received</p>
	<p>Obstruction of police officer or other authorised person in the exercise of any of his functions under the Act (Section 17)</p> <p>Penalty</p> <p>Fine of not less than one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment</p>	<p>Identify officer obstructed</p> <p>Give particulars of obstruction</p> <p>Demonstrate officer was in the course of duty</p>
	<p>Failure to furnish information or to produce evidence lawfully required (Section 18)</p> <p>Penalty</p> <p>Fine of not less than one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment</p>	<p>Demonstrate person had information or ought to have information</p> <p>Show that person failed to provide information</p>
	<p>Refusing or failing to submit a statement of all assets and liabilities; or submitting a statement which is false or misleading in any material particular, in response to a direction of the court in an application for a restraint order (Section 24)</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment</p>	<p>Produce the restraint order</p> <p>Demonstrate failure to submit statement</p>
	<p>Contravening or failing to comply with a restraint order (Section 30)</p> <p>Penalty</p> <p>Imprisonment for a period not exceeding ten years</p>	<p>Produce order</p> <p>Identify terms of restraint order contravened</p> <p>Give particulars of contravention of order</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Contravening or failing to comply with a forfeiture order (Section 44)</p> <p>Penalty</p> <p>Fine not be less than the value of the property, the possession of which the person refuses or fails to hand over in addition to imprisonment for one year</p> <p>Note: Offences by body corporate (Section 66)</p> <p><i>Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly and in addition the court convicting may, where such body corporate is registered under such written law, make an order directing that such body corporate be de-registered.</i></p> <p><i>Note: the test and report that contains proof that a substance is a controlled one, are in accordance with Section 17 of the Evidence Act, undertaken and drawn by the government analyst. There are however few government analysts across Kenya and this occasions delays of cases. This calls for an increase in the facilities put up for analysis of controlled substances</i></p>	<p>Produce the forfeiture order</p> <p>Identify terms of order contravened</p> <p>Give particulars of contravention of order</p>
<p>Narcotic Drugs and Psychotropic Substances (Control) Restraint and Forfeiture) Regulations, 1997</p>	<p>Handling any property which is subject to a restraint order in any manner contrary to the terms of such order (Regulation 5)</p> <p>Penalty</p> <p>Fine not exceeding two hundred and fifty thousand shillings, or imprisonment for a term not exceeding five years, or to both</p>	<p>Identify property subject to restraint order</p> <p>Produce the order</p> <p>Give particulars of handling property</p>
<p>Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations, 2006</p>	<p>Failing to keep record of seized substances or Falsifying records of seized substances (Regulation 11(3))</p> <p>Penalty (Section 85 of the Act)</p> <p>Fine of one hundred thousand shillings or to imprisonment for three years and in the case of a continuing offence to a further penalty of twenty thousand shillings for each day during which the offence continues</p> <p>Contravening these Regulations (Regulation 17)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or to a fine not exceeding two hundred and fifty thousand shillings, or to both and in the case of a continuing offence, to a further penalty of twenty thousand shillings for each day or part thereof during which the offence continues</p>	<p>Identify the seized substances</p> <p>Produce the records kept and demonstrate falsity</p> <p>Demonstrate failure to keep records</p> <p>Identify regulation contravened</p> <p>Give particulars of contravention</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
<p data-bbox="159 264 430 336">Pharmacy and Poisons Act, Cap 244</p> <p data-bbox="159 403 438 515">Health Laws Amendment Act, No. 5 of 2019</p>	<p data-bbox="462 264 1053 324">Carrying on pharmacies business by a non-registered pharmacist (Section 19)</p> <p data-bbox="462 336 1021 392">Any person other than a registered pharmacist or authorised person:</p> <ul data-bbox="462 414 1101 739" style="list-style-type: none"> c) carrying on, either on his own behalf, or on behalf of another, the business of a pharmacist; d) in the course of any trade or business, preparing, mixing, compounding or dispensing any drug except under the immediate supervision of a registered pharmacist; e) assuming, taking, exhibiting or in any way making use of any title, emblem or description reasonably calculated to suggest that he is registered as a pharmacist <p data-bbox="462 761 550 795">Penalty</p> <p data-bbox="462 806 1093 884">Fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding three years or to both</p>	<p data-bbox="1157 309 1372 392">Show that offender is not a registered pharmacist</p> <p data-bbox="1157 414 1404 526">Demonstrate that the offender was carrying on a pharmacist business</p> <p data-bbox="1157 548 1404 716">Show that offender dispensed, prepared, mixed, compounded drugs without the supervision of a registered pharmacist</p> <p data-bbox="1157 739 1428 851">Demonstrate that the offender passed off as a pharmacist while not a registered pharmacist</p>
	<p data-bbox="462 907 1109 963">Carrying on pharmacist business in unregistered premises (Section 23)</p> <p data-bbox="462 974 550 1008">Penalty</p> <p data-bbox="462 1019 1093 1097">Fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment</p>	<p data-bbox="1157 907 1388 985">Identify the premises where business was being carried out</p> <p data-bbox="1157 1008 1404 1064">Show that premises is not registered</p>
	<p data-bbox="462 1120 1077 1176">Being in possession of a Part I poison otherwise than in accordance with the provisions of the Act (Section 26)</p> <p data-bbox="462 1198 550 1232">Penalty</p> <p data-bbox="462 1243 1101 1321">Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment</p>	<p data-bbox="1157 1120 1380 1209">Prove the act of possession of Part I poison</p> <p data-bbox="1157 1232 1412 1310">Demonstrate possession not in accordance with Part I</p>
	<p data-bbox="462 1344 1077 1400">Selling poisons for mining agricultural or horticultural purposes contrary to conditions of licence (Section 28)</p> <p data-bbox="462 1422 550 1456">Penalty</p> <p data-bbox="462 1467 1085 1545">Fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding two years, or to both</p>	<p data-bbox="1157 1344 1428 1400">Show that offender sold poison</p> <p data-bbox="1157 1422 1380 1478">Produce the poison sold</p> <p data-bbox="1157 1500 1412 1579">Identify the conditions of licence breached in the sale</p> <p data-bbox="1157 1601 1420 1680">Identify the person to whom poison was sold/ offered for sale</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Dealing as a wholesale dealer in poisons without a licence from the Pharmacy and Poisons Board (Section 27(7))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment. In addition to the fine/imprisonment, the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited</p>	<p>Show that the person is a wholesale dealer in poison</p> <p>Prove that the person does not have a license from the Board</p>
	<p>Selling a Part I poison otherwise than in accordance with the provisions of the Act (Section 29(5))</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding ten years or to both</p>	<p>Prove the act of selling of Part I poison</p> <p>Demonstrate sale of poison not in accordance with Part I</p> <p>Identify person to whom poison was sold/offered for sale</p>
	<p>Failing to comply with provisions as to Poison Book when selling Part I poisons (Section 30)</p> <p>Penalty</p> <p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment</p>	<p>Identify provision of Poison Book not complied with</p> <p>Identify the Part I poison sold</p> <p>Identify the person to whom poison was sold/offered to sale</p>
	<p>Contravening conditions as to supply and dispensing of Part I poisons³¹ (Section 31)</p> <p>Penalty</p> <p>Fine not exceeding five thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment</p>	<p>Demonstrate that officials supplied Part I poison</p> <p>Identify the person to whom Part I poison was supplied</p> <p>Identify the Part I poison supplied</p> <p>Point out the condition breached in the supply of Part I poison</p>
	<p>Selling Part II poisons contrary to the provisions of the Act (Section 33)</p> <p>Penalty</p> <p>Fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding one year, or to both</p>	<p>Identify the Part II poison sold</p> <p>Identify the person to whom Part II poison was sold</p> <p>Point out the provision of the Act breached</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Supplying any poison in unlabeled Containers (Section 34)</p> <p>Penalty</p> <p>Fine not exceeding twenty thousand shillings, or to imprisonment for a period not exceeding one year or to both</p>	<p>Identify the poison supplied</p> <p>Identify the person to whom poison is supplied</p> <p>Produce the unlabelled container</p>
	<p>Exposing or causing to be exposed for sale any poison in or by means of an automatic machine (Section 35)</p> <p>Penalty</p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding one year or to both</p>	<p>Identify the poison exposed for sale</p> <p>Produce the automatic machine used to expose the poison for sale</p>
	<p>Contravening provisions on advertising of any drugs or poison (Section 40)</p> <p>Penalty</p> <p>First conviction: Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year, or both;</p> <p>Subsequent conviction: Fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding two years or to both</p>	<p>Show the advertisement made</p> <p>Point out the provision on advertising contravened</p>
	<p>Breach of patents or proprietary interest (Section 43)</p> <p>Contravening an order, prohibiting or controlling the manufacture, sale, advertisement or possession of any secret, patent, proprietary or homoeopathic medicine, preparation or appliance</p> <p>Penalty (Section 51)</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine or imprisonment, and in addition to any penalty imposed under this Act the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited</p>	<p>Identify the order prohibiting/ controlling the manufacture, sale or advertisement</p> <p>Identify the patent holder or person with proprietary interest over the substance</p> <p>Produce the items manufactured, offered for sale or advertised</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Obstruction of authorised officer (Section 48)</p> <p>Penalty (Section 51)</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine or imprisonment, and in addition to any penalty imposed under this Act the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited</p>	<p>Identify the officer obstructed</p> <p>Point out the acts constituting obstruction</p>
	<p>Manufacture, importation, exportation, compounding, storage, promotion or distribution of medicinal substances that are unfit for human and animal use, adulterated, stored in insanitary conditions etc. (Section 50A (1))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment. In addition to the fine/imprisonment, the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited</p>	<p>Prove one of the following:</p> <ul style="list-style-type: none"> a) That the substance is unfit for use in human or in animals. b) That the substance is adulterated. c) That the substance has any natural or added deleterious substances which renders it injurious to human or animal health; d) That the substance has been manufactured, prepared, packaged or stored for sale under insanitary and or unfavourable conditions. e) That the substance has been labeled, packaged or promoted in a manner that is false, misleading, deceptive or likely to create an erroneous impression regarding its source, character, value, quality, composition, potency, merit or safety

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
<p>Prevention of Organised Crimes Act, No. 6 of 2010</p>	<p>General offences (Section 4)</p> <p>c) Acting in concert with other persons in the commission of a serious offence for the purpose of obtaining material or financial benefit or for any other purpose</p> <p>d) Possessing, collecting, making or transmitting a document or records likely to be useful to a person committing or preparing to commit a serious crime involving an organised criminal group</p> <p>e) Providing, receiving, or inviting another to provide property and intending that the property should be used for the purposes of an organised criminal group</p> <p>f) Using, causing or permitting any other person to use property belonging to an organised criminal group for the purposes of the activities of an organised criminal group</p> <p>g) Knowingly entering into an arrangement whereby the retention or control by or on behalf of another person of criminal group funds is facilitated</p> <p>Penalty</p> <p>(a) Fine not exceeding five million shillings or imprisonment for a term not exceeding fifteen years, or both</p> <p>(b) If as a result of the act a person dies, the member of the organized criminal group shall on conviction be liable to imprisonment for life</p>	<p>Identify the other persons or indicate persons unknown Identify material or financial benefit</p> <p>Disclose the serious offence committed</p> <p>Identify document</p> <p>Demonstrate that document may be useful in committing serious crime involving an organised group</p> <p>Identify property</p> <p>Demonstrate that property used for purposes of an organised criminal group</p> <p>Identify property and organized criminal group</p> <p>Demonstrate that property belonged to and was used for purposes of activities of organised criminal group</p> <p>Identify arrangement and funds</p> <p>Demonstrate how arrangements facilitates fund of criminal group</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to firearms by authorised persons (Section 4A)</p> <p>Hiring or otherwise unlawfully permitting another person to take possession of or use that firearm or ammunition to advance the course of organised criminal activity</p> <p>Penalty</p> <p>Imprisonment for life</p>	<p>Demonstrate that person licensed to possess, hold or trade in firearms or ammunition</p> <p>Demonstrate that firearm or ammunition used to advance course of organised criminal activity</p>
	<p>Inchoate offences (Section 6)</p> <p>Attempting, aiding, abetting, counselling, procuring, or conspiring with another to commit an offence under the Act</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or imprisonment for a term not exceeding fourteen years, or both</p>	<p>Set out the details of attempt, aiding, procuring or conspiring to commit an offence under the Act</p> <p>Identify the offence involved</p>
	<p>Wilfully interfering with material which is likely to be relevant to a police officer's investigation into the activities of an organised criminal group (Section 13)</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding ten years or to both</p>	<p>Identify material</p> <p>Demonstrate act of interference with material and how it affect investigations into activities of an organised criminal group</p>
<p>Prevention of Terrorism Act, No. 30 of 2012</p>	<p>Commission of a terrorist act (Section 4)</p> <p>a) Carrying out a terrorist act</p> <p>Penalty</p> <p>Liable, on conviction, to imprisonment for a term not exceeding thirty years</p> <p>b) Carrying out a terrorist act which results in the death of another person</p> <p>Penalty</p> <p>Liable, on conviction, to imprisonment for life</p>	<p>For offences relating to illicit cash flows or any other form of illicit trade:</p> <p>Identify whether the following acts were carried out:</p> <p>Carrying out an act or threat of action—</p> <p>(a) which—</p> <ol style="list-style-type: none"> a. endangers the life of a person, other than the person committing the action; b. creates a serious risk to the health or safety of the public or a section of the public; c. results in serious damage to property; d. involves the use of firearms or explosives;

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
		<p>e. involves the release of any dangerous, hazardous, toxic or radioactive substance or microbial or other biological agent or toxin into the environment;</p> <p>f. interferes with an electronic system resulting in the disruption of the provision of communication, financial, transport or other essential services;</p> <p>g. prejudices national security or public safety; and</p> <p>Note: An act which disrupts any services and is committed in pursuance of a protest, demonstration or stoppage of work shall be deemed not to be a terrorist act so long as the act is not intended to result in any harm referred to above.</p>
	<p>Collection or provision of property and services for commission of terrorist acts (Section 5)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twenty years.</p> <p>Note: <i>The offences under this section shall be deemed to be committed irrespective of the occurrence of a terrorist act or other act referred to above, whether or not the funds have been actually used to commit the offence.</i></p>	<p>For offences relating to illicit cash flows or any other form of illicit trade:</p> <p>Identify that the person directly or indirectly, collected, attempted to collect, provided, or attempted to provide any property, funds or a service.</p> <p>Show that the person intended, knew or had reasonable grounds to believe that the funds/property were to be used to commit a terrorist act/ by a terrorist group for any purpose.</p> <p>Show that the person collected/ provided the property to facilitate the commission of a terrorist act.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Possession of property for commission of terrorist acts (Section 6)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twenty years</p>	<p>Identify the terrorist act</p> <p>Identify the property</p> <p>Show that the person was in possession of the property</p> <p>Demonstrate that the person intended or had knowledge that the property (whether in whole or in part) was to be used for the commission of, or facilitating the commission of the terrorist act.</p> <p>Need not demonstrate that the person participated directly in the commission of the Offence</p>
	<p>Arrangements for the retention or control of terrorist property (Section 7)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twenty years</p>	<p>Identify the terrorist property</p> <p>Demonstrate that the person acted knowingly.</p> <p>Show that the person entered into an arrangement to facilitate the retention or control by or on behalf of another person of terrorist property either by:</p> <p>(a) by concealment;</p> <p>(b) by a removal outside the jurisdiction of Kenya; or</p> <p>(c) by transfer to a nominee</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Dealing in property owned or controlled by terrorist groups (Section 8)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twenty years</p>	<p>Identify the property</p> <p>Demonstrate that the person acted knowingly</p> <p>Show that the person either-</p> <p>(a) dealt directly or indirectly, in any property that is owned or controlled by or on behalf of a terrorist group;</p> <p>(b) entered into, or facilitated, directly or indirectly any transaction in respect of property referred to in paragraph (a); or</p> <p>(c) provided financial or other services in respect of property referred to in paragraph (a) at the direction of a terrorist group</p>
	<p>Soliciting and giving of support to terrorist groups or for the commission of terrorist acts (Section 9)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twenty years.</p>	<p>Identify the support given</p> <p>Show that the person acted knowingly</p> <p>Demonstrate that the person supported or solicited support for the commission of a terrorist act by any person or terrorist group.</p> <p>Note: Support includes the provision of forged or falsified travel or other documents</p>
	<p>Facilitation of terrorist acts (Section 9A)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding twenty years</p>	<p>Identify the terrorist Act.</p> <p>Demonstrate that the person acted with intent to commit a terrorist act.</p> <p>Show that the person advocated, promoted, advised or facilitated any preparatory act to commit a terrorist act</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Provision of weapons to terrorist groups (Section 11)</p> <p>Penalty Imprisonment for a term not exceeding thirty years</p>	<p>Identify the weapons and the terrorist group</p> <p>Show that the person acted knowingly.</p> <p>Show that the person offered to provide or provided a weapon to—</p> <p>(a) a terrorist group;</p> <p>(b) a member of a terrorist group; or</p> <p>(c) any other person, not being a member of a terrorist group, for use by that person to commit an offence under this Act</p>
	<p>Possession of weapons for terrorist purposes (Section 12A)</p> <p>Penalty Imprisonment for a term of not less than twenty-five years</p>	<p>Show that the person was in possession of a weapon, an improvised explosive device or components of an improvised explosive device for purposes of terrorism.</p> <p>Note: <i>unlawful possession of a weapon, an improvised explosive device or component of an improvised explosive device shall be presumed to be for terrorist or criminal purposes</i></p>
	<p>Recruitment of members of a terrorist group (Section 13)</p> <p>Penalty Imprisonment for a term not exceeding thirty years</p>	<p>Show that the person acted knowingly.</p> <p>Show that the person recruited or facilitated the recruitment of another person—</p> <p>(a) to be a member of a terrorist group; or</p> <p>(b) to commit or participate in the commission of a terrorist act</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Training and directing of terrorist groups and person (Section 14)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding thirty years</p>	<p>For offences relating to illicit cash flows or any other form of illicit trade:</p> <p>Show that the person facilitated the provision of training, or instruction to any person or member of a terrorist group:</p> <ul style="list-style-type: none"> • in the making or use of a weapon; • in the carrying out of a terrorist act; • in the practice of military exercises or movements. <p>Show that the person acted knowing that such training or instruction was intended for the use in the commission of a terrorist act</p>
	<p>Acts carried out for the commission of a terrorist act in foreign states (Section 21)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding thirty years</p>	<p>For offences relating to illicit cash flows or any other form of illicit trade:</p> <p>Show that the person:</p> <p>(a) knowingly facilitated the commission of a terrorist act.</p> <p>(b) accumulated, stockpiled or otherwise kept any weapons</p> <p>(c) provided any money or goods to, or performed services for or on behalf of a person, body or association; or</p> <p>(d) received or solicited money or goods or the performance of services.</p> <p>Demonstrate that the person committed the above-mentioned acts for the purpose of facilitating the commission of a terrorist act in a foreign State</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
<p>Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009</p>	<p>Offences Relating to Money laundering (Section 3)</p> <p>(a) entering into any agreement in connection with property which forms part of the proceeds of crime;</p> <p>b) performing any other act in connection with such property.</p> <p>Penalties:</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding fourteen years, or a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher, or to both the fine and imprisonment; and</p> <p>(b) in the case of a body corporate, to a fine not exceeding twenty-five million shillings, or the amount of the value of the property involved in the offence, whichever is the higher.</p>	<p>Identify the Property</p> <p>Show that the property is or forms part of the proceeds of crime.</p> <p>Demonstrate that the person knew or who ought reasonably to have known that the property is or forms part of the proceeds of crime.</p> <p>Show that the person entered into any agreement or engaged in any arrangement or transaction with anyone in connection with that property.</p> <p>Note: It is irrelevant that the agreement, arrangement or transaction is legally enforceable</p> <p>Demonstrate the performance of any other act in connection with such property, whether it is performed independently or with any other person.</p> <p>Demonstrate that the performance of the Act had the effect of:</p> <ul style="list-style-type: none"> i. concealing or disguising the nature, source, location, disposition or movement of the said property or its ownership or any interest which anyone may have in respect of that property; or ii. enabling or assisting any person who has committed or commits an offence, whether in Kenya or elsewhere to avoid prosecution; or iii. removing or diminishing any property acquired directly, or indirectly, as a result of the commission of an offence.

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Acquisition, possession or use of proceeds of crime (Section 4)</p> <p>Penalties</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding fourteen years, or a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher, or to both the fine and imprisonment; and</p> <p>(b) in the case of a body corporate, to a fine not exceeding twenty-five million shillings, or the amount of the value of the property involved in the offence, whichever is the higher</p>	<p>Identify the property</p> <p>Show that the person acquired, used or had in their possession property forming part of the proceeds of crime</p> <p>Demonstrate that at the time of acquisition, use or possession of such property, the person knew or ought reasonably to have known that the property was or formed part of the proceeds of a crime committed by him or by another person</p>
	<p>Failure to report suspicion regarding proceeds of crime (Section 5)</p> <p>Penalty:</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding seven years, or a fine not exceeding two million, five hundred thousand shillings, or to both and</p> <p>(b) in the case of a body corporate, to a fine not exceeding ten million shillings or the amount of the value of the property involved in the offence, whichever is the higher.</p>	<p>Identify the obligation as contemplated in section 44(2) of the Act.</p> <p>Show that the person acted willfully</p> <p>Show that the person failed to report the suspicion.</p>
	<p>Financial promotion of an offence (Section 7)</p> <p>Penalties</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding fourteen years, or a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher, or to both the fine and imprisonment; and</p> <p>(b) in the case of a body corporate, to a fine not exceeding twenty-five million shillings, or the amount of the value of the property involved in the offence, whichever is the higher.</p>	<p>Identify the monetary instrument or thing of value</p> <p>Demonstrate that the person acted knowingly</p> <p>Demonstrate that the person intended to commit an offence</p> <p>Show that the person transported, transmitted, transferred or received or attempted to transport, transmit, transfer or receive a monetary instrument or anything of value to another person.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Tipping off a person as to a report being prepared under Section 44 (Section 8)</p> <p>Penalty</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding seven years, or a fine not exceeding two million, five hundred thousand shillings, or to both and</p> <p>(b) in the case of a body corporate, to a fine not exceeding ten million shillings or the amount of the value of the property involved in the offence, whichever is the higher.</p>	<p>Identify the report</p> <p>Show that a report under section 44 was being prepared or was or was about to be sent to the Financial Reporting Centre</p> <p>Show that the person disclosed to another person information or other matters relating to a report made under section 44.</p> <p>Demonstrate that the person acted knowingly or ought reasonably to have known the above.</p>
	<p>Misrepresentation of statements or documents given to a supervisory body or to the Financial Reporting Centre (Section 9)</p> <p>Penalty</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding two years, or a fine not exceeding one million shillings, or to both and</p> <p>(b) in the case of a body corporate, to a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher.</p>	<p>Identify the false, fictitious or fraudulent statement, representation or false document.</p> <p>Show that the statement, representation or document was false, fictitious or fraudulent.</p> <p>Show that the person made or provided such statements or documents.</p> <p>Demonstrate that the person acted knowingly.</p> <p>Demonstrate that the person knew that the statements or documents contained any false, fictitious or fraudulent statement or entry, to a reporting institution, or to a supervisory body or to the Financial Reporting Centre.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Malicious reporting (Section 10)</p> <p>Penalty</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding two years, or a fine not exceeding one million shillings, or to both and</p> <p>(b) in the case of a body corporate, to a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher.</p>	<p>Identify the malicious report</p> <p>Show that the person acted willfully</p> <p>Show that the information was given to the Financial Reporting Centre or an authorised officer</p> <p>Demonstrate that the person knew that the information was false</p> <p>Identify the reporting institution as per the act</p>
	<p>Failure of a reporting institution to comply with the provisions of this Act (Section 11(1))</p> <p>Penalty</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding seven years, or a fine not exceeding two million, five hundred thousand shillings, or to both and</p> <p>(b) in the case of a body corporate, to a fine not exceeding ten million shillings or the amount of the value of the property involved in the offence, whichever is the higher.</p> <p>Note: <i>In determining whether a person has complied with any requirement of sections 44, 45 and 46, or of any regulations, the court shall have regard to:</i></p> <p>a) <i>all the circumstances of the case, including such custom and practice as may, from time to time, be current in the relevant trade, business, profession or employment; and</i></p> <p>b) <i>may take account of any relevant guidance adopted or approved by a public authority exercising supervisory functions in relation to that person, or any other body that regulates or is representative of the trade, business, profession or employment carried on by that person</i></p>	<p>Identify the reporting Institution</p> <p>Identify the obligation to be complied with as stated under sections 44, 45 and 46 of the Act</p> <p>Show that the institution failed to comply with any of the requirements of sections 44, 45 and 46 of the Act, or of any regulations.</p>
	<p>Conveyance of monetary instruments to or from Kenya (Section 12 (3))</p> <p>Penalty</p> <p>fine not exceeding ten per cent of the amount of the monetary instruments involved in the offence.</p>	<p>Show that money was conveyed</p> <p>Show that the person failed to report the conveyance of monetary instruments into or out of Kenya</p> <p>Alternatively show that the person materially misrepresented the amount of monetary instruments reported contrary to section 12(1)</p> <p>Show that the person acted willfully</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Misuse of information (Section 13)</p> <p>Penalty</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding seven years, or a fine not exceeding two million, five hundred thousand shillings, or to both and</p> <p>(b) in the case of a body corporate, to a fine not exceeding ten million shillings or the amount of the value of the property involved in the offence, whichever is the higher</p>	<p>Identify the information misused</p> <p>Show that the misused information had been disclosed under Part II of the Act</p> <p>Show that the disclosed information was or was likely to lead to the conduct of an investigation</p> <p>Show that the person directly or indirectly alerted, or brought information about the above-mentioned fact to the attention of another person</p> <p>Show that the person acted knowingly or ought reasonably to have known</p> <p>Show that the other person was or was likely to prejudice an investigation brought in relation to the disclosure under Part II</p>
	<p>Failure to comply with order of court (Section 14)</p> <p>Penalty</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding two years, or a fine not exceeding one million shillings, or to both and</p> <p>(b) in the case of a body corporate, to a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher.</p>	<p>Identify the court order</p> <p>Show that the person intentionally refused or failed to comply with the order</p> <p>Show that that the order was made under the Act</p>
	<p>Hindering a person in the performance of their functions under this Act (Section 15)</p> <p>Penalty</p> <p>(No penalty provided)</p> <p>Use general penalty for offences in the Penal Code</p>	<p>Identify the performance or exercise that was hindered</p> <p>Show that the person hindered a police officer or any other person in the performance of their functions under the Act</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failure to produced required information (Section 33(2))</p> <p>Penalty</p> <p>(No penalty provided)</p> <p>Use general penalty for offences in the Penal Code</p>	<p>Identify the books, accounts, records, documents, correspondence, statements, returns or other information in relation to section 33(1)</p> <p>Identify the specified period given for production</p> <p>Show that the person failed to produce such information</p>
	<p>Obligation of a supervisory body and its staff (Section 36(2))</p> <p>Penalty</p> <p>(No penalty provided)</p> <p>Use general penalty for offences in the Penal Code</p>	<p>Identify the supervisory body as per the Act</p> <p>Show that the employee of the supervisory body failed to make a report to the Centre on any suspicious transaction that the supervisory body or its staff encountered during the normal course of their duties.</p> <p>Show that the employee of the supervisory body acted deliberately or with the intention to deceive</p>
	<p>Orders to enforce compliance with obligations under this Act (Section 39(1))</p> <p>Penalty</p> <p>(No penalty provided)</p> <p>Use general penalty for offences in the Penal Code</p>	<p>Identify the obligation under the Act</p> <p>Show that the person failed to comply with the obligation</p>
	<p>Obligation to register with the Centre (Section 47A (5))</p> <p>(No penalty provided)</p> <p>Use general penalty for offences in the Penal Code</p>	<p>Show that the reporting institution is not registered with the centre.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failure to comply with a production order (Section 105)</p> <p>Penalty:</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding seven years or a fine not exceeding two million shillings or to both; or,</p> <p>(b) in the case of a body corporate, to a fine not exceeding ten million shillings</p>	<p>Identify the production order</p> <p>Identify the document that was required to be produced to a police officer</p> <p>Show that the requirement in the production order</p> <p>Show that the person contravened the order without reasonable cause</p> <p>Show that the person knowingly produced or made available a document known to the person to be false or misleading</p>
	<p>Power to search for and seize documents relevant to locating property (Section 106(2))</p> <p>Penalty:</p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding one million shillings, or to both</p>	<p>Identify the authority or officer</p> <p>Show that the authority or officer was exercising powers under the Act or any regulations made under it.</p> <p>Show that the authority or officer without reasons recorded in writing:</p> <p>(a) searched or caused to be searched any building or place; or</p> <p>(b) detained, searched or arrested any person.</p>
	<p>Searches conducted without written reasons (Section 108)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding one million shillings, or both.</p>	<p>Show that the authority or officer was exercising powers under the Act or any regulations made under it</p> <p>Show that the authority or officer without reasons recorded in writing:</p> <p>(a) searched or caused to be searched any building or place; or</p> <p>(b) detained, searched or arrested any person</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Access to information (Section 121 (3))</p> <p>Penalty</p> <p>A person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding two million shillings, or to both.</p>	<p>Show that the person acted without the written permission of the Attorney-General.</p> <p>Show that the person disclosed to any other person any confidential information, registers, records, documents or electronic data which came to his knowledge in the performance of that person's functions in terms of this Act.</p> <p>Show that the disclosure relates to the activities, affairs or business of any other person.</p>
	<p>Note: Offences relating to Hearings of court held in Camera (Section 124 (5))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred thousand shillings, or to both</p>	<p>Show that the court directed the public or any category of the public should not be present at any proceedings or part thereof.</p> <p>Show that information relating to the proceedings, or any part thereof held behind closed doors, was made public</p> <p>Show that the person made information which was likely to reveal the identity of any witness in the proceedings public</p>
	<p>Monitoring orders (Section 125)</p> <p>Penalty</p> <p>(a) in the case of a natural person, to imprisonment for a term not exceeding three years, or to a fine not exceeding two million shillings, or to both; or</p> <p>(b) in the case of a body corporate, to a fine not exceeding ten million shillings.</p>	<p>Identify the reporting institution</p> <p>Show that the notice of a monitoring order was given</p> <p>Show that the person contravened the order</p> <p>Show that the person provided false or misleading information in purported compliance with the order</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Monitoring orders not to be disclosed (Section 126(3))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding three years or to a fine not exceeding two million shillings or to both.</p>	<p>Identify the officer or agent of the institution, a legal adviser for the purpose of obtaining legal advice or representation, and a police officer authorised in writing to receive the information.</p> <p>Show that such person illegally disclosed the existence or operation of a monitoring order otherwise than in the performance of his duties.</p>
	<p>Preservation of secrecy (Section 130)</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding one year or a fine not exceeding one million shillings or to both.</p>	<p>Identify the information</p> <p>Show that it was secret</p> <p>Show that the information was shared otherwise than in accordance with the law</p> <p>Show that the person disclosed the information or matter which had been obtained by him in the performance of their duties</p> <p>Show that a person who had knowledge of any information or matter which to his knowledge has been disclosed in contravention of this section disclosed that information or matter to any other person.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
Protection of Traditional Knowledge and Cultural Expressions Act, No. 33 of 2016	<p>Offences and penalties relating to any goods or services provided using unauthorized traditional knowledge or cultural expressions (Section 37(1)(a))</p> <p>Having in possession or control in the course of trade any goods or service using unauthorized traditional knowledge or cultural expressions</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or to a fine of not exceeding five hundred thousand shillings in respect of each article or item involved or to imprisonment for a term not exceeding ten years or to a fine not exceeding one million shillings</p>	<p>Identify the goods or services</p> <p>Identify the unauthorized traditional knowledge or cultural expressions</p> <p>Show that the person was not authorized</p> <p>Show that the person was in possession or control of the goods</p> <p>Show that it was in the course of trade</p>
	<p>Offences in the course of trade (Section 37(1)(b))</p> <p>manufacture, production or making goods in the course of trade using unauthorized traditional knowledge or cultural expressions;</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or to a fine of not exceeding five hundred thousand shillings in respect of each article or item involved or to imprisonment for a term not exceeding ten years or to a fine not exceeding one million shillings</p>	<p>Identify the goods or services</p> <p>Identify the unauthorized traditional knowledge or cultural expressions</p> <p>Show that the person was not authorized</p> <p>Show that person was manufacturing, producing or making the prohibited good</p> <p>Show that it was in the course of trade</p>
	<p>Offences relating to selling, bartering or exchanging, offering or exposing for sale, disposing, distributing, or hiring out using unauthorized traditional knowledge or cultural expressions (Section 37(1)(c))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or to a fine of not exceeding five hundred thousand shillings in respect of each article or item involved or to imprisonment for a term not exceeding ten years or to a fine not exceeding one million shillings</p>	<p>Identify the goods or services</p> <p>Identify the unauthorized traditional knowledge or cultural expressions</p> <p>Show that the person was not authorized</p> <p>Show that person was offering, selling or otherwise exchanging for profit</p> <p>Show that it was in the course of trade</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences relating to Exposing or exhibiting for the purposes of trade using unauthorized traditional knowledge or cultural expressions (Section 37(1)(d))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or to a fine of not exceeding five hundred thousand shillings in respect of each article or item involved or to imprisonment for a term not exceeding ten years or to a fine not exceeding one million shillings</p>	<p>Identify the goods or services</p> <p>Identify the unauthorized traditional knowledge or cultural expressions</p> <p>Show that the person was not authorized</p> <p>Show that the person was exhibiting for trade</p> <p>Show that it was in the course of trade</p>
	<p>Offences relating to importing into, transiting through, transshipping within or exporting from Kenya (Section 37(1)(f))</p> <p>Penalty</p> <p>Imprisonment for a term not exceeding five years, or to a fine of not exceeding five hundred thousand shillings in respect of each article or item involved or to imprisonment for a term not exceeding ten years or to a fine not exceeding one million shillings</p>	<p>Identify the goods or services</p> <p>Identify the unauthorized traditional knowledge or cultural expressions</p> <p>Show that the person was not authorized</p> <p>Show that the person was importing or exporting into Kenya</p> <p>Show that the import or export was for domestic, industrial and commercial use of the importer or exporter.</p> <p>Show that it was in the course of trade</p>
	<p>Offences relating to non-customary use of traditional knowledge or cultural expressions without authorization (Section 37(2))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or imprisonment for a term not exceeding five years or both</p>	<p>Identify the non-customary use of traditional knowledge</p> <p>Show that the person acted without authorization</p> <p>Need not show that such use is of a commercial or industrial nature</p>
	<p>Failure to acknowledge the source of the traditional knowledge or cultural expression (Section 37(3))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or imprisonment for a term not exceeding five years or both</p>	<p>Identify the Source of the traditional knowledge or cultural expression.</p> <p>Demonstrate that the person failed to acknowledge the source of the traditional knowledge.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Distortion, mutilation, modification or performance of a derogatory action in a way prejudicial to the cultural interests of the community concerned (Section 37 (4))</p> <p>Penalty</p> <p>Fine not exceeding one million shillings or imprisonment for a term not exceeding five years or both</p>	<p>Identify the cultural interests of the community.</p> <p>Demonstrate that the person distorted, mutilated, modified or performed a derogatory action in relation to the cultural interests of the community.</p>
	<p>Making false, confusing or misleading indications or allegations which refer to, draw upon or evoke the traditional knowledge or cultural expressions (Section 37 (5))</p> <p>Penalty</p> <p>Fine not exceeding two million shillings or imprisonment for a term not exceeding ten years or both</p>	<p>Identify the false, confusing or misleading indication or allegation</p> <p>Show that it was made in relation to goods and services that refer to, draw upon or evoke the traditional knowledge or cultural expression</p> <p>Demonstrate that the misleading indication suggests an endorsement or linkage with the holders of the right</p>
	<p>Acquiring and exercising intellectual property rights over protected traditional knowledge or cultural expressions without authorization (Section 37 (6))</p> <p>Penalty</p> <p>Fine not exceeding two million shillings or imprisonment for a term not exceeding ten years or both</p>	<p>Identify the act</p> <p>Show that it was done without authorization</p> <p>Demonstrate that the person acted without authorization to acquire IP rights over protected traditional knowledge or cultural expressions</p>
	<p>Disclosing, subsequently using or acquiring and exercising, the intellectual property rights over secret traditional knowledge or cultural expressions without authorization (Section 37 (7))</p> <p>Penalty</p> <p>Fine not exceeding two million shillings or imprisonment for a term not exceeding ten years or both</p>	<p>Identify the Secret traditional knowledge or cultural expressions</p> <p>Show that the person disclosed, subsequently used or acquired and exercised, the IP right</p> <p>Demonstrate that traditional knowledge or cultural expressions was secret.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Importing an article or other thing into Kenya that relates to traditional knowledge or cultural expressions of Kenya, which thing if manufactured in Kenya would have been contrary to the Act (Section 37 (8))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or both</p>	<p>Show that the person imported an article or other thing into Kenya</p> <p>Show that it relates to traditional knowledge or cultural expressions of Kenya.</p> <p>Demonstrate that the person knew or reasonably ought to have known, that the import would contravene this Act</p>
	<p>Exporting an article or other thing out of Kenya that relates to traditional knowledge or cultural expressions for a non-traditional use without authorization (Section 37(9))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or both</p>	<p>Show that the person acted without authorization</p> <p>Show that the article was exported out of Kenya</p> <p>Show that the article related to traditional knowledge or cultural expressions of Kenya</p> <p>Show that the article was exported for not traditional use</p>
	<p>Making or having in his possession any contrivance used or intended to be used for the purpose of exploiting unauthorized traditional knowledge and cultural expressions (Section 37 (10))</p> <p>Penalty</p> <p>Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or both</p> <p>Note: <i>A court that has convicted a person of an offence under this section—</i></p> <ol style="list-style-type: none"> i. <i>shall, when considering which penalty to impose, take into account any risk that may arise from the presence or use of the traditional knowledge or cultural expressions in question;</i> ii. <i>may consider, any evidence to the effect that such person had fully, truthfully and to the best of his ability disclosed to an inspector who investigated the offence, all information and particulars available to that person relating to—</i> <ol style="list-style-type: none"> i. <i>the source of the unauthorized traditional knowledge or cultural expressions that is the subject of the offence;</i> ii. <i>the identity of the persons involved in the importation, exportation, manufacture, production or making of those unauthorized traditional knowledge or cultural expressions;</i> iii. <i>the identity and the addresses or whereabouts of the persons involved in the distribution of the traditional knowledge or cultural expressions; and</i> iv. <i>the channels for the distribution of those traditional knowledge or cultural expressions.</i> 	<p>Identify the prohibited item</p> <p>Show that the person made or had in his possession any contrivance used</p> <p>Demonstrate that the person intended to use it for the purpose of exploiting unauthorized traditional knowledge and cultural expressions.</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Offences committed by a body corporate with the consent or connivance of, or is attributable to, negligence on the part of any director, manager, secretary or other similar officer of the body corporate (Section 37 (12))</p> <p>No Penalty provided. See General penalty under the Penal Code.</p> <p>Note: <i>a person may not be convicted of an offence under subsection (12) if such a person has been acquitted or convicted in the country where that offence was committed.</i></p>	<p>Identify the body corporate</p> <p>Prove that offence was committed by a body corporate</p> <p>Show that the consent or connivance of an officer or person purporting to act for the body corporate; OR</p> <p>Show offence is attributable to, negligence on the part of an officer/person purporting to act in such capacity on behalf of the body corporate.</p>
<p>Wildlife Conservation and Management Act, No. 47 of 2013</p>	<p>Bio-prospecting involving any wildlife resources (Section 22)</p> <p>No Penalty provided.</p> <p>Use general penalty under Section 103(5) - a fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or to both.</p>	<p>Demonstrate that person engaged in bio-prospecting</p> <p>Show that person did not have a permit</p>
	<p>Failing to grant Director access to documents and records (Section 61)</p> <p>Use general penalty under Section 103(5) - a fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or to both.</p>	<p>Show that Director desired to access public records or documents</p> <p>Identify lead agency affected</p> <p>Demonstrate refusal to grant Director Access</p>
	<p>Contravening management plan (Section 88)</p> <p>Penalty</p> <p>Fine of not less than five hundred thousand shillings or imprisonment for a term of not less than two years or both such fine and imprisonment, where the offence is committed with respect to a national park, national reserve or national sanctuary</p> <p>Fine of not less than one hundred thousand shillings in any other case</p>	<p>Identify management plan</p> <p>Demonstrate how management plan contravened</p>
	<p>Discharging hazardous substance in a wildlife area (Section 89)</p> <p>Penalty</p> <p>Fine of not less than two million shillings or to imprisonment of not less than five years or to both such fine and imprisonment</p>	<p>Identify hazardous substance</p> <p>Identify the wildlife area affected</p> <p>Demonstrate discharge of harmful substance in wildlife area</p> <p>Identify wildlife order</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Non-compliance with a wildlife Order (Section 90)</p> <p>Penalty</p> <p>Fine of not less than five hundred thousand shillings or to imprisonment of not less than three years or to both such fine and imprisonment</p>	<p>Set out provisions of order not complied with</p> <p>Demonstrate failure to comply with order</p>
	<p>Making false statement (Section 91)</p> <p>Penalty</p> <p>Fine of not less than two hundred thousand shillings or to imprisonment of not less than one year or to both such fine and imprisonment.</p>	<p>Demonstrate falsity of statement made</p> <p>Show that the person knew or ought to have known that statement is false</p>
	<p>Offences against endangered species (Section 92)</p> <p>Penalty</p> <p>Fine of not less than twenty million shillings or imprisonment for life or to both such fine and imprisonment.</p>	<p>Identify the endangered specie</p> <p>Demonstrate commission of an offence against the endangered specie</p>
	<p>Introducing an invasive species (Section 93)</p> <p>Penalty</p> <p>Fine of not less than three hundred thousand shillings or to imprisonment of not less than one year or to both such fine and imprisonment.</p>	<p>Identify the specie</p> <p>Identify wildlife conservation area</p> <p>Demonstrate person introduced specie in area</p>
	<p>Being in possession of wildlife trophy (Section 95)</p> <p>Penalty</p> <p>Fine of not less than one million shillings or imprisonment for a term of not less than twelve months or to both such imprisonment and fine.</p>	<p>Identify wildlife trophy</p> <p>Demonstrate person had possession of wildlife trophy</p>
	<p>Engaging in sport hunting or recreational hunting (Section 96)</p> <p>Penalty-Depending on the category of wildlife</p> <p>Fine of not less than twenty million shillings or imprisonment for life</p> <p>Fine of five million shillings or imprisonment of five years or to both such fine and imprisonment</p> <p>Fine of one million shillings or imprisonment of two years or to both such fine and imprisonment</p>	<p>Produce the hunting equipment/ gear</p> <p>Demonstrate person was engaged in hunting for sport</p>
	<p>Engaging in hunting for bush meat (Section 98)</p> <p>Penalty</p> <p>Fine of not less than two hundred thousand shillings or to imprisonment for a term not less than one year or to both such fine and imprisonment.</p>	<p>Produce hunting gear</p> <p>Demonstrate person was involved in hunting</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Importing/ exporting specimen of wildlife species without a permit (Section 99)</p> <p>Penalty</p> <p>Category A wildlife: Fine of not less than ten million shillings or to imprisonment for not less than five years</p> <p>Other wildlife categories: Fine of not less than one million shillings or to imprisonment of not less than two years or to both such imprisonment and fine</p>	<p>Identify wildlife species</p> <p>Demonstrate person imported species into the country without a permit</p>
	<p>Failing to comply with lawful requirement or obstruction (Section 101)</p> <p>Penalty</p> <p>Fine of not less than one hundred thousand shillings or imprisonment of not less than six months or to both such fine and imprisonment</p>	<p>Identify lawful requirement not complied with</p> <p>Demonstrate that person failed to comply with requirement</p> <p>Demonstrate that person obstructed officer in execution of duties under the Act</p>
	<p>Entering park without a licence or permit (Section 102)</p> <p>Penalty</p> <p>Fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment</p>	<p>Show that person was in park without licence or permit</p> <p>Identify the park</p> <p>Produce the logs and equipment used</p> <p>Demonstrate that person cleared land for cultivation.</p> <p>Identify crops planted</p> <p>Produce object removed or attempted to be removed</p> <p>Produce the firearm, ammunition, arrow, spear, snare, trap or similar device.</p> <p>Identify protected area</p> <p>Identify extractive activity undertaken</p> <p>Identify the marine protected area</p>

Law	Relevant sections (Promoting licit trade/providing for Offences/Penalties)	Elements of the offence
	<p>Failing to stop or allow search of vehicle (Section 111)</p> <p>Penalty</p> <p>Fine of not less than fifty thousand shillings or to imprisonment for a period of not less than six months or to both such fine and imprisonment.</p>	<p>Identify vehicle</p> <p>Demonstrate that person was required to stop but failed to stop at a barrier</p> <p>Identify officer who required stop</p>
	<p>Conveying a weapon in a wildlife area (Section 112(7))</p> <p>Conveying without authorisation into a wildlife conservation area, or while within the area thereof, being in possession of, any weapon, ammunition, explosive, trap or poison.</p> <p>Penalty</p> <p>fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or to both</p>	<p>Identify wildlife area</p> <p>Identify weapon possessed or conveyed</p> <p>Produce the weapon, ammunition, explosive trap or poison possessed or Conveyed.</p>

FOOTNOTES FOR THE NATIONAL STATUTORY PROVISIONS CRIMINALISING ILLICIT TRADE

- 1 Offence by an officer under the Act
- 2 Offence by manufacturers
- 3 Offence by a trader
- 4 Offence by a retailer
- 5 Offence by licensee
- 6 Offence by an officer
- 7 Offence by Master or agent of any aircraft or vessel
- 8 Offence by a Bank/ financial institution
- 9 Offence by a person in charge of a vehicle
- 10 Offence by a station officer or any person in charge
- 11 Offence by owner of a warehouse
- 12 Offence by a warehouse keeper
- 13 Offence by a warehouse keeper
- 14 Offence by a warehouse keeper
- 15 Offence by a warehouse keeper
- 16 Offence by warehouse keeper
- 17 Offence by a master or agent of aircraft or vessel
- 18 Offence by owner of goods
- 19 Offence by owner of goods
- 20 Offence by Master or agent of ship
- 21 Offence by a Master of a vessel
- 22 Offence by officers
- 23 Offence by a licensed manufacturer
- 24 Offence by a licensed person
- 25 Offence by a licensee
- 26 Offence by a person being licensed to possess, hold, trade in or otherwise have custody of any of the specified firearms, ammunition or parts of such firearm or ammunition
- 27 Offence by public officers
- 28 Offence by owner or occupier of premises
- 29 Offence by a medical practitioner
- 30 Offence by patients
- 31 Offence by health officials

CHAPTER THREE

CRIMINAL PROCEEDINGS





Criminal cases are ordinarily initiated by a complaint being lodged. In most instances, however, the criminal process is initiated when a law enforcement agent observes the commission of a cognizable offence, and makes an arrest hot on the heels of the commission of the said offence.

Complaints are ordinarily lodged by a report being made at a police station, or through an agency imbued with powers of arrest for a specialised area of crime, whereupon the said complaint is recorded in the OB. The record reflects who the complainant is and what the complaint entails. The decision to file a case depends on the information in the OB. The officers will commence investigations that may include taking statements from the complainant and witnesses, scene visit and if necessary, take photographs of the scene, and collect any evidentiary materials. They may also consider interrogating any suspect and where none is identified, conduct investigations to establish those culpable. Depending on the evidence in their hands, if an offence is disclosed, the officers will proceed to arrest and indict the suspects. In most offences, arrests can be made without a warrant.

1. Offences

Offences generally fall into two main categories: cognizable and non-cognizable. As a general rule, cognizable offences may result in an arrest without a warrant. All non-cognizable offences require a warrant of arrest to be issued prior to effecting arrest. These offences must be preceded by investigation and identification of those to be arrested.

All offences require the authority of the Director of Public Prosecutions to prosecute. The DPP had delegated his authority to different officer under the various Acts such as KEBS inspectors, ACA inspectors amongst others. However, vide gazette notice Vol.CXXXI Number 176 of 27th December 2019 the DPP official revoked all delegated prosecution authority.

2. Elements of a Crime: Mens Rea and Actus Reus¹⁰⁰

The elements of crime constitute the ingredients that must be present in order for a person to be found guilty of a crime. This is generally covered in the maxim *actus reus non facit reum nisi mens sit rea*. Loosely translated, an act of itself does not constitute a crime unless it is accompanied by a guilty intent.

Four elements must be present:

- a criminal act or actus reus,
- a criminal state of mind or mens rea,
- concurrence of a criminal act and a criminal state of mind, and
- causation.

Actus reus refers to an event or state of affairs, which is forbidden by the criminal law, a wrongful deed or omission that, if combined with the other elements of a crime, may result in the arrest, trial and conviction of the accused. *Mens rea* or “guilty mind” requires the person to intend to commit a wrongful deed and have the mental capacity to do so. *Mens rea* can be deduced from planning and execution of the *actus reus* and from the *corpus delicti* or the body or other material particulars that constitute the foundation of that particular crime.

¹⁰⁰ In full- *actus non facit reum nisi mens sit rea*, which when translated means that an act does not make a person guilty unless that person’s mind is also guilty

It is imperative that a connection is drawn between the act and the intent. One may intend to commit a crime but never actually follow through to carry out the crime. It may not be necessary that the act and the intent be present concomitantly as they can occur at different points in time.

Causation is the element of a crime that requires the existence of a causal relationship between the offender's conduct and the particular harmful consequences. It connects conduct with a resulting effect, typically an injury. It answers the question, did the accused person's conduct or omission cause the harm or damage? "But for" the conduct or omission of the accused, would the injury or damage have arisen? There are however, some offences which can be committed even without the existence of *mens rea*. These are called strict liability offences, e.g. possession of illicit drugs, traffic offences.

The prosecution must strive to prove the existence of these two in an offence for the case to succeed unless the statute establishes a strict liability offence.

3. Guide to Investigating Illicit Trade Offences

The procedure of investigating illicit trade offences is given by a combination of relevant Acts of Parliament such as, the Penal Code, Criminal Procedure Code (Section 89), Evidence Act Cap 80, National Police Service Act, 2011, the Anti-Counterfeit Act 2008, the Standards Act, ACECA of 2003 and the National Police Service Standing orders. In accordance with the CPC, the general procedure is:

- a. A complaint received at the relevant enforcement agency shall be recorded in the OB/ complaint register and brought to the attention of the officer in-charge (OSC) of the police station or in-charge of the investigations at the relevant agency.
- b. Depending on the nature of the complaint, the OCS/ officer in-charge of the investigations at the relevant agency will identify the investigator(s) who will visit the premises/scenes of crime. The investigator(s) will gather as much information from the scene of crime as possible, draw sketch plans of the scene, interview witnesses, record statements and arrest the suspects where possible. For cases which involve expert's handling, they will be informed without delay in order to visit the scene.
- c. The OCS/ officer in-charge of the investigations at the relevant agency will inform relevant agencies such as KWS, ACA, KEBS and KFS to reinforce, join or take over the investigations.
- d. The investigator may also inform the office of the DPP depending on the complexity of the case. More serious cases will be handed over to the DCI.
- e. It will be the duty of the investigator to record statements of witnesses gathering all the necessary information and take charge of any exhibits in the case. Exhibits which require analysis will be properly packed, labelled and submitted to the relevant departments for analysis without delay. Perishable exhibits should be photographed and produced in court during the plea and the prosecutor shall address the court on the manner of disposal of such exhibits. Any other exhibits will be marked and kept in the exhibit store at the police station/designated illicit goods depots pending production in court as the case may be.
- f. The investigator will open a case file in the matter inclusive of all facts about the case and inform the relevant authorities as the case may be.
- g. Upon completion of the investigations, the case file will be forwarded to the DCI/relevant authorities for onward transmission to the DPP for advice and/or sanction to prosecute the accused persons.
- h. Once the case file is returned with the sanction/advice, the OCS/ officer in-charge of the investigations at the relevant agency will draft the charges and take the accused persons to court for the plea. The prosecutor will then be furnished with information regarding bail and status of investigation.
- i. For a fair trial, all documents, exhibits, statements to be relied on by the prosecution shall be furnished to the defence. The identities of the witnesses may be protected. This is critical for the safety of whistle blowers and witnesses in cases involving organized crimes.
- j. The prosecutor must promptly inform the OCS/ officer in-charge of the investigations at the relevant agency of hearing dates of case(s) for witnesses to be bonded in time and pre-trials held with the investigator(s) and witnesses.
- k. It will be the duty of the investigator(s) to produce exhibits in court, ensure safe custody of the same and witness attendance during the hearing of the case.

NOTE: All offences on illicit trade should be treated as felonies because of the gravity of the offence and as a deterrent to the vice. As such, the investigator(s) shall take finger prints of the accused person(s) all the time.

4. Disposal of unclaimed/ abandoned property

- a) In case of any property that is unclaimed, the investigator will take charge of the property and put it in safe custody at the designated illicit trade depot.
- b) He will cause a proclamation of the goods to be posted at the courts notice board for a period not exceeding 6 months.
- c) At the expiry of 6 months without any claimant, the investigator will seek for orders of disposal from the court.
- d) If the unclaimed goods are disposed of by way of auction, the proceeds will be deposited in the consolidated fund.

5. Arrests

This involves the physical apprehension of a suspect, confining him or her in custody or restraining the person's movement. The process of arrest is governed by the Constitution (Article 49), Criminal Procedure Code (Section 21-42) and National Police Service Act (Section 24). Some of the agencies have powers of arrest. The public can also conduct an arrest. The mode of arrest:

- Arresting officer will touch/confine the body of person, unless there is submission by word or action. If there is resistance or attempts to evade arrest all means necessary may be used to effect, provided only reasonable force is used (Section 21 CPC). However, it should be noted that some culprits of illicit trade such as poachers and traffickers of firearms and light weapons may have weapons and thus arresting officers may have to use force during the arrest. Police officers have discretion to use as much force as they, at the time of arrest, reasonably think necessary to protect both the public and themselves.
- The person arrested shall not be subjected to more restraint than is necessary to prevent his escape (Section 24 CPC).
- When the person arrested cannot legally be admitted to bail or cannot furnish bail, the officer may search the suspect and place all recovered articles in safe custody. (Section 25 CPC).
- Women suspects are searched by women officers.

6. Rights of an arrested person¹⁰¹

1. Right to information-a person arrested must be informed promptly of the reason of the arrest. The information must be conveyed in a language that the arrested person understands. This may necessitate the use of translators.
2. Right to remain silent- The arrested person is under no obligation to provide information to the police or any arresting agency. The arrested person must also be informed of this right.
3. Right to communicate with others- The arrested person has a right to communicate to an advocate or any other person whose assistance is necessary. Further, the Persons Deprived of Liberty Act (PDLA), such persons have the right to communicate to any person of their choice.¹⁰²
4. Right to be compelled not to make a confession- An arrested person should not be compelled to make a confession or admission that may be used against him/her in court.

¹⁰¹ Article 49 of the CoK 2010

¹⁰² Section 8 (1) PDLA

5. Right to be separated from convicted prisoners- Arrested persons must be held separately from convicted prisoners. This is in line with the presumption of innocence until proven guilty. Further, under the PDLA men, women, children and intersex individuals must be held separately from one another.
6. Right to be presented in court within twenty-four hours- An arrested person must be presented in court not later than twenty-four hours since his arrest. Where the twenty-hours end outside the ordinary court hours or a day that is not an ordinary court day, then the arrested person must be presented before court on the next court day.
7. Right to be released on bond or bail- an arrested person had a right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

7. Exhibits

Exhibits management and handling is a key component of the criminal justice system especially in illicit trade cases, which by their very nature are determined largely by production of exhibits. The investigator, prosecutor and the court must take necessary measures to ensure the proper collection, preservation, presentation of exhibits in court and their destruction or disposal upon the conclusion of the case. Investigating officers should develop an inventory of all the items recovered. The inventory must be signed by the persons recovering the items, the persons found with the items, their lawyers if available. Investigating officers must take photographs of the scene and items recovered if any. The photographs must also be produced to court. Accepting, maintaining, returning, and disposing of exhibits vests in the court and it has to determine where the exhibits will be stored and make a determination of their disposal upon the conclusion of the trial. The trial court must therefore develop local procedures for managing exhibits, including;

- a) scheduling periodic physical inventory of exhibits,
- b) handling of dangerous or biohazard exhibits,
- c) handling of exhibits with a high monetary value,
- d) transferring the custody of exhibits between courtroom staff and exhibits custodians,
- e) monitoring the movement of exhibits from courtrooms to vaults or exhibit rooms,
- f) permitting the public viewing of exhibits where required,
- g) accounting for lost exhibits,
- h) alerting parties when exhibits are available to be returned or destroyed,
- i) managing exhibits while cases are under appeal,
- j) extension of time for the court to retain exhibits, and
- k) notifying concerned agencies of the court's intention to destroy exhibits

Perishable, noxious, dangerous and bulk exhibits such as chemicals, petroleum products and food should be produced in court at the first instance or soon thereafter and an order made for release. In the subsistence of cases involving such exhibits, photographs may be used after the release order has been issued.

Before production, narcotics and psychotropic substances must be weighed by an analyst in the presence of the accused and the advocate representing the accused.¹⁰³ During trial, a sample of the substance and the analyst's certificate may be produced as evidence.

103 Section 74 Narcotics Drugs and Psychotropic Substances (Control) Act

8. Receiving, Handling, and Transfer of Exhibits in Criminal Cases

All exhibits must be entered into an inventory of all the items produced. All exhibits that have been introduced in any criminal action or proceeding are retained by the executive officer of the court, who shall establish a procedure to account for the exhibits properly until the final determination of the case and determination by the trial court on what should be done to the exhibits.

Though exhibits are under the direct administration of executive officers of the Court, judicial officers have the overall responsibility over the exhibits and they have to ensure that they exercise actual control over the preservation and destruction of exhibits. Failure to exercise such control, may pose an actual risk of exhibits finding their way back into the market or circulation amongst members of the public.

Courts should also develop their own local processes that address the custodial responsibilities for managing exhibits that are dangerous or contain biohazard materials. The court can in this regard seek assistance from specialized agencies of the state e.g. the NEMA in the handling of hazardous exhibits. Courts may make arrangements with prosecuting agencies or local law enforcement agencies to secure such exhibits in their own secure strong rooms, as an alternative to having court staff handle these dangerous items.

Exhibits may at times be bulky and the agencies may not have sufficient storage facilities to keep the exhibits pending trial or as the matter is heard. In such instances the court should consider sealing the exhibits at the point of recovery (e.g. in the warehouse/storage facility) where the illicit goods were recovered. The court has to ensure that the place is sealed with the court seal and sufficient security measures are put in place to avoid tampering with the exhibits. The court also has to constantly monitor and check on the condition of the exhibits to determine that there has not been any tampering.

The court officer must also lay down clear procedure for the handling of the exhibits in court during the trial. The court officer should ensure that custody of exhibits is under his/her control at all times. For instance, during the production of exhibits in court by witnesses, the magistrate or judge may:

- i. Prepare a list of the witnesses at the back of the court file;
- ii. Indicate the document/exhibit marked and produced by the witness;
- iii. Include details of the location of the exhibit during the pendency of the trial;
- iv. The magistrate or judge may also sign any document presented to ensure that the document is not tampered with while in custody;
- v. Where money is part of the exhibit, the serial numbers should also be indicated.

9. Destruction of Exhibits

At the conclusion of the trial, the trial court will make an order on the agency to destroy the goods. The court has to directly supervise the destruction of the exhibits and a report to that effect made. Before destruction of exhibits, the court must ascertain that they are indeed the actual exhibits produced in court.

Where the exhibits to be destroyed are hazardous or toxic materials, the court may seek assistance of specialized agencies or institutions to assist in determining the mode of destruction and the destruction of the exhibits. The court will still be required to supervise such destruction even if being undertaken by the specialized agencies.

10. Instituting Criminal Prosecutions

A prosecutor is defined as a public prosecutor or a person permitted by the court to conduct a prosecution under Section 88 of the CPC. The DPP is the principal prosecutor of offences under the Constitution. Article 157 (12) of the Constitution however provides that Parliament may through an Act grant prosecutorial powers to other agencies. The DPP can also donate prosecutorial powers to other agencies. Some of the factors that may influence the decision to prosecute include:

- a) The existence of Prima Facie evidence. This is evidence upon which a court, properly directing itself upon law and evidence, is likely to convict in the absence of an explanation from the accused.
- b) The attitude of the complainant. All offences are committed against the State and thus the attitude of complainant should not influence a withdrawal of a case. However, in some cases the complainant's attitude is taken into account in deciding whether a prosecution is warranted. Where a complainant has lost interest in a matter and does not wish to pursue the case the prosecutor may be forced to reconsider a decision to prosecute. In some instances in illicit trade, intellectual property right holders may not want the negative publicity associated with their products being known to be the target of counterfeiters and hence may prefer other private out of court resolution mechanisms.
- c) Health of the accused. When an accused's health is poor, prosecution may be discontinued, especially in terminal illnesses.
- d) Humanitarian factor. It is a cardinal rule that a prosecutor has to be fair and not oppressive. This is a factor that should be borne in mind in considering whether or not a prosecution is merited. For example, if a husband and wife are charged and the husband dies, the case against the wife could be withdrawn.
- e) Public Interest. The DPP has to assess whether the public interest will be served best by the prosecution.
- f) Gravity of the offence, the circumstances surrounding the commission of the offence and its nature determine the gravity.
- g) Impact on international relations. Where two sovereign states are involved, it is a good practice to consider the impact of such intended prosecution on the relations between the affected States.

In making the decision to prosecute, the Public Prosecutor must first be satisfied that there is sufficient evidence (the evidential test).

If there is sufficient evidence, the Public Prosecutor must next determine whether a prosecution would be in the public interest (the public interest test).

The evidential test requires the Public Prosecutor to be satisfied that there is sufficient evidence i.e. evidence that would provide a realistic prospect of conviction against each suspect on each charge. The Public Prosecutor must therefore assess the available evidence and decide whether an objective, impartial and reasonable court would more likely than not convict the accused of the charge or charges alleged on the basis of the available and admissible evidence.

In deciding whether the available evidence is sufficient, the Public Prosecutor must consider whether the available evidence is admissible (in the sense that it can be used in court) and whether it is reliable. Further, the evidential test requires the Public Prosecutor to have a firm grasp of the substantive law relating to the offence committed.

Reliable evidence is evidence that a court is likely to find credible. In determining whether the available evidence is reliable, the Public Prosecutor should, by way of illustration, take into account the following factors:

- a) Whether the appropriate procedures for identifying suspects have been followed;
- b) Whether witnesses have any bias that may affect their testimony;
- c) Whether a witness has a previous conviction that may affect his or her credibility;
- d) Whether a confession is admissible;
- e) Whether there are any factors that may affect the reliability of the evidence to be given by a witness;
- f) Whether the suspect has given an explanation, and whether it is plausible. For example, is a court likely to find the explanation credible in light of the evidence as a whole?
- g) Whether the suspect's explanation rings of truth or innocent explanation;
- h) Whether the suspect's explanation suggests that the complaint is improper or is based on improper considerations;
- i) Whether the complaint is an attempt to abuse the criminal justice process so as to achieve a private or civil benefit or a collateral purpose, such as realizing a debt;
- j) Whether the evidence is authentic; and
- k) Whether the evidence, taken as a whole, is consistent.

A Public Prosecutor has a duty not to ignore evidence merely because he or she is not sure that it is usable or that it is reliable. The prosecutor's job is to see that all the relevant facts, including those favourable to an accused, are placed before the court and to present those facts in an ethical, fair, dispassionate, firm and clear manner. Prosecutors must refrain from all actions which could lead to the conviction of innocent persons. The Prosecution should be able to avail all witnesses necessary to establish the truth even if their evidence is inconsistent and under certain circumstances the court, on its volition, has a duty to call witnesses whose evidence appears essential to the just decision of the case. This test gets its constitutional backing from Article 50(2) (j) where every accused person has the right to a fair trial which includes the right to be informed in advance of the evidence the prosecution intends to rely on and to have reasonable access to that evidence. A proper guide for a prosecutor would be to follow the below stated steps in conducting prosecutions;

1. Ensure that the correct charge is filed against the accused person. Section 214 of the Criminal Procedure Code¹⁰⁴ empowers a court to amend or substitute a charge if the original charge is shown to be defective.
2. Read the file carefully.
3. Know and find out relevant laws.
4. Plan the case presentation with care and common sense.

The prosecutor does not go into court only to lead in evidence of the facts contained in his file. His job is more exacting than that. He has to lead the evidence, judge its veracity and effect on the court, form an opinion concerning what facts seem to be common cause and what facts are in dispute and be prepared to argue the merits of his case, either on a point of law or on the facts. He must take a sustained and intelligent interest in all the evidence given. We recommend that any parties who conduct prosecution of illicit trade cases be regularly trained on the provisions of the laws applicable to the prosecution of illicit trade and their constituent responsibilities. This is especially useful in cases where amendments of laws are undertaken from time to time.

11. Proof of A Case Beyond Any Reasonable Doubt

The prosecution in a criminal trial has the obligation to tender evidence and prove its case beyond any reasonable doubt so that during the trial the prosecution will bring all their witnesses and exhibits to prove its case against the accused and the court will determine whether there is a case to answer. Evidence adduced by the prosecution should be such that it can convict the accused. In the words of a former Attorney General in Kenya, Justice M.G. Muli, he said:

¹⁰⁴ Cap 75 Laws of Kenya

'As prosecuting counsels we never lose or win cases. We only have a burden upon ourselves to prove a case beyond reasonable doubt in criminal cases and on the balance of probabilities in civil cases. In this regard, we must place before this court all facts concerning the case and must be fair, honest, frank, courteous and respectful when doing so. In our system, the constitution allows for a constitution and an acquittal, so we should not therefore strain after a conviction, we must always seek to see that justice is not only seen to be done but that it is done.'

The burden of proof entails two different concepts, that is, legal burden of proof and evidentiary burden of proof. The legal burden of proof is borne by the Public prosecutor and it never shifts to the accused. In some instances, the evidentiary burden of proof may be on the accused, e.g, in a case of handling substandard goods, the law places the evidentiary burden on the accused to explain specific matters within his knowledge. However, the accused decision to remain silent, as is his right, should not be inferred as guilt on the part of the accused.

12. Public Interest

The role of the prosecutor is that of an agent of justice. As an advocate in court, he represents the public, including the complainant who is the victim of some crime of which the public is interested in knowing the truth through fair prosecution in court.

The Public Interest Test in prosecution of criminal cases is concerned with the goals of criminal law, which include reducing crime (for example through punishing guilty offenders with a view to deterring potential offenders), reforming and rehabilitating offenders, reparation, and protecting the public. In some cases, for example, it may be necessary to prosecute an offender so as to deter potential offenders from committing a crime that the society considers notorious. However, there are cases in which rehabilitation would be considered to be an appropriate response to an offence. In such cases, it may be appropriate to divert the matter from court, without the need to prosecute and procure a conviction. The Public Interest Test deals with governmental decision-making processes, with a view to ensuring that they facilitate the fair administration of justice.

Accordingly, even if a Public Prosecutor considers that there is sufficient evidence to justify a prosecution, there should only be a prosecution whenever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest. Further, the Public Prosecutor must consider whether, as required by Article 157 of the Constitution, a prosecution would be in the interests of the administration of justice, and would not constitute an abuse of the legal process.

A number of common public interest factors tend to be in favor of prosecution. Equally, a number of common public factors tend to be against prosecution. In deciding whether a prosecution would be in the public interest, the Prosecutor must weigh the public interest factors that tend in favor of prosecution against the public interest factors that tend against prosecution. In doing so, the Public Prosecutor must decide the importance of each public interest factor in the circumstances of each case and make an overall assessment

13. Charges and Information

Section 89 – Criminal Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without a warrant.

A person who believes from a reasonable and probable cause that an offence has been committed by another person may make a complaint thereof to a magistrate having jurisdiction.

A complaint may be made orally or in writing, but, if made orally, shall be reduced to writing by the magistrate, and, in either case, shall be signed by the complainant and the magistrate. For a suspect to be brought formally before the court there must be a formal complaint.

Section 89(5) of the CPC provides that where the magistrate is of the opinion that a complaint or formal charge made or presented under this Section does not disclose an offence, the magistrate shall make an order refusing to admit the complaint or formal charge and shall record his reasons for the order.

A magistrate can discharge under Section 89(5) CPC if the charge does not disclose an offence. Particulars are what gives one what the offence is and whether it falls under a specific provision. One cannot be charged with a non-existent offence.

When somebody makes a report that an offence has been committed the police must look at all the statements from the witnesses and the complainants and then consult the respective statutes to see which offence is revealed by those facts and which Section of the law it offends.

Once the police have determined what offence has been committed then certain rules will follow; firstly every offence that is committed must be charged separately, this is the rule that gives rise to joinder of counts, gives rise to joinder of persons. Counts constitute every individual offence that has been committed in a single transaction. Depending on the number of offences that have been identified one uses a format such as Count 1, Count 2 etc.

The charge will have a statement of offence which will be the statement that will tell what the offence is e.g. theft contrary to Section 279(b) of the Penal Code. One has to be careful not to join charges. Where the facts indicate that two persons were arrested and brought together to the police station, it is possible that the reports are different for both persons, the facts of what offences they have committed might be very different. One should never have counts that are totally unrelated, there must be a nexus.

When one is jointly charging persons, they should be charged in a single charge sheet. Where there is a link between any offences or persons then one has a joinder of counts or joinder of parties. In circumstances where one person has committed two different offences at different times and locations, one must have different charge sheets as the offences are unrelated.

Section 137 (a) (i) CPC a count of a charge or information shall commence with the statement of the offence charge called the statement of the offence;

- i. Name of the accused person(s). This part of a charge sheet merely identifies the accused person(s). Care must be taken to include all the aliases that the accused person(s) goes by and that the witnesses may use to describe them.
- ii. Statement of the Offence. This part shall describe the offence briefly in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment, shall contain a reference to the Section of the enactment creating the offence;
- iii. The particulars of the offence essentially deal with the circumstances under which the offence was committed. One of the main objectives of a charge is to clearly inform the accused persons of the offence they have been charged with. It should therefore be in plain ordinary language. Simplicity is required so that information critical to the accused is communicated in a manner easily understood. The particulars are the ones that tell the accused person exactly where they committed the offence, the identity of the counterfeit goods owner, etc. Particulars should also briefly show the elements of the offence the accused is charged with. For example, in a charge sheet charging for the counterfeit offence, a key element would be to show in the particulars such as there was lack of consent of the patent holder in producing the goods.

The Charge must be drawn in a particular way and if the police brings the charge they will produce it in form of a standard charge sheet that all police have. Make sure that the charge sheet drawn captures the essential requirements of a charge.

The framing of the charge should adhere to the rules set out under section 137 of the CPC. However, defects in the framing of the charge does not automatically vitiate the proceedings unless the defect occasions a failure in justice¹⁰⁵. A court may order the amendment of a charge at any moment before the closure of the prosecution's case if the charge is defective in form or substance unless such amendment would result in an injustice.¹⁰⁶ Where the charge is amended, the accused should be called upon to take plea on the amended charge.

14. Bail and Bond

Bail and Bond in the Police Station

At the Police Station, a suspect may be released on cash bail, with or without sureties, or personal (free) bond or recognizance. The Police Service Standing Orders¹⁰⁷ require the officer in charge of a police station to release any person arrested on a minor charge on the security of cash bail, as a general rule, unless the officer has good grounds for believing that the arrested person will not answer his bail terms. In case a person who has been released on bail fails to appear in court, the officer in charge of the police station should apply to the magistrate for a warrant of arrest. At this point, the magistrate may either order the cash bail to be forfeited (if it is demonstrated that there are sufficient grounds that justify an order for forfeiture), or retained on court deposit until such time as the accused person appears. Where the accused person violates bail or bond terms, the police should cancel the bail or bond, re-arrest him or her, bring him or her to the police station, and take him or her to court.

The following factors shall be considered in relation to the police bail¹⁰⁸:

- i. likelihood that the accused will abscond;
- ii. likelihood that the accused will interfere with witnesses or the investigation;
- iii. likelihood that the accused will commit an offence while on release;
- iv. that detention is necessary for the accused's own protection; and
- v. security of the suspect or accused person

Bail and Bond in the court

Once an accused person has taken plea, the court will normally determine if the accused person should be admitted to bail or bond before the trial commences. Bail takes the form of a cash amount determined by the court being paid directly in court to secure the release of the accused person as he/she awaits trial. The amount is referred to as cash bail.

The court may also take into account other considerations and determine that the circumstances of the case require that it imposes a sum of money as bail to be guaranteed by a surety or sureties who will deposit security in court to secure the release of the accused person pending his/ her trial. This is referred to as bond.

Bail/ Bond as a Constitutional Right

Article 49 (1) (h) of the Constitution provides that every arrested person has the right to be released on bond or bail, on reasonable conditions, unless there are compelling reasons not to be released.

¹⁰⁵ Section 382 CPC

¹⁰⁶ Section 214 and 275 CPC

¹⁰⁷ Chapter 15 paragraph 8

¹⁰⁸ Ibid paragraph 9

The grant of bail/ bond is at the discretion of the court and the court is at liberty to determine whether to grant or deny bail, and the terms upon which bail/ bond can be granted. In determining whether to grant Bail or Bond, the court may take into account the following matters:

- i. Nature of Offence/ seriousness of the offence. The court may take into account the seriousness of the offence charged in determining whether to grant bail or bond. It is important that courts take into account the impact of trade in illicit goods on the country in determining whether to grant bail or bond.
- ii. Severity or otherwise of sentence in case of conviction e.g. where it is likely to attract a fine rather than imprisonment, the more reason to grant bail. Trade in illicit goods offences largely attracts severe penalties and as such courts may take into account those penalties when determining bail or bond.
- iii. The court may consider what sort of person the accused is – his social standing, ties with the community, ownership of property in the areas, is the accused person a citizen or non-citizen, immigrant etc. The court may also consider the special circumstances of the accused e.g. illness which may be aggravated by incarceration. Persons involved in trade in illicit goods may in some instances be non-citizens with a high likelihood of absconding trial.
- iv. The court may consider the length of the remand period, the longer it will take before the trial, the more reason to grant bail. Delays may be caused by the prosecution or the defence.
- v. Unnecessary delay by the prosecution may result in the grant of bail in cases where the court would otherwise not grant bail.
- vi. Delaying tactics by the defence may also lead to the cancellation of bail. If the court for any reason believes that adjournments sought by defence are not genuine, they can cancel bail and have the case proceed with expediency.
- vii. Where the accused person is to be released on surety, the court has to determine whether the accused may fail to turn up for trial. Some courts may consider that the surely having given their personal information is sufficient amount of surety based on their earnings, the court can ask for payslips and if the court allows surety to be surely based on their earnings they have to be certain that if the accused does not turn up in court they would know how to find the accused.
- viii. The court may also assess whether the proposed sureties are capable of paying up in case the accused person jumps bail. They should also consider the relationship between the proposed surety and the accused person to determine if they can guarantee the attendance of accused person to trial.
- ix. The court may also take into account the likelihood of the accused person not turning up for trial – whether or not there is likelihood of accused absconding.
- x. Whether or not the accused is likely to interfere with witnesses – this is a difficult matter for courts to evaluate because the courts do not know the relationship of the accused and the witnesses – there may well be cases where it is possible to make an intelligent guess that the accused because of the nature of the offence may actually intimidate prosecution witnesses. It is difficult for courts especially where there is no evidence of such an occurrence happening. It should however be noted that in highly syndicated offences involving trade in illicit goods and organised criminal gangs, the likelihood of witness interference would be high. Usually it is the prosecution that makes the objection that there is likelihood of interfering with witnesses. Where they do so then grounds supported by facts should be adduced to show reasonable cause for the alleged fears. It is not sufficient for the prosecution to allege, they must show high potential for witness interference.
- xi. Character and antecedents of the accused. The prosecution should be able to bring forth this information to the court to enable the court assess the suitability of admitting the accused to bail or bond e.g. where the accused had previously absconded or abused bail terms.
- xii. Views of the prosecution – the prosecution must be given opportunity to object to bail if they so wish.

However, the grant of bail is entirely the discretion of the magistrate – where the prosecution advances cogent reasons then it is advisable for bail to be denied.

Section 124 of the CPC states that bail should not be excessive, but no specific amounts are provided. The court should consider whether the amount is reasonable taking into account the amount of fine or sentence that the offence is likely to attract.

Insufficient Bail Terms

Section 127 provides that where through mistake, fraud or otherwise, insufficient bail terms or sureties have been accepted, or if they afterwards become insufficient i.e. through the addition of more serious charges, the court may require of the accused to find sufficient sureties, failure of which he/she may be remanded in custody.

Sureties

The suitability of a surety is determined by the court through an examination under oath. Sureties are examined by courts/magistrates to assess their suitability – such examination forms part of the court records. The magistrates thus take responsibility in the event that something goes wrong.

It is the responsibility of the accused and of his next of kin to find suitable sureties. The prosecution is also allowed to cross-examine sureties and to cross check any details that they supply to the court, such as place of residence and employment, authenticity of any documents produced.

The examination of sureties includes finding out the nature of the relationship that exists between them and the accused – whether they can exercise authority to require the accused to attend court. It also includes ensuring that the sureties understand the nature of their obligation to court and their undertaking to ensure that it is their responsibility where there is failure on the part of the accused to attend court.

Considerations will also be made to the financial resources of sureties or capability, character and previous convictions if any. Proximity or relationship with the accused person is also taken into consideration.

It is essential that the surety should be interested in and looking after and if necessary using powers/ or position of authority over the accused to prevent his escape. Sureties must have attained the age of majority.

Under Section 128 of the CPC, the surety can apply at any time to be discharged from responsibility. There is no requirement for a surety to furnish the court with reasons. In practice such applications are made during mention dates when the accused is present. Where the accused is absent then a warrant of arrest may be issued to require attendance.

Section 129 of the CPC provides that where a surety dies before a bond is forfeited; his estate shall be discharged from all liability in respect of the bond. This provision should be understood within the context of the personal nature of the obligation of a surety to the court which cannot be assigned.

Where an accused is required to provide security so as to be released on bond, the court must be furnished with a security documents such as a title Deed, a log book or an insurance bond. In addition, the court may require a valuation report revealing the value of the security. Upon acceptance of the security document, the court makes an order against the transfer of the property and the order is served on the land registrar or registrar of motor vehicles as appropriate.

Forfeiture

Section 130 and Section 131 of the CPC set out the procedure for forfeiture where an accused absconds/ jumps bail. A warrant of arrest is issued against the accused and summons to the surety. If the accused comes to court he should give reasons as to why forfeiture should not take place if the court is persuaded the warrant may be lifted.

Where the accused is not arrested and continues with non-attendance the surety will be required to show cause why forfeiture should not be ordered against them. The surety will be given time to look for the accused and it is only where he fails to do so that the forfeiture will ensue.

If penalty is not paid then an order can issue for attachment against property. Where it is not possible to attach property, the court can make an order for imprisonment for a term not exceeding 6 months. The court may also enforce only part payment of the surety.

If a surety fails to take reasonable precautions in the discharge of his/her duty he/she is liable to be ordered to pay the penalty of the bond.

Challenges

Some of the challenges facing the grant of bail arise due to the discretionary nature of bail and the practice of courts may differ from court to court. There is a lack of uniformity in approaching bail terms which confuses defence counsels and litigants alike.

Courts are called upon to make bail decisions with very little information. Courts therefore rely heavily on the prosecution to provide information to guide the grant of bail or bond. It is therefore onerous on the prosecution to assist the court by providing this information.

Renewal and Appeal of Bail Terms

Section 123 of the CPC provides that the High Court has powers to review cases where bail is denied by the police or the Magistrates courts. The High Court also has powers to entertain bail applications in its original jurisdiction. Where bail is denied, an application for review may be made before the trial. Where bail terms are considered unreasonable, application may be made for review of the terms and appeal, made to the High Court.

Consideration by the trial court will be based on whether or not there is a change of circumstances to warrant an application for renewal of bail/ bond. Where investigations are still going on the police are more likely to fear that the accused persons can intimidate witnesses not to record statements but once statements are recorded this minimises that fear.

15. Plea Bargaining¹⁰⁹

Plea bargaining is a legal concept provided for in Section 137(A) to 137 (O) of CPC. After an accused has been charged or any time before judgement, the prosecutor and the accused may negotiate and enter into an agreement for reduction of a charge to a lesser offence, for a withdrawal of the charge, for a stay of other charges or for a promise not to proceed with possible charges.

In conducting plea negotiations and presenting a Plea Agreement to the court, the prosecutor shall act openly, reasonably, fairly and in the interests of the administration of justice and shall ensure that¹¹⁰:

- i. The procedures followed command public and judicial confidence.
- ii. The accused person has sufficient information to enable him/her to make an informed decision in the plea negotiations including the right to have a legal representative or any other person of his/her choice.
- iii. That the accused person has the assistance of an interpreter where he/she cannot understand the language of the court.
- iv. The accused person has entered into plea negotiations voluntarily and without undue influence, coercion or misrepresentation of facts by any party to the negotiation.

¹⁰⁹ Legal Notice number 47 of 19th February 2018

¹¹⁰ Plea Bargaining Guidelines-general principles

- v. The accused person is informed of his/her rights under section 137F 1(a) of the CPC and that by entering into the plea negotiations he/ she waives his/her right to a full trial and appeal except as to the extent or legality of sentence.
- vi. A full and accurate record of the plea negotiations is prepared and maintained.
- vii. Reasonable effort is made to communicate with the victim, the victim's family, victim's representative or any other person whether natural or artificial likely to be affected by the terms and the status of the Plea Agreement.
- viii. The Plea Agreement placed before the court fully reflects the matters agreed upon in a clear and simple way.
- ix. The court has sufficient material and information to pass an appropriate sentence.
- x. The investigating officer is notified in writing of the intention to enter into plea negotiations.

The view of the victim must be sought before the conclusion of the plea agreement. The agreement may provide for compensation or payment for restitution of the victim.¹¹¹ The court does not participate in plea bargain. Before recording the plea agreement, the court is required to place the accused person under oath and address him to ensure that he understands the rights pertaining to the trial and the implications of the plea agreement.¹¹²

When the court accepts the plea agreement, it must record the facts informing the plea. The facts the accused admits to must be recorded to ensure whether they support the offence. Where the court rejects the plea agreement, it must record the reasons for the rejection and inform the parties.¹¹³

A sentence passed by court following a plea agreement is final and an appeal may only lie against the extent or legality of the sentence.

16. Diversion

The Constitution encourages a restorative rather than a retributive approach to criminal justice. It thus recognises other outcomes in the criminal justice system apart from imprisonment. Diversion is a means of resolving criminal cases without resort to full judicial proceedings. Diversion allows for the quick disposal of criminal matters, in appropriate cases, while providing benefits for the victim and the public¹¹⁴.

The conditions of diversion seek to address the harm caused by the crimes committed, by promoting restorative justice. Diversion can take the form of a simple caution or warning, an apology to the victim, payment for damage done, or it may involve referral to a structured diversion programme, restorative justice process or similar scheme. Diversion also seeks to address the lasting stigma that attaches to a criminal conviction and incarceration. It enables offenders to be dealt with by non-judicial bodies and thereby avoiding the negative effects of formal judicial proceedings. An offender who successfully completes a diversion process will not be convicted and will not have a criminal record. Diversion is guided by the following key principles¹¹⁵:

- a. Acceptance of responsibility
- b. Accountability to the victim
- c. Restitution, rehabilitation and reintegration
- d. Transparency
- e. Public interest, confidence, safety and wellbeing

¹¹¹ Section 137 D of the CPC, Section 9 (1) C of the Victim Protection Act

¹¹² Section 137 F of the CPC

¹¹³ Judicial Criminal Procedure Bench Book 2018

¹¹⁴ ODPP Diversion Policy paragraph 8

¹¹⁵ Ibid paragraph 12

Public Prosecutors and prosecutors exercising delegated authority shall determine whether a person is eligible for diversion or not. The decision for diversion may be made at any point during the trial before the close of the prosecutor's case.

The factors to be taken into account when a Public Prosecutor makes a decision on diversion fall into two broad categories¹¹⁶:

a. Offender-focused criteria including:

- The circumstances of the offender.
- Whether the impact of a conviction on the offender would be disproportionate to the offending.

b. Offence-focused criteria including:

- The seriousness of the offence type.
- The circumstances of the offending.
- The victim's views on diversion and diversion options.
- The investigating officer's views on diversion and diversion options.

Diversion enhances quick conclusion of criminal matters while offering the accused, who accepts responsibility, a second chance to correct their mistakes and/or reform.

In illicit trade proceedings, a drug addict for instances, would be taken to a rehabilitation center and used as an informant to enable the police arrest the dealers, instead of being prosecuted and taken to court.

17. The Trial Process

The criminal trial process commences when the prosecution presents criminal information in the form of a charge before the relevant court. The charge is read out to the accused person and he answers by either pleading guilty or not guilty. If the accused person pleads guilty, the court must record the admission as nearly as possible in the words of the accused before entering a plea of guilty. This is to ensure that the plea is unequivocal and that it cannot be interpreted in any other way except as an admission of guilt. The duty of the court is heightened where the accused is not represented by an advocate. Such plea must be specific and not a general assertion of guilt. Where the accused is charged on more than one count, the plea must be entered for each count. The court then proceeds to hear his/her mitigation and pass a sentence. In such a case, the accused is convicted on his/her own plea of guilty. Where an accused person pleads not guilty, the case proceeds to full trial in which case the prosecution will lead evidence to prove the guilt of the accused person.

A plea of not guilty is entered where:

- The accused does not admit the charge;
- The accused does not the statement of facts; or
- The accused refuses to plead.

The trial of an accused person must be conducted in public though Article 50(8) of the Constitution allows the court to conduct private hearings in specified circumstances including, if the exclusion of the public is necessary in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security.

116 Clause 25 General Prosecution Guidelines 2015

18. In-Camera Trial

The sensitive nature of prosecuting suspects on trade in illicit goods offences may at times militate against a public trial. A prosecutor must be sensitive to this fact and where in appropriate cases the safety of witnesses may be compromised; the prosecutor may apply for a trial to be conducted in camera.

19. Presence of Accused Persons

The accused person must be present at the commencement of his trial. He/she must also be present in court at all times during the proceedings. The court may issue summons to ensure attendance by the accused person.¹¹⁷ The trial may however proceed in the absence of the accused person if his/her conduct makes it impossible for the trial to proceed, in accordance with Article 50(2) (f) of the constitution. However, the discretion to proceed in the absence of the accused person must be exercised with caution especially where the court concludes that the accused has absconded.

20. Presence of Complainant

Section 202 of the CPC requires the complainant to be present at the commencement of the trial. Failure to attend by the complainant may lead to an acquittal of the accused persons. The decision to acquit must be exercised judicially. It must be exercised where the court has determined that the complainant's absence is deliberate or repeated.

21. Calling Witnesses

The prosecution case starts by the prosecution calling the complainant and other primary witnesses first. All witnesses who are yet to testify must be outside the courtroom when a witness is testifying. The evidence of witnesses who sit through the testimony of another witness cannot be rejected but will be of a lesser evidentiary value to the prosecution case. Make sure witnesses who are yet to testify do not sit in court and listen to the testimony of another witness.

22. Language of the Court

Court proceedings are conducted in either English or Swahili. Where the prosecution has a witness who cannot speak either of these languages, he may make an application to court to provide an interpreter if necessary. Prosecutions involving offences relating to trade in illicit goods at times may also involve foreign nationals who may not understand the language of the court. Measures should be taken to ensure that the court secures interpreters to be able to explain to the accused person the proceedings as they take place in court.

23. Examination In Chief

The burden of proof in criminal cases is on the prosecution who must prove their case beyond any reasonable doubt at the conclusion of the trial. Prosecution proves its case by calling relevant witnesses and adducing evidence in court. At times the burden of proof may shift to an accused person but it should be noted that the prosecution must lay some factual basis through its witnesses and exhibits before the burden shifts to the accused person.

The prosecution has the overall conduct of its case and determines the order of calling witnesses and which witnesses to call. It is however desirable that the prosecutor call the complainant as the first witness and the investigating officer as the final witness. Care should be taken to call all material witnesses if they can be found. Where these witnesses can't be found the same should be disclosed to the court. Where the prosecution fails to call a material witness without any apparent reason, the court may presume that the evidence of such a witness would have been adverse to the prosecution's case.

¹¹⁷ Section 91 of the CPC

The primary purpose of examination in chief is to get testimony in support of the prosecution's version of events as they took place and that leads to the conviction of the accused person. One must avoid asking leading questions during examination in chief.

24. Cross-Examination

Once the prosecution has examined a witness in chief, the accused person is given an opportunity to ask the witness questions in what is referred to as Cross-Examination. Section 208 (3) CPC obliges the court to ask an accused person who is not represented whether he wishes to ask the witness any question. The court is required to record the answer given by the accused person. The accused person may ask leading questions to witnesses during Cross-Examination. The aim of Cross-Examination is to raise doubt about the accuracy of the evidence given by the witness in examination in chief.

25. Re-Examination

Once the accused person has concluded Cross-Examination, the prosecution is given an opportunity to ask any question in reexamination.

The purpose is to respond to any issue that was raised by the accused person in Cross-Examination. New matters cannot be introduced at re-examination.

26. Prima Facie Case / Case to answer

At the conclusion of the prosecution's case, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence then it amounts to a prima facie case. In *Bhatt v Republic* 957 EA 332, the court defined a prima facie case as one where a reasonable court directing its mind to the law and evidence would convict if no explanation were offered by the defence.

Where the court is of the opinion that the prosecution has failed to establish a prima facie case; then a detailed reasoned ruling will be written, leading to an acquittal under Section 210 of the CPC.

Once a ruling that a prima facie case has been entered, Section 211 of the CPC provides that the court shall again explain the substance of the charge to the accused. This is to prepare the accused person or to remind him of the charge. The accused person will then be put on his/her defence.

27. Defence Case

Once an accused person is put on his/her defence, the court shall inform him/her that he/she has a right to give evidence on oath from the witness box, in which case he/she shall be liable for cross examination. The accused may also elect to give an unsworn statement in which case he/she shall not be liable to cross-examination.

Whichever option the accused person chooses, the accused shall be informed of the right to call witnesses. Section 211(2) enables the court to compel attendance of witnesses on behalf of the accused where there is need to grant adjournment to enable such witnesses to attend court.

It is advisable that the accused person gives his testimony first before his/her other witnesses. Since an accused person must be present at trial at all times, the accused should not have the advantage of listening to his/her witnesses and thereby probably tailoring his/her own evidence to corroborate such witness statements

The accused's witnesses shall be sworn/affirmed and shall give their evidence in chief, be cross examined by the prosecutor and re-examined by the defence and finally they may be examined by the court.

After calling all the witnesses the defence shall signify to the court the close of their case. After the close of the defence case the accused or his advocate addresses the court; with the prosecutor having an automatic right of reply where the accused has adduced evidence (calling witnesses other than himself). The accused also has the right to remain silent and wait for the decision of the court. No adverse inference should be drawn when the accused decides to offer unsworn evidence or decides to remain silent.

After listening to the arguments from both sides the court will proceed to write the judgment. It will then proceed to take the convicts mitigation if a guilty verdict is returned and pass the sentence.

28. Sentencing

In Kenya, certain offences carry a mandatory death sentence upon conviction. In such a instance, the court does not have discretion as regards sentencing where the accused has been found guilty. These apply in capital offences. In other cases, courts exercise their discretion and impose sentences as guided by statutes. At times, statutes impose minimum sentences but leave it to the discretion of the court to determine the ultimate sentence to impose. There are no cases with rational sentencing; there is no codified sentencing mechanism. In cases of varying penalties for similar offences across legislations, the legislation upon which the prosecution relied to bring the charge forward would be the same one that would be referred to in order to determine the appropriate penalty to be meted. Broadly speaking sentencing has the following purposes;

- as punishment (retribution)
- as a form of rehabilitation
- for restoration of the wrong done, where a fine or compensation is ordered
- as deterrence to would-be offenders
- as a measure of protection for society

Section 216 provides that the court may before passing sentence or making an order against an accused person, receive such evidence as it thinks fit in order to inform itself as to the sentence or order properly to be passed or made.

Arising from this provision the practice is for the courts to give the prosecution an opportunity to produce the past records of the offenders. Additionally, the prosecution is allowed to address the court before the sentence is awarded. The offender may challenge the records produced or require sworn evidence on the general address by the prosecutor. Where the records are challenged then the prosecutor will lead evidence to prove their authenticity.

A similar provision is made under Section 329 of CPC with regard to trials before The High Court. Section 329B applies to an offence that is being dealt with by any court, where the offence results in the death of or actual physical bodily harm to any person.

29. Victim Impact Statements

Section 329 of the CPC makes it discretionary upon the court to determine whether or not to receive and adopt a victim impact statement, after conviction and before sentence. Where the primary victim has died as a direct result of the offence then the court may receive a statement from a family victim. The impact statement must be in writing and meet such other requirements as per the rules (rules are to be made by the Chief Justice).

A primary victim is a person against whom the offence was committed or a person who was a witness to the act of actual or threatened violence, the death or the infliction of bodily harm.

The court shall not accept a victim impact statement unless it has been filed by or on behalf of the victim to whom it relates (where the victim is incapable of preparing the statement it may be prepared on their behalf). The court shall only consider a statement by a family victim if it considers it appropriate to do so. The prosecutor in his address to court should point out the harmful consequences and impact of trade in illicit goods and the impact it has on the country.

The negative impact of illicit trade on public health and safety may lead to the loss of lives or impairment of persons who consume them. Further, illicit trade hampers legitimate trade and results in losses to the proprietors of legitimate trade. It may therefore be necessary for a prosecutor to get victim impact statements under this provision and bring them to the attention of the court. Such statements will assist the court to understand the impact of the offence on victims of illicit goods in the market.

30. Post-trial handling of exhibits

At the conclusion of the trial and conviction of the accused, the prosecutor should make an application to court for an order of how the exhibits are to be handled. It may be in the form of destruction of the goods, forfeiture of the goods to the State or any other ancillary order. The court should make an appropriate order and where possible supervise the implementation of its order or require a specified person or agency to report on the implementation of the order.

It is important to note that some of the exhibits in illicit trade trials may be harmful or hazardous in nature and such special care and assistance may be sought from specialised agencies or organizations to assist the court in destroying the exhibits.

It is also possible that the court may find an accused person not guilty of the charge but it is proved that the goods are illicit. In such cases, the court should not order a release of the goods to the person. If the goods are illicit though the accused person(s) are not guilty, the court should make an appropriate order on the handling of those exhibits Post-Trial i.e. whether they should be destroyed or forfeited to the State as guided by Statute.

EXTRADITION PROCEEDINGS

Introduction

Extradition is the process through which an alleged criminal or a fugitive is surrendered by one state to another having jurisdiction over the crime charged.¹¹⁸ In Kenya, the extradition process is governed by the Extradition (Contiguous and Foreign Countries) Act, Cap 76 and the Extradition (Commonwealth Countries) Act, Cap 77. The request for the return of a person is made by the authorities of the requesting country through the Attorney-General, while the DPP is tasked with applying to court.

1. Factors that a Court must consider during Extradition

A Court conducting extradition proceedings must take in account the following factors:

A Whether the Offence is Extraditable

Not all offences warrant extradition. To be an Extradition Offence, a crime must be punishable under the law of the country seeking extradition and under Kenyan law or under a law that can be applied as an extraterritorial offence in Kenya. In addition, the law must be listed in the schedules of the governing Act.¹¹⁹

B Statutory Grounds for Refusing to Extradite

The Statutory grounds for refusing to extradite include:

- i. Where it appears that the alleged offence is of a political character. In this case, the accused may, in reality, be sought after in order to be punished for his or her political opinions.
- ii. Where the accused is being charged on the basis of gender, race, religion or nationality.¹²⁰
- iii. If the law on previous conviction or acquittal applies.¹²¹
- iv. Where it appears that the accused person is being discriminated upon.¹²²

¹¹⁸ Criminal Procedure Bench Book. By September 21, 2018

¹¹⁹ See Section 2(1) of the Extradition (Contiguous and Foreign Countries) Act, Cap 76; and Sections 2(1) and 4(1) of the Extradition (Commonwealth Countries) Act, Cap 77.

¹²⁰ Section 6 of the Extradition (Commonwealth Countries) Act, Cap 77; Section 16 of the Extradition (Contiguous and Foreign Countries) Act, Cap 76; Section 18 (a) Refugee Act.

¹²¹ Section 6(2) of the Extradition (Commonwealth Countries) Act, Cap 77

¹²² See Article 27 of the Constitution of Kenya.

- v. Where there is a reason to believe that the person is in danger of being subjected to torture or cruel, inhuman or degrading treatment or Punishment.¹²³
- vi. If the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country.¹²⁴
- vii. Where there are doubts that the accused person would receive a fair trial if extradited.¹²⁵

C Where there is an Extradition Treaty or Agreement between Kenya and the Requesting State

The Extradition (Commonwealth Countries) Act, Cap 77 applies to any commonwealth country that the DPP has designated for the purpose of the Act. No separate Agreement with the country is required.¹²⁶ On the contrary, an application for extradition under the Extradition (Contiguous and Foreign Countries) Act, cannot succeed unless the requesting state has entered into an Agreement with Kenya.¹²⁷ Extradition may also occur if an International Treaty or Convention ratified by Kenya provides for Extradition of an offence as was the case in *Gunter Grochowski v Attorney-General & Another*.¹²⁸

D Jurisdiction

Under both the Extradition (Contiguous and Foreign Countries) Act, and the Extradition (Commonwealth Countries) Act, the Resident Magistrates Court has jurisdiction to hear extradition cases.¹²⁹

E Bail

The Court has discretion to grant bail in extradition cases. When determining whether to grant bail, each case should be dealt with on its own merit.¹³⁰

F Court's Duty

It is the duty of the Court to be satisfied that there is, prima facie, a link between the Individual and the criminal incident.¹³¹

The Court should not act like a trial court. It is not the duty of the Court to decide whether or not the accused is guilty.¹³²

Where the illicit trade offence concerned is of a cross-border e the court may consider extradition proceedings against the offenders to ensure that they are dealt with even in their own countries.

¹²³ See Article 25 of the Constitution of Kenya; and Section 21(2) of the Prevention of Terrorism Act

¹²⁴ Section 18(b) Refugee Act

¹²⁵ *Torroha Mohamed Torroha v R* (Court of Appeal at Nairobi Criminal Appeal Number 163 of 1988); UK case of *Government of Rwanda v Nteziriyayo and Others* (2017) EWHC 1912

¹²⁶ See the Extradition (Commonwealth Countries) Act, Cap 77, Subsidiary Legislation

¹²⁷ *Gunter Grochowski v Attorney-General & Another* – High Court at Nairobi Miscellaneous Criminal Application 282 of 2009.

¹²⁸ *ibid*

¹²⁹ See Sections 2 and 9(1) of the Extradition (Commonwealth Countries) Act, Cap 77; and Section 7(1) of the Extradition (Contiguous and Foreign Countries) Act, Cap 76.

¹³⁰ See *R v Baktash Akasha Abdalla and Others* High Court at Mombasa Criminal Appeal Number. 178 of 2014.

¹³¹ *Torroha Mohamed Torroha v R* (Court of Appeal at Nairobi Criminal Appeal Number 163 of 1988).

¹³² *R v Wilfred Onyango Nganyi and Another* High Court at Nairobi Criminal Appeal No. 96 of 2005)

CHAPTER FOUR

INSTITUTIONS INVOLVED IN COMBATING ILLICIT TRADE





There are several Ministries, Departments, Authorities, Agencies and other institutions charged with combating illicit trade in Kenya as provided for in the Constitution and in various pieces of legislation. The Constitution establishes various Offices and Commissions charged with combating illicit trade in Kenya. They include:

1. **The Office of the Director of Public Prosecutions**—exercises state powers of persecution.
2. **Office of the Attorney-General**—Primary government legal advisor and in-charge of drafting of legislation.
3. **Ethics and Anti-Corruption Commission**—conduct investigation especially regarding illicit cash flows.
4. **Office of Inspector General of the National Police Service and National Police**—conduct investigation of offences.
5. **Courts**—Hear and determine criminal proceedings.

COURTS TASKED WITH COMBATING ILLICIT TRADE IN KENYA

Introduction

Courts play a crucial role in the enforcement of various laws that touch on illicit trade. It is the duty of the Court to ensure that due procedure is followed from the arrest of an accused person up to the person's conviction. It is the duty of the Court to ensure that the rights of an accused person, such as the right to a fair trial, are not violated.

Equally, it is the duty of the Court to ensure that a breach of the law is punished. It is also the duty of the Court to deter persons from committing future crimes. Lastly and most importantly, it is the duty of the Court to ensure that Justice is served, not only for individual persons, but also for the economy.

This part of the Manual covers the various institutions tasked with combating illicit trade in Kenya. It provides for the various provisions on enforcement against illicit trade, the offences and the prescribed penalties. This Chapter outlines the role played by the various agencies in their respective mandates against illicit trade.

1. The High Court

The High Court of Kenya is established under Article 165 of the Constitution. In relation to illicit trade, the High Court has:

- (a) unlimited original jurisdiction in criminal and civil matters;
- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; (consumer rights);
- (c) any other jurisdiction, original or appellate, conferred on it by legislation;
- (d) Supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court; and
- (e) the jurisdiction to call for the record of any proceedings before any subordinate court or person, body or authority referred to in (d) above, and may make any order or give any direction it considers appropriate to ensure the fair administration.

2. Environment And Land Court

Article 162(2)(b) establishes the Environment and Land Court which has the same status as the High Court. Section 13 of the Environment and Land Court Act, 2011 provides that the Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of the Act or any other law applicable in Kenya relating to environment and land including environmental crimes.

The section additionally provides that in the exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

- relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; and
- any other dispute relating to environment and land.

Further, the Act provides that the Court shall have the power to hear and determine applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution. In addition to the matters referred to above, the Court exercises appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

Lastly, in the exercise of its jurisdiction, the Court has the power to make any order and grant any relief as the Court deems fit and just, including—

- i. interim or permanent preservation orders including injunctions;
- ii. prerogative orders;
- iii. award of damages;
- iv. compensation;
- v. specific performance;
- vi. restitution;
- vii. declaration; or
- viii. costs.

3. Magistrates' Courts

As a court of first instance, the Magistrates' Court has jurisdiction and powers in proceedings of a criminal nature as conferred on it by:

- a. The Criminal Procedure Code (Cap.75 of the Laws of Kenya); or
- b. Any other written Law.¹³³

In relation to the Court's Civil Jurisdiction, Magistrates' Courts have the jurisdiction to hear and determine disputes in which the value of the subject matter in dispute does not exceed:

- (a) 20 Million shillings, where the court is presided over by a Chief Magistrate;
- (b) 15 Million shillings, where the court is presided over by a Senior Principal Magistrate;
- (c) 10 Million shillings, where the court is presided over by a Principal Magistrate;
- (d) 7 Million shillings, where the court is presided over by a Senior Resident Magistrate; or
- (e) 5 Million shillings, where the court is presided over by a Resident Magistrate.¹³⁴

¹³³ Section 6 of the Magistrates' Courts Act, 2015

¹³⁴ Section 7(1) of the Magistrates' Courts Act, 2015

It is important to note that this jurisdiction includes the power to determine any cases relating to illicit trade.

Specifically, Magistrates' Courts have the jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights under Articles 25(a) and (b).¹³⁵ The Articles guarantee freedom from torture and cruel, inhuman or degrading treatment or punishment; and freedom from slavery or servitude.¹³⁶ In essence these Articles protect persons from human trafficking, which is a form of illicit trade.

Additionally, Magistrates' Courts have the jurisdiction to hear and determine matters relating generally to the environment.¹³⁷

NEED FOR SPECIALISED COURTS THAT DEAL WITH MATTERS RELATING TO ILLICIT TRADE

Specialized courts are a feature of the judicial systems of many countries. The jurisdiction and function of such courts vary, sometimes widely, from one to another.¹³⁸ If the objective of Kenya's judicial system is to maintain high-quality and high-productivity generalist courts¹³⁹, an important consideration would be to transfer jurisdiction over matters dealing with illicit trade to specialised courts. Some of the matters dealing with illicit trade are often time-consuming, problematic, and complex.¹⁴⁰ This Manual therefore recommends the establishment of a specialized court with limited jurisdiction to hear and determine matters that touch on illicit trade.

ARGUMENTS IN FAVOUR OF SPECIALISED COURTS

There are several advantages to having specialised courts that only have the jurisdiction to hear particular and complex legal issues. They include:

1. Judicial System Efficiency

This system of specialised courts allow judges who preside over courts with unlimited jurisdiction to remain current on fewer areas of law. This is because the specialised fields of the law are assigned to specialised courts. The research efficiency of the judges in generalist courts is therefore increased.¹⁴¹

In contrast, judges in specialised courts, who deal with specialised matters frequently, develop the expertise to determine matters that involve such issues more efficiently and expeditiously than their counterparts. Overall, the efficiency of the court system is enhanced.¹⁴²

¹³⁵ See Section 8 of the Magistrates' Courts Act, 2015; Article 165 (3) (b) of the Constitution and the pecuniary limitations set out in section 7(1) of the Magistrates' Courts Act, 2015

¹³⁶ Articles 25(a) and (b) of the Constitution

¹³⁷ Section 9(a)(v) of the Magistrates' Courts Act, 2015; Section 26 of the Environment and Land Court Act, No. 19 of 2011

¹³⁸ See Working Party of the Consultative Council of European Judges (CCJE), "Report of the 22nd Meeting" (Strasbourg, CCJE, March 26–28, 2012), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046a4b5>
See also Lawrence Baum, *Specializing the Courts* (Chicago: University of Chicago Press, 2011)

¹³⁹ See <https://www.judiciary.go.ke/about-us/our-commitment/>

¹⁴⁰ World Economic Forum. (2014). *Out of the Shadows: Why Illicit Trade and Organized Crime matter to us all*, Global Agenda Council on Illicit Trade & Organized Crime 2012-2014. Cologny and Geneva: World Economic Forum

¹⁴¹ See Working Party of the Consultative Council of European Judges (CCJE), "Report of the 22nd Meeting" (Strasbourg, CCJE, March 26–28, 2012)

¹⁴² *ibid*

2. Legal System Efficiency

Since generalist judges may be only marginally familiar with some complex areas of law, advocates usually have to go into great detail on that area during proceedings. They do this in order to educate the judge, and to ensure that they have access to as much information as possible that is favorable to their case. Advocates also do this in order to lay the groundwork for an appeal if the judge's decision fails to grasp the nature of the dispute and the elements of the law that compel its resolution. This is time consuming and costly for litigants.¹⁴³

On the other hand specialised court judges, usually do not need to be educated by the bar. This is because they are much more capable of reducing the scope of the legal framework to the vital issues on which resolution of the case depends. Since the litigants do not feel the need to establish a comprehensive record, the cost and delay are greatly reduced.¹⁴⁴

3. Uniformity

Greater uniformity yields more consistent case law and, over time, less litigation. Less uniformity, which arises as a result of complex and narrowly focused jurisdiction being exercised by a number of generalised courts, leads to inefficiencies, increased forum- shopping problems, loss of confidence in the courts, and weaker jurisprudence.¹⁴⁵

4. Expertise

Judges that work in specialised courts have specific experience and therefore greater expertise. They are therefore more likely to produce higher-quality decisions with fewer rates of appeals. On the other hand, Generalist judges usually have a high caseload that consist of matters touching on various fields of the law. It is therefore challenging to remain sufficiently conversant and current with every area of law. This may lead to decisions that more prone to appeals.¹⁴⁶

5. Improved Case Management

Since specialised courts tend to have similar cases, the procedural rules and requirements can be specifically designed to facilitate effective case management. Additionally, specialised judges are usually in a better position to effectively impose and monitor case management controls. Such controls include: setting and enforcing pretrial preparation deadlines; supervising disclosure of evidentiary materials and information, making interlocutory rulings; requiring advocates to prepare case summaries and proposing pretrial/trial schedules; and advocating for settlement proceedings.¹⁴⁷

In contrast, generalist judges frequently make case-related determinations without a thorough review of case law, applicable law or briefs. This is because they have little time and support available to them for research, consultation, and reflection. In contrast, specialized judges often employ specialized expertise and in-depth knowledge when making ruling interlocutory rulings. Additionally, specialized judges would require less time to research and reflect on the fundamental issues of the case and can therefore provide direction and guidance to the advocates earlier than generalist judges.¹⁴⁸

143 Marcus Zimmer. "Overview of specialized courts." *International Journal For Court Administration*, August 2009

144 Marcus Zimmer. "Overview of specialized courts." *International Journal For Court Administration*, August 2009

145 Dr. Heike Gramckow and Barry Walsh. *Developing Specialized Court Services International Experiences and Lessons Learned*, Justice and Development Working Paper Series 24/2013

146 Isaac Unah, *The Courts of International Trade: Judicial Specialization, Expertise, and Bureaucratic Policy Making* (Ann Arbor, MI: University of Michigan Press)

147 See David C. Steelman, John A. Goerd, and James E. McMillan, *Caseflow Management. The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts, 2000)

148 *ibid*

6. Elimination of Conflicts and Forum Shopping

Specialized courts serve to reduce and even eliminate conflicts in the interpretation and application of the law in their field(s) of jurisdiction. This depends on how they are structured and how their decisions are appealed. It is common to find conflicts in law between generalist courts in different geographical regions of a country. Such conflicts promote forum shopping by litigants.¹⁴⁹

Resolving such conflicts in law at appellate courts or second instance tribunals is costly and causes delays for litigants as well as to the judicial system. Therefore, establishing specialised courts with limited jurisdiction can reduce and eventually eliminate such conflicts and the forum shopping.

7. Increased System Flexibility

Caseloads tend to vary over time in particular fields of the law. Tasking generalist courts with such fluctuating caseloads usually leads to untimely and unsystematic resolution of their ongoing caseload. Appointing additional new generalist judges may soften the impact of the workload increase, but what is to be done with the extra judges when the workload diminishes?¹⁵⁰

Specialized courts can play a significant role in helping court systems to cope with such variations by handling those volatile areas. The number of judges in such courts can be adjusted to cope with the workload.¹⁵¹

8. Consistency of Administrative Agency Law

As various agencies perform their designated functions and exercise their authority, they inevitably generate disputes which then must be resolved, usually by some internal agency dispute resolution process.¹⁵²

One of the primary functions of administrative agencies is to produce a consistent interpretation of the law that confers their jurisdiction. In the absence of independent dispute review forums, such reviews should be conducted by a single specialized forum rather than by a number of generalist regional courts:

- a. that are much more prone to issue varying and conflicting interpretations of the relevant statutes, thus confounding one of the primary objectives for establishing the agency and generating needless appeals, and
- b. whose case processing efficiency is likely to be congested and obstructed by the addition of narrowly focused and sometimes complex litigation.¹⁵³

149 See Antony Altbecker, "Justice Through Specialisation? The Case of the Specialised Commercial Crime Court," ISS Monograph 76 (Pretoria: Institute for Security Studies, 2003)

150 Edward Cazalet, "Specialised Courts: Are They a 'Quick Fix' or a Long-Term Improvement in the Quality of Justice?" (Washington, DC: World Bank, 2001), <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/SpecializedCourtsCazadet.pdf>

151 *ibid*

152 Martin Shapiro, *The Supreme Court and Administrative Agencies* (New York: Free Press, 1968)

153 *ibid*

FACTORS TO CONSIDER WHEN ESTABLISHING SPECIALISED COURTS

1. Selection of the Specialised Subject Matter

The jurisdiction of a new specialized court should be selected carefully.¹⁵⁴ The legal field should be one in which generalist court judges, in processing their varied caseload, are unlikely to achieve sufficient expertise and efficiency because of:

- a. the narrow and detailed complexity of the legal issues and/or factual matter; or
- b. the number of disputes is so small that they would deal with them only infrequently.¹⁵⁵

As a general rule, the more intricate and difficult the field of law, the more likely it is that the generalist judge will misapply the law, confuse rather than clarify the issues, and inadvertently encourage additional litigation.

The same holds true of the technical complexity of factual information typically associated with that field. The legal area also should be one that:

- (i) can be technically and substantively separated from other areas of the law with relative ease; and
- (ii) has historically fostered and continues to foster sufficient litigation to justify the creation of a specialized tribunal.¹⁵⁶

Ideally, the jurisdiction should be one in which the law is evolving, even if only gradually. Specialized judges function most effectively if they have a relatively constant supply of new cases that are generated by disputes in the developing area of the law that their jurisdiction covers. The objective should be to segregate those cases that, relative to their importance, impose the greatest burdens on the productivity of the generalist courts.¹⁵⁷

In determining how many specialized courts to establish, legislative or parliamentary bodies should bear in mind the need to retain as the fundamental building block of their judicial systems the generalist trial or first-instance and intermediate appellate or second-instance courts. Creation of too many specialized courts may result in the depletion of the broad and rich jurisdiction of the generalist courts to a point at which the benefits such courts provide in bringing new ideas and insights into the evolution of the law may be diminished.¹⁵⁸ Where the jurisdiction of the generalist courts is unduly narrowed and impoverished, the quality of candidates seeking appointment to those courts may decline. Moreover, the judicial system risks being held hostage by specialized jurisdiction courts, each with its own agenda, priorities, and advocacy groups.¹⁵⁹

¹⁵⁴ David L. Finnegan, "Observations on Tanzania's Commercial Court. A Case Study" (Paper for the World Bank Conference on "Empowerment, Security and Opportunity Through Law and Justice," Washington, DC, 2005)

¹⁵⁵ David L. Finnegan, "Observations on Tanzania's Commercial Court. A Case Study" (Paper for the World Bank Conference on "Empowerment, Security and Opportunity Through Law and Justice," Washington, DC, 2005)

¹⁵⁶ See Joan E. Jacoby, Edward C. Ratledge, and Heike P. Gramckow, "Expedited Drug Case Management Programs: Issues for Program Development" (Washington, DC: National Institute of Justice, 1992)

¹⁵⁷ *ibid*

¹⁵⁸ See Friederike Henke, "Specialised Court Systems. Comparative Paper Analysing the Possibilities of Implementing a Specialised Court System in India," 2005, Self-published

¹⁵⁹ See Lawrence Baum, "Probing the Effects of Judicial Specialization," *Duke Law Journal* 58 (2009):1667–84

2. Isolate the Jurisdiction

Wherever possible, the judges of a specialized court should have complete authority over the fields of law and subject matters placed within their jurisdiction. They should not share their jurisdiction with other courts via any kind of concurrent jurisdiction arrangement. If possible, the jurisdiction should be defined to constrain litigants from embedding the specialized legal issues in more broadly focused cases whose other issues fall within the jurisdiction of other courts.¹⁶⁰

Alternatively, the jurisdiction of the specialized court may provide that, when the case involves additional other issues that normally fall outside of its jurisdiction, the court shall have jurisdiction to determine all the issues raised in the case. This second alternative has the advantage of taking the expert judges out of their normally narrow focus and expanding their horizon to consider other interests, thus giving them the benefit of learning from other fields of law. Failure to adopt one of these alternatives is likely to encourage advocates to engage in forum shopping to locate the court that is most likely to issue a finding that is favorable to their case. Where advocates have the option of forum shopping and litigating peripheral issues or boundary law, the advantages of creating specialized courts are greatly diminished. As a general rule, if the jurisdiction cannot be wholly transferred to the specialized court, then the jurisdiction should be left with the generalist courts.¹⁶¹

3. Define the Jurisdiction to Promote Judicial Interest

If the jurisdiction of a specialized court is so narrowly drawn so that judges continually hear and determine the same legal issues and factual disputes, the process becomes mechanical. This usually leads to a diminished quality of judges and ultimately the status of the court.¹⁶²

The effects of repetitiveness, in terms of legal and factual issues, and repetitive advocacy from the same group of advocates may create vulnerabilities in the court system.¹⁶³

The court may therefore be in danger of being captured by its professional clientele. To protect against such risks, the jurisdiction of a specialized court might be broadened to include two or more distinct specialty areas of the law, as in the case of illicit trade.¹⁶⁴

4. Consider the Need for a Specialized Court

A number of institutional considerations should be reviewed, when considering the creation of a specialized court. These factors include:

- i. Whether the jurisdiction can/should be given to an independent administrative agency/tribunal;¹⁶⁵
- ii. Whether generalist courts are able to handle the extra workload;¹⁶⁶
- iii. Whether the current judicial system is efficient in terms of speedy determination of such matters;
- iv. Whether the current judicial system is promoting the deterrence of such offences; and

160 Mak, Elaine. 2008. "Balancing Territoriality and Functionality. Specialization as a Tool for Reforming Jurisdiction in the Netherlands, France and Germany," *International Journal for Court Administration* October

161 *ibid*

162 See David Rottman, "Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)?" *Court Review* Spring (2000): 22–27

163 *ibid*

164 *ibid*

165 Martin Shapiro, *The Supreme Court and Administrative Agencies* (New York: Free Press, 1968)

166 *ibid*

- v. Whether the area of the law that defines the Court's jurisdiction is likely to continue to generate litigation for the court to handle for the foreseeable future.¹⁶⁷

Carefully structured statistical studies should be undertaken to determine what kind of workload the new court is likely to have before legislation creating it is drafted. Such courts need not always be permanent additions to an existing court system; as has been done on several occasions in the United States, specialized courts can be created for fixed periods of time by legislative action that includes sunset provisions. When the caseload reaches a low threshold, it may be more economical to transfer the specialized court's jurisdiction back to the generalist regional courts than to maintain a specialised court.¹⁶⁸

5. Creation of same status courts

Specialized court judges typically are viewed by the legal and judicial professions as lower in status and importance than generalist court judges. To improve the status of such courts, legislative bodies should establish same salary levels and benefits, and same constitutional status as the judges of the general courts for specialized judges.¹⁶⁹

6. Constrain the Tendency Toward Isolation

Some advocates of specialized courts suggest that one way of restricting this tendency toward isolation is to have judges hear cases in panels of three that are based on a rotation so that the composition of each panel changes with each new case, as is done in the Federal Republic of Germany.¹⁷⁰

Another alternative is to have individual generalist court judges occasionally sit on these panels and, alternatively, to have individual specialized court judges sit on generalist court panels. Such exchanges could promote learning and information sharing in a manner that is beneficial to the adjudication process. and, in addition, is likely to be personally rewarding and invigorating for both categories of judges. Such exchanges should be considered only after the specialized court judges have achieved full competence and are considered fully qualified and competent in their respective specialties.¹⁷¹

Additionally, another alternative is to broaden the jurisdiction to include more than one narrowly focused field of the law. A specialized court might have jurisdiction in two or three narrow but related fields of law. Such mixed jurisdiction, although specialized, provides for learning and, in addition, increases the level of challenge and interest to the judges.¹⁷²

7. Determine the Appropriate Organizational Hierarchy

Legislators should carefully consider whether to create specialized courts at the trial or the appellate level or both. Where adjudication of complex subject matter requires specialized expertise, such expertise should be located at the fact-finding or trial level. Specialized courts may well function best, in the overall scheme of things, at the first-instance level where:

167 See Federal Reports Study Committee, "Report of the Federal Courts Study Committee," Connecticut Law Review 22, no. 4 (1990). A summary of its criteria for specialized courts appears in "Recommendations of the Administrative Conference of the United States," ABA Administrative Procedure Database, Florida State University School of Law, <http://www.law.fsu.edu/library/admin/acus/305919.html>

168 *ibid*

169 See Antony Altbecker, "Justice Through Specialisation? The Case of the Specialised Commercial Crime Court," ISS Monograph 76 (Pretoria: Institute for Security Studies, 2003)

170 See Friederike Henke, "Specialised Court Systems. Comparative Paper Analysing the Possibilities of Implementing a Specialised Court System in India," 2005, http://www.fdrindia.org/publications/CourtSystemInIndia_PR.pdf. Self-published

171 *ibid*

172 *ibid*

- (i) judges with the required subject-matter expertise are capable of analyzing complex technical matters, and
- (ii) appeals are not automatic but must be based on allegations of serious error by the first-instance court.

To minimize the problems associated with capture and isolationism, review of the decisions of the specialized courts should fall within the jurisdiction of second instance or appellate generalist courts.¹⁷³

Alternatively, where the objective is to achieve a predictable body of stable and relatively uniform interpretation in a particular field of the law that is complex and technically difficult, specialization may be more appropriate at the appellate level.

Decisions issued by lower generalist courts that span the spectrum can be reversed and/or remanded to create greater coherence and consistency.¹⁷⁴

8. Make Access as Convenient as Possible to All Prospective Litigants

Creating a single specialized court to handle a particularly complex field of law may limit the access of some litigants. The specialized court should be located as centrally as possible to all major population centers.¹⁷⁵

173 See Lawrence Baum, "Probing the Effects of Judicial Specialization," *Duke Law Journal* 58 (2009):1667–84

174 *ibid*

175 8 Edward Cazalet, "Specialised Courts: Are They a 'Quick Fix' or a Long-Term Improvement in the Quality of Justice?" (Washington, DC: World Bank, 2001), <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/SpecializedCourtsCazadet.pdf>

KEY AGENCIES TASKED WITH COMBATING ILLICIT TRADE

Various pieces of legislation provide for various agencies that have been tasked with combating illicit trade. The table below illustrates the various agencies and the mandate of each agency as regards combating illicit trade:

AGENCY	MANDATE
KEY AGENCIES	
Ministry of Industry Trade and Cooperatives, State Department for Trade	<p>The State Department for Trade was established in 2016 with a mandate that transcends domestic and international trade.</p> <p>As regards combating illicit trade the Ministry is tasked with the implementation of the National Action Plan to Combat Illicit Trade. To this end, the core functions of the Ministry are:</p> <ol style="list-style-type: none"> i. Strategy formulation and development of the implementation plan; ii. Provision of policy guidance to inter-agency institutions in respect of the strategy; iii. Coordination and spearheading of implementation of all aspects of the Action Plan; and iv. Ensuring that the Action Plan is an integral component of national trade development plans
Kenya Industrial Property Institute (KIPI) (Industrial Property Act, 2001- Section 5)	<p>The Institute's core mandate is to protect and promote industrial property rights³² and foster innovation for sustainable development in Kenya. The Institute maintains the registers of Trade Marks, Patents, Utility Models, Industrial Designs and Technovations.</p> <p>The Industrial Property Act limits rights of patent holders by allowing for parallel importation³³. The Pharmacy and Poisons Board (PPB) is mandated to consider applications for the registration of parallel imported drugs, poisons, listing of herbal, complementary medicines and cosmetics.³⁴</p> <p>There is no requirement for the registration of parallel imports relating to other types of patented goods.</p>
Kenya Copyright Board (KECOBO) (Kenya Copyright Board- Section 3)	<p>KECOBO is mandated with the administration and enforcement of copyright and related rights³⁵. The Board is responsible for:</p> <ul style="list-style-type: none"> • organizing legislation on copyright and related rights; • conducting training programmes on copyright and related rights; • enlightening and informing the public on matters related to copyright; • licensing and supervising the activities of collective management societies; and • maintaining an effective databank on authors and their works. <p>KECOBO is mandated with ensuring the protection of traditional knowledge and traditional cultural expressions by establishing and maintaining the Traditional Knowledge Digital Repository. Similarly, County Governments are mandated to establish and maintain a register which shall contain information relating to traditional knowledge and cultural expressions collected and documented by the county government.³⁶</p>

AGENCY	MANDATE
	<p><u>KECOBO Inspectors</u></p> <p>KECOBO Inspectors may enter and search any premises within which infringement is suspected to be ongoing³⁷. Upon such entry, a Police Officer or a Copyright Inspector may³⁸:</p> <ol style="list-style-type: none"> (a) inspect articles appearing to be works. (b) inspect plant or equipment used or intended to be used for production or manufacture the work. (c) inspect packages or container used or intended to contain a copyright work. (d) Seize any article suspected of being infringing and documents that may be required at the proceedings. (e) Issue an inventory of seized goods/documents specifying items as soon as practicable. <p>The police or officers of the Board (inspectors) are empowered to arrest without warrant any person suspected of committing an offence under the Copyright Act.</p>
<p>Anti-Counterfeit Authority (ACA) (Anti-Counterfeit Authority Act, No. 13 of 2008)</p>	<p>The Authority is mandated with:</p> <ul style="list-style-type: none"> • Enlightening and informing the public on matters relating to counterfeiting; • Combating counterfeiting, trade and other dealings in counterfeit goods; • Devising and promoting training programs to combat counterfeiting; • Coordinating with national, regional or international organizations involved in combating counterfeiting; and <p><u>Anti-Counterfeit Inspectors</u></p> <p>The powers of Anti-Counterfeit inspectors include to:</p> <ol style="list-style-type: none"> 1. enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being counterfeit goods. 2. take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods 3. investigate any offence related or connected to counterfeiting notwithstanding that such an offence is not expressed as such under the provisions of the Anti-Counterfeit Act. 4. if an inspector reasonably suspects that a person at, on or in any place, premises or vehicle may furnish any information with reference to any act of dealing in counterfeit goods— <ol style="list-style-type: none"> (i) question that person and take down a statement from him; (ii) demand and procure from that person any book, document, article, item or object which in any way may be relevant to the nature, quantity, location, source or destination of the goods in question, or the identity and address of anyone involved or appears to be involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or clearing and forwarding agent of, or other dealer in, the goods in question; 5. seal or seal off any place, premises or vehicle at, on or in which— <ol style="list-style-type: none"> (i) suspected counterfeit goods are found, or are manufactured, produced or made, either wholly or in part; (ii) any trade mark, any exclusive mark or any work which is the subject matter of copyright, is applied to those goods; (iii) the packaging for those goods is prepared; or (iv) the packaging of those goods is undertaken.

AGENCY	MANDATE
	<p>6. seize detain, and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or that exclusive mark on such goods</p> <p>7. arrest, without a warrant, any person whom he suspects upon reasonable grounds of having committed any offence under the Act and may search and detain such a person;</p> <p>8. Note: Section 23(7) allows an inspector to enter any premises with any other persons and equipment that appear to be necessary for the inspector to perform their functions.</p> <p>Anti-Counterfeit Inspectors have same powers as customs officers with regard to importation of counterfeit goods.³⁹</p> <p>Powers to seal or seal off any place, premise or vehicle at, on or in which any work which is the subject matter of copyright is applied to suspected counterfeit goods. (overlap with KECOBO inspectors).</p> <p>Powers of the Executive Director of the ACA to seize and detain all suspected counterfeit goods, pursuant to an application by an owner of an intellectual property right similar to powers of the Commissioner of the Kenya Revenue Authority.⁴⁰</p>
<p>Kenya Bureau of Standards (KEBS) (Standards Act, Chapter 496)</p>	<p>The core function of the Bureau is Standards development, Metrology, Conformity Assessment and provision of Training and Certification services. Specific functions include⁴¹:</p> <p>(a) To promote standardization in industry and commerce;</p> <p>(b) To make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards approved by the Minister on the recommendation of the Council, and for the issue of certificates in regard thereto;</p> <p>(c) To make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated;</p> <p>(d) To control, in accordance with the provisions of this Act, the use of standardization marks and distinctive mark; and</p> <p>(e) To prepare, frame, modify or amend specifications and codes of practice.</p> <p>Inspectors of the Bureau have powers to enter any premise, inspect and take samples of any goods or commodity to which any standard specification or standardization mark exists⁴² They also have powers to order destruction of any products that do not meet the set standards.⁴³</p>
<p>Kenya Revenue Authority (Kenya Revenue Authority Act, No. 2 of 1995)</p>	<p>The core functions of the Authority are: -</p> <ul style="list-style-type: none"> • To assess, collect and account for all revenues in accordance with the written laws and the specified provisions of the written laws. • To advise on matters relating to the administration of, and collection of revenue under the written laws or the specified provisions of the written laws. • To perform such other functions in relation to revenue as the Minister may direct. <p>The Customs Services Department of KRA implements bilateral, regional, and international trade arrangements. The department also supports global enforcement efforts against smuggling, the illegal importation and exportation of arms and drugs of abuse through control of entry and exit points. Further, as the agency of government entrusted with the responsibility to monitor and control imports and exports, KRA is responsible for the implementation of the trade and customs clauses of regional trade agreements.⁴⁴</p>

AGENCY	MANDATE
<p>The Department of Weights and Measures (The Weights and Measures Act, Cap. 513, and the Trade Descriptions Act, Cap. 505)</p>	<p>Its mandate is to facilitate fair trade by ensuring use of accurate weighing and measuring equipment, promoting fair business practices and protecting the consumer against exploitation in the sale of goods and services.</p> <p>The functions of the department include: -</p> <ol style="list-style-type: none"> i. Establishment of a uniform system of measurement in trade, ii. Control of weighing and measuring equipment in use for trade, iii. Control of the sale of goods, and iv. Protecting the consumer against cheating through the use of falsehood in the sale of goods and in the provision of services in the course of trade.
<p>Kenya Plant Health Inspectorate Service (KEPHIS) (Kenya Plant Health Inspectorate Service Act No. 54 of 2012)</p>	<p>The Service's responsibility is to assure the quality of agricultural inputs and produce to prevent adverse impact on the economy, the environment and human health.</p> <p>The Service is mandated with the implementation of the following Acts:⁴⁵</p> <ul style="list-style-type: none"> • The Plant Protection Act, (Cap. 324); • The Seeds and Plant Varieties Act, (Cap. 326) • The Agricultural Produce (Export) Act (Cap. 319) • The Suppression of Noxious Weeds Act, (Cap. 325) <p>Officers of the Service have the powers to arrest, without a warrant any person who, in the officers' presence, commits any offence, and may detain such person until he can be delivered into the custody of a police officer to be dealt with according to law.</p>
<p>The Assets Recovery Agency (ARA) (Proceeds of Crime and Anti-Money Laundering Act)</p>	<p>The Agency is mandated to recover assets that were at least suspected to have been acquired illegally or with illegally acquired finances. The specific mandate of ARA include:</p> <ol style="list-style-type: none"> a. Liaising with other investigative agencies to get information on individuals and other entities who acquire wealth through illicit trade b. Identification and tracing of assets obtained from proceeds of illicit trade c. Institution of court proceedings in freezing, seizure and confiscation of such assets d. Recovery of assets from all suspects of illicit trade and restoring the asset to the state or their rightful owners
<p>Kenya Forest Service (KFS) (Forest Conservation and Management Act No. 34 of 2016)</p>	<p>The Service's mandate is to enhance development, conservation and management of Kenya's forest resources base in all public forests, and assist County Governments to develop and manage forest resources on community and private lands for the equitable benefit of present and future generations.</p> <p>Officers of the Services have powers to:</p> <ol style="list-style-type: none"> a) demand from any person the production of an authority or licence for any act done or committed by that person in a national, county or provisional forest, or in relation to any forest produce for which a licence required under this Act or under any rules made thereunder; b) require any person found within a national, county or provisional forest who has in his possession any forest produce suspected to have come from such forests, to give an account of the manner in which he became possessed thereof, and, where the account given is not satisfactory, arrest and take such person before a court of competent jurisdiction; c) search any person suspected of having committed an offence under this Act or of being in possession of any forest produce in respect of which an offence has been committed, and arrest the person, seize and detain any baggage, package, parcel, conveyance, tent, hut or building under the control of that person or his agent or servant: d) search any vehicle or vessel and seize and detain any forest produce in respect of which there is reason to believe that an offence has been committed, together with any tools, equipment, vessels, vehicles or livestock used in the commission of the offence:

AGENCY	MANDATE
	<p>e) seize and detain any livestock found in a national, county or provisional forest without any person in charge of them;</p> <p>f) confiscate any equipment or receptacle placed without authority in a national, county or provisional forest.</p> <p>Further, the Service's officers may be granted firearms for the lawful conduct of their functions⁴⁶.</p>
<p>Pharmacy and Poisons Board (Pharmacy and Poisons Act, Cap 244)</p>	<p>The Board regulates the Practice of Pharmacy and the Manufacture and Trade in drugs and poisons.</p> <p>The Board aims to implement the appropriate regulatory measures to achieve the highest standards of safety, efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer</p> <p>The core functions of the board are:</p> <ol style="list-style-type: none"> 1. Product Registration- make rules under which medicines may be imported, manufactured for sale or sold in Kenya.⁴⁷ 2. Pharmacy Practice- ensure the availability of pharmaceutical services in Kenya. 3. Manufacturer Services- The Board reserves the right to verify the Good Manufacturing Practices Compliance of the manufacturer at the applicant's expense. 4. Inspectorate- regulates the Practice of Pharmacy and the Manufacture and Trade in drugs and poisons. <p>The Board is also mandated to institute administrative, civil and criminal proceedings in accordance with the Act.</p> <p>Additionally, Section 3B (2) of the Health Laws Amendment Act provides that the Board shall perform the following functions in relation to regulation of health products and technologies—</p> <ol style="list-style-type: none"> (a) ensure that all medicinal products manufactured in, imported into or exported from the country conform to prescribed standards of quality safety and efficacy; (b) investigate conduct related to the manufacture, import, export storage, distribution, sale and use of medical products; (c) prescribe a system for sampling, analysis and other testing procedures of finished medicinal products released into the market to ensure compliance with the labeled specifications; (function also conducted by KEBS) (d) monitor the market for the presence of illegal or counterfeit medicinal substances. (overlap with ACA function) (e) grant or revoke licenses for the manufacture, importation, exportation, distribution and sale of medicinal substances; (f) maintain a register of all authorized medicinal substances; (g) regulate licit use of narcotic, psychotropic substances and precursor chemical substances in accordance with either the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances 1971, and the UN Convention against Illicit Traffic Drug and Psychotropic Substances, 1988; (h) inspect and license all manufacturing premises, importing and exporting agents, wholesalers, distributors, pharmacies, including those in hospitals and clinics, and other retail outlets;

AGENCY	MANDATE
Kenya Wildlife Service (KWS) (Wildlife Conservation and Management Act, No. 47 of 2013)	<p>The mandate of the Service is to conserve and manage wildlife in Kenya, and to enforce related laws and regulations. KWS undertakes conservation and management of wildlife resources across all protected areas systems in collaboration with stakeholders. Its core function is to work with others to conserve, protect and sustainably manage wildlife resources.</p> <p>The KWS officers have powers similar to those of KFS officers with regards to wildlife resources. KWS officers may also be granted firearms that may be lawfully used in arrest of any suspects.</p> <p>KWS officers may also erect barriers on any road or place for purposes of conducting searches.</p>
Financial Reporting Centre (FRC) (The Proceeds of Crime and Anti-Money Laundering Act 2009) (The Prevention of Terrorism Act 2012)	<p>The objective of the FRC is to assist in the identification of the proceeds of crime and combating money laundering. Other objectives include:</p> <ul style="list-style-type: none"> • Sharing information collected by it with investigating authorities and supervisory bodies to facilitate the administration and enforcement of the laws of Kenya; • Ensuring compliance with international standards and best practice in anti-money laundering measures; • Sharing and exchange of information on money laundering activities and related offences with similar bodies in other countries. <p>Powers of the officers under the Act to enter, search any premise or seize any documents may only be exercised upon obtaining a warrant.</p> <p>FRC may impose civil penalties for non-compliance where a person or a reporting institution is in breach of the Proceeds of Crime and Anti-Money Laundering Act and to take administrative action for non-compliance of the Act.</p>
National Environment Management Authority (NEMA) (Environmental Management and Co-Ordination Act No.8 of 1999 EMCA)	<p>Section 9(i) of EMCA mandates the Authority to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of the Government of Kenya in the implementation of all policies relating to the environment.</p> <p><u>Powers of Environmental Inspectors</u></p> <p>Power to enter any premise, search, inspect examine any licences or registers, take samples and seize any articles which the officer believes has been used in the commission of an offence under the Act.</p>
OTHER AGENCIES	
Competition Authority of Kenya (Competition Act No.12 of 2010)	<p>The Authority's mandate is to enforce the Act with the objective of enhancing the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing misleading market conduct throughout Kenya.</p> <p>As regards consumer protection the Authority investigates complaints relating to false or misleading representations, unconscionable conduct as well as supply of unsafe, defective and unsuitable goods. The Authority also investigates undertakings that fail to comply with prescribed Consumer Product Safety Standards and prescribed Product Information Standards. (Overlap with KEBS).</p>
The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) (NACADA Act No.14 of 2012)	<p>NACADA was established to coordinate a multi-sectoral effort aimed at preventing, controlling and mitigating alcohol and drug abuse in Kenya.</p> <p>Its functions are two-fold:</p> <ol style="list-style-type: none"> 1. Demand reduction; and 2. Supply suppression.

AGENCY	MANDATE
	The aim of supply suppression measures is to control, limit or otherwise curtail access to intoxicating substances by the general public especially the vulnerable populations. It involves formulation, enactment and enforcement of policy, legislation and other measures to control the production, trafficking and sale of alcohol and intoxicating drugs.
Anti-Doping Agency of Kenya (Anti-Doping Act)	<p>“Doping” means the use of prohibited substances and methods in any sporting activity whether competitive or recreational in order to artificially enhance performance;</p> <p>The Agency is the only organisation permitted to carry out anti-doping activities in Kenya and its authority shall be recognized by all national federations in Kenya⁴⁸. The Agency is also empowered to deal with any athlete or athlete support personnel who trafficks or attempts to traffick in any prohibited substance. (overlap with roles of Ant-Narcotics Unit of the DCI).</p>
Kenya Citizens and Foreign Nationals Management Service (Kenya Citizens And Foreign Nationals Management Service Act, 2011)	The function of the Service is to be responsible for the implementation of policies, laws and any other matter relating to citizenship and immigration, births and deaths, identification and registration of persons, issuance of identification and travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register. ⁴⁹
Director in charge of citizenship and immigration	As regards combating illicit trade, the Director is in charge of designating ports and points of entry and exit and border management including the control and regulation of entry and exit of all persons at ports and points of entry and exit. Officers are able to verify the Authenticity of travel documents such as passports in cases of trafficking and smuggling of persons.
Kenya Maritime Authority (Kenya Maritime Authority Act; Merchant Shipping Act)	As part of its mandate, the Authority is required to ensure maritime safety and prevention of marine pollution. The Authority may be instrumental in the destruction of illicit goods and advising on the effect to marine life is any.
Firearms Licencing Board	The Board is responsible for regulating, licensing and controlling the manufacture, importation, exportation, transportation, sale, repair, storage, possession and use of firearms, ammunition, airguns and destructive devices. The officers may be of help in the prosecution of offenders in relation to illicit trade in small arms and light weapons.

Footnotes on the agencies and the mandate

- 32 In Kenya includes trade marks, patents, utility models, industrial designs and technovations. KIPi also protects and promotes trade mark rights.
- 33 Section 58 Industrial Property Act 34 pursuant to the Pharmacy and Poisons (Registration of Drugs) (Amendment) Rules, 2010 (Legal Notice No. 192 of 26th November, 2010),
- 35 Related rights protect the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter to the public eg broadcasters, producers etc
- 36 The Protection of Traditional Knowledge and Cultural Expressions Act, 2016.
- 37 Section 40 Copyright Act
- 38 Section 41 Copyright Act
- 39 Section 7 the East African Community Customs Management Act, 2005
- 40
- 41 Section 4 of the Standards Act
- 42 Section 14 of the Standards Act
- 43 Section 14A of the Standards Act
- 44 <https://www.export.gov/article?id=Kenya-customs-regulations> accessed on 22nd November 2019
- 45 Section 6 Kenya Plant Health Inspectorate Services Act
- 46 Section 63 Forest Conservation and Management Act
- 47 Section 44 (1) of the Pharmacy and Poisons Act
- 48 Section 5 of the Anti-Doping Act
- 49 Section 4 of the Kenya Citizens And Foreign Nationals Management Service Act, 2011

OTHER STAKEHOLDERS RELEVANT TO THE ENFORCEMENT OF LEGISLATION RELATING TO ILLICIT TRADE

1. Kenya Association of Manufacturers

The Kenya Association of Manufacturers (KAM) is the representative organisation for manufacturing value-add industries in Kenya.

The Mission of KAM is to promote competitive and sustainable local manufacturing. The strategic objectives of KAM are:

- a Driving industrial growth and realization of 15% contribution of manufacturing sector to GDP by 2019;
- b Supporting skills-based job creation agenda and increase manufacturing sector jobs by 33%; and
- c Enhancing market access for products, locally and globally to grow exports by 33% by 2019.

2. Kenya Private Sector Alliance

The Kenya Private Sector Alliance (KEPSA) is a limited liability membership organisation registered in 2003 as the apex body of the private sector in Kenya.

The primary Mission of KEPSA is to ensure year- on- year improvement in the overall business environment of Kenya by working together with the Government and other stakeholders.

3. Kenya National Chamber of Commerce and Industry

The Kenya National Chamber of Commerce and Industry (KNCCI) is an autonomous, non-profit, membership-based and private sector lobby institution. The vision of KNCCI is to promote, protect and develop commercial, industrial and investment interests of members in particular and those of the entire business community in general.

The objectives of KNCCI are to:

1. promote, coordinate and protect commercial and industrial interests in Kenya;
2. promote trade within and outside Kenya;
3. organize participation in trade activities;
4. foster social unity within and to promote the welfare of the business community;
5. promote and support Legislation;
6. collect and disseminate trade information; and
7. promote training on principles of commerce and industry.

NATIONAL ACTION PLAN TO COMBAT ILLICIT TRADE 2019-2022

The National Action Plan for Combating Illicit Trade, 2019-2022 (“the Action Plan”) which was launched in June 2019 aims at ensuring that agencies tasked with combating illicit trade have the required capacity and leverage their synergies with other partners and collaborators to realize meaningful impact in the war against illicit trade. The Action Plan considers countering illicit trade as a strategic priority in realizing Vision 2030 aspirations as well as the Big Four Agenda that include universal health care, food security, affordable housing and 25 per cent increase in manufacturing by 2030. The essence of the Action Plan, therefore, is to lay foundations to combat illicit trade to facilitate attainment of the country’s development goals. It highlights the need for effective collaboration between the public, private sector and the international community for effective outcomes. It synchronizes all institutional enforcement and public awareness strategies to combat illicit trade in Kenya in order to allow for reduction and elimination of the vice; and for effective monitoring and reporting.¹⁷⁶

¹⁷⁶ The National Action Plan to Combat Illicit Trade 2019-2022

The objectives of the Action Plan are to:

1. Reduce illicit trade in the Kenyan market by 20% p.a.
2. Strengthen the capacity of agencies to combat illicit trade.
3. Strengthen collaborations and partnerships.
4. Enhance public-private partnerships towards managing the vice.
5. Increase the level of awareness on illicit trade by 20% p.a.

The Action Plan outlines the various activities to be undertaken in order to achieve the set objectives. It includes an implementation strategy as well as a monitoring, evaluation and reporting mechanism.

The Action Plan also proposes an inter-agency coordination model that addresses the challenges faced by the model in place before the launch of the Action Plan¹⁷⁷. Before the launch of the Action Plan, the inter-agency model in the fight against illicit trade consisted of two layers: at the top is the Inter-Agency Anti-Illicit Trade Executive Forum (Executive Forum) and at the bottom is the technical working group. The Executive Forum is the policy organ with over 20 members from government and the private sector mandated to provide policy direction on matters illicit trade. The Technical Working Group is the implementing arm, which consists of technical officers from the institutions who sit in the Executive Forum.

The model before the launch of the Action Plan may be demonstrated as below:



The Action Plan proposes the amendment of the model to provide for a National Anti-Illicit Trade Coordination Centre with a Secretariat for support. The National Anti-Illicit Trade Coordination Centre is the apex body mandated with the overall coordination and provision of policy guidelines on the fight against illicit trade. It shall consist of Principal Secretaries of line ministries responsible for promoting fair trade practices, Private sector and a Chairperson to be appointed by the President. The Executive Forum shall provide managerial guidance in the war against illicit trade and shall consist of Chief Executive Officers (CEOs) of enforcement agencies, ministries, private sector and the working group. Its chairperson may

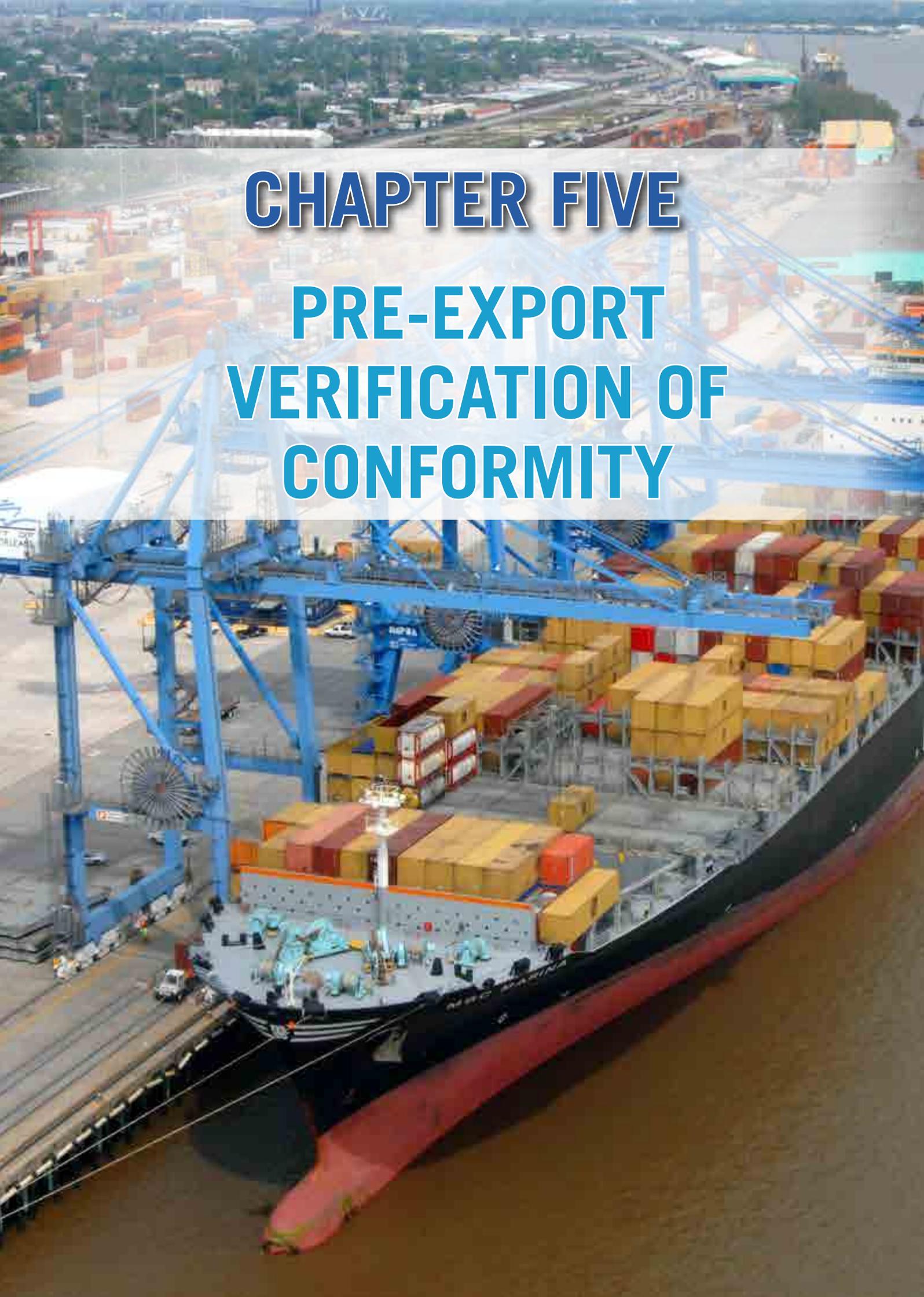
¹⁷⁷ Inter-Agency model established via gazette notice No. 7270 of 20th July 2018.

be from either the private or public sector. The Public Awareness/Outreach Working Group shall be responsible for coordinating multi-agency efforts towards sensitizing the public about the dangers of illicit trade as well as training various stakeholders.

To ensure the achievement of the Action Plan's objective, each agency is required to develop and implement a resource mobilization strategy and the resources required must be included in the agency's budgetary estimates.

The proposed model under the Action Plan may be summarized as below:





CHAPTER FIVE

PRE-EXPORT VERIFICATION OF CONFORMITY

EFFECTIVENESS OF THE PRE-EXPORT VERIFICATION OF CONFORMITY (PVoC) TO STANDARDS PROGRAM

The PVoC Program is a conformity assessment program applied to products at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory Standards or approved specifications.¹⁷⁸The purpose of the verification is to assure Kenyan consumers of the safety and quality of the imported goods they buy, and to protect Kenyan manufacturers from unfair competition from imports.

1. Objectives of the PVoC program

- i. To ensure quality of products, health and safety, and environmental protection for consumers.
- ii. To facilitate trade by ensuring that compliant goods are given expedited clearance at the port of entry.
- iii. To safeguard the country from unfair trade practices and dumping of substandard goods by ensuring that imported products comply with the same requirements to which locally manufactured goods are subjected.
- iv. To safeguard the country's national security.
- v. To prevent deceptive trade practices.
- vi. To enhance efficiency of clearance of imported goods at the ports of entry.

2. Modalities of the PVoC program

The KEBS is in charge of the conduct of the PVoC. To this end, KEBS has subdivided the world into nineteen (19) regions based on proximity and trade volumes. KEBS has also partnered with authorised PVoC agents in the nineteen regions to assist with the verification of all consignment destined for Kenya. All consignments destined for Kenya are required to undergo mandatory certification in the country of origin or supply prior to shipment into the country. The authorised agents have the powers of inspection, sampling, testing, sealing of full-load containers and issuance of Certificate of Conformity (COCs) / Certificate of Inspection (COIs) / Certificate of Roadworthiness for Motor Vehicles (CORs) or Non-conformity Report (NCR) where relevant standards and regulatory requirements have not been met.

3. Routes for Certification

The PVoC program provides four (4) routes for obtaining certification dependent on the frequency of exporters' shipments to Kenya and the level of compliance shown in the initial application.

Route A

Under this Route, products to be shipped have to be tested and physically inspected by the PVoC agent to demonstrate conformity. All containerized cargo under this route must be sealed by the agent's seal and container numbers indicated in the CoC.

Route B

This route offers a fast track certification process through registration of products by the PVoC Agent. Products eligible for registration must have reasonable and consistent levels of quality (homogenous products).

¹⁷⁸ KEBS 2019, PVoC Manual Version 9.0

Shipments of registered products are exempted from mandatory testing and certification may be based on physical inspection only. To ensure product conformity throughout the registration period of one (1) year, regular testing of registered product is conducted.

Frequent exporters of such homogenous products are advised to pursue this route. Some products, though homogenous in nature, are not eligible for certification under this route¹⁷⁹.

Route C

This route is open only to manufacturers who can demonstrate existence of a quality management system in their production/ manufacturing process. It involves auditing of the production processes and licensing of products manufactured thereof by authorized PVoC Agent. A license issued for the relevant products shall be valid for three (3) years. Licensed products shall be subject to random physical inspection by authorized PVoC Agent(s) prior to issuance of CoC and shipping. To ensure product conformity throughout the license period, regular testing of registered product is conducted.

Route D

This route is open only to registered importers of consolidated cargo. This is cargo containing a wide range of products generally in small quantities belonging to several consignees who have pooled or assembled together their parcels to form one consignment which may be declared as belonging to one importer at the port of destination. To be eligible, a consolidated cargo shall contain not less than three (3) different products/ brands.

Registered consolidators are required to apply for certification and submit the packing list and commercial invoice to PVoC agent at least forty-eight (48) hours before inspection. Upon inspection the PVoC agent shall issue a Certificate of Inspection (Col). All containerized cargo under this route must be sealed by the contracted inspection agencies and seal numbers indicated in the CoC.

High risk goods imported through this Route shall be subjected to testing at destination by KEBS at the importer's cost.

Summary of the Routes for certification

ROUTE	SUMMARY
Route A (Consignment inspection and Testing) for Occasional exporters	<ul style="list-style-type: none"> • No registration • Testing and Inspection • Issuance of CoC
Route B (Product Registration) for Frequent Exporters	<ul style="list-style-type: none"> • Product registration • Inspection and random testing • Issuance of CoC
Route C (Product Licensing) for regular and High Volume exporters with quality management systems	<ul style="list-style-type: none"> • Product licensing • Random inspection and regular testing • Issuance of CoC
Route D (Consolidated Cargo Imports)	<ul style="list-style-type: none"> • Importer registration with KEBS • Product Inspection • Issuance of CoC • Testing by KEBS at the entry point.

¹⁷⁹ Sugar, Cereals and pulses such as Rice, wheat, beans, Maize etc., Fertilizer, Animal and Fishery products (fresh and frozen- not further processed), Fresh dairy Products, Fresh horticultural produce, Used or second hand goods, Cooking Oils, Tyres

4. Challenges

Some of the challenges experienced under the PVoC programs include:

1. Lack of information on the relevant standards for the different imports and applicable exemptions by importers.
2. Lack of proper knowledge on applicable standards by the PVoC agents. This has on occasion resulted in the detection of substandard goods in the market.
3. High charges under the program. The fee charged is ad valorem which means it charged on the basis of the value of one's goods. This has been argued to promote importation of low quality goods as these have a lower value hence lowering the cost. However, this is the system used by all countries managing such programs.
4. Lack of clear direction from KEBS on the PVoC program. For instance, although the manual provides for compulsory verification and inspection of goods at the exporting country, the Ministry of Trade recently re-introduced local CoC which has resulted in double inspection of goods and high costs for traders.

5. Way Forward

The above challenges have been faced by different governments and have even led to the suspension of the programs in some countries eg Uganda. However, through consultations and creation of awareness, the Uganda National Bureau of Standards (UNBS) was able to resume the program. Further, UNBS set up a sensitization program, wherein all stakeholders were informed about the program generally and the standards applicable as well as the authorised agent to undertake the inspection on behalf of UNBS. UNBS finally set up a toll free number for quick assistance in the event a trader had any urgent inquiry.

Borrowing from the practice in Uganda, to ensure that the PVoC program is effective in Kenya, KEBS and KRA should invest in creating awareness on the program, the standards and the authorised PVoC agents. The traders (importers) need to be fully sensitised about the program and should also have a means of reaching KEBS for inquiries. The traders should also be informed that the role of inspection by the authorised agents does not take away from the role of surveillance by KEBS. Therefore, when substandard goods are seized in the market, the traders may not simply rely on the CoC to escape liability. Additionally, KEBS should be empowered with the relevant resources (including financial and human resources) to ensure that the objectives of the PVoC program are met.

It is also critical that any changes in relevant standards or exemptions are informed to the traders and also displayed in strategic locations such as the customs offices in the Zones of operation and the customs office at the ports of entry.

INTERNATIONAL BEST PRACTICE IN THE PRE-EXPORT VERIFICATION OF CONFORMITY PROGRAMS

The significant increase in imported goods into developing countries has caused many developing countries to implement Pre-Export Verification of Conformity (PVoC) programs or Consignment Based Conformity Assessment (CBCA).

CBCA/PVOC programs put in place conformity assessment procedures which take place on a pre-shipment basis.¹⁸⁰ The objective of these programs is to:

¹⁸⁰ <https://www.tralac.org/discussions/article/8373-consignment-based-conformity-assessment-and-pre-export-verification-of-conformity-to-standards-programmes-in-sadc-countries.html> accessed 22nd November 2019

- protect consumers from dangerous, substandard or counterfeit products.
- protect the environment.
- protect domestic industry from unfair competition from non-compliant goods.
- facilitate trade through the avoidance of consignment testing upon arrival or multiple testing requirements.

Some of the countries that have these programs include¹⁸¹:

1. Angola;
2. Bangladesh;
3. Benin;
4. Burkina Faso;
5. Burundi; and
6. Uzbekistan.

CBCA/PVOC programs are governed by the provisions of Articles 5 of the WTO Technical Barriers to Trade Agreement (the TBT Agreement) and the WTO Agreement on Pre-shipment Inspection (the PSI Agreement).

The PSI Agreement recognises the need for developing countries to have recourse to Pre-shipment Inspection (PSI) for as long and in so far as it is necessary to verify the quality, quantity of price of imported goods.¹⁸²

CBCA/PVOC programs are administered by The Standards Body of each country on behalf of country's Government. All inspections and tests are carried out by the appointed independent verification partners on regulated goods in the country of supply.

CBCA/PVOC programs are quite standard in most countries and work as below:¹⁸³

- i. Each country's government instructs its National Standards Body to apply CBCA/PVOC on imports and defines the list of products which must comply.
- ii. National Standards Body appoints independent inspection companies to handle the testing.
- iii. These approved independent inspection companies provide test services to exporters and issues certificates of conformity for products that pass the tests.
- iv. Certificate of Conformity is a mandatory document required by the customs of the countries which apply CBCA/PVOC.

However, in some cases, a country may require CBCA/PVOC only for certain types of goods. For example, Kuwait requires pre-shipment inspection for regulated products valued at more than \$3,000. Mexico requires a pre-shipment inspection for a variety of goods such as shoes, textiles, steel, and bicycles only if they do not qualify for NAFTA.

181 Others include Cambodia, Cameroon, Central African Republic, Comoros, Republic of Congo (Brazzaville), Democratic Republic of Congo (Kinshasa), Cote d'Ivoire, Ecuador, Ethiopia, Guinea, India, Indonesia Iran, Kenya, Kuwait, Liberia, Madagascar, Malawi, Mali, Mauritania, Mexico, Mozambique, Niger, Senegal, Sierra Leone, Togo

182 Preamble The WTO Agreement on Pre-shipment Inspection

183 <https://www.letterofcredit.biz/index.php/2018/05/07/pre-export-verification-of-conformity-pvoc-certificate/> accessed on 22nd November 2019

CHAPTER SIX

EMERGING ISSUES





This Chapter covers the issues that have in the recent past become influential in the fight against illicit trade. These issues shape the national strategies and agency cooperation in this fight.

ONLINE COUNTERFEITING

Online counterfeiting is the sale of counterfeit products through the internet.¹⁸⁴ Due to the global nature of the internet, counterfeiters are taking advantage of the World Wide Web to sell counterfeit goods to unsuspecting buyers. There are various ways in which sellers of counterfeit products use online platforms to make their sales, namely:

- a) Promotion of fake products using advanced marketing techniques such as paid search advertisements search engine optimization, unsolicited emails or the use of branded terms in domain names;¹⁸⁵
- b) Sale through mobile applications which appear on official application stores;¹⁸⁶ and
- c) Some e-commerce websites show genuine goods on their sites but proceed to ship out counterfeit goods to their consumers.¹⁸⁷

In Kenya, the sale of counterfeits online is a growing problem seeing as Kenya ranks in the top three countries in Africa in terms of the number of online shoppers.¹⁸⁸ The ACA has noted this problem¹⁸⁹ and it has employed the following strategies to curb online counterfeiting:

- a) Monitoring the sale of goods through online platforms such as Facebook and Twitter to identify which goods might be counterfeit; and
- b) Working with e-commerce sites such as Jumia to train them on enhancement of their quality assurance processes and complaint mechanisms; this training has enabled the e-commerce sites to enhance their vetting of vendors to weed out sellers of counterfeit products and to identify and take down any counterfeit products that have been put up for sale on their sites.

¹⁸⁴ International AntiCounterfeiting Coalition <https://www.iacc.org/online-initiatives/about> accessed on 22nd November, 2019

¹⁸⁵ Europol, Awareness Campaign On Online Counterfeiting, <https://www.europol.europa.eu/printpdf/activities-services/public-awareness-and-prevention-guides/awareness-campaign-online-counterfeiting> page 1

¹⁸⁶ Ibid page 2

¹⁸⁷ International Trademark Association, Addressing the Sale of Counterfeits on the Internet https://www.inta.org/Advocacy/Documents/2018/Addressing_the_Sale_of_Counterfeits_on_the_Internet_021518.pdf page 3

¹⁸⁸ UNCTAD, B2C E-Commerce Index 2018 Focus On Africa, https://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d12_en.pdf page 15

¹⁸⁹ Pradeep Paunrana (Chairman of the Board, Anti-Counterfeit Agency), The Fight Against Counterfeiting is a Must Win Battle! - Op-ed, <https://www.aca.go.ke/media-center/news-and-events/71-the-fight-against-counterfeiting-is-a-must-win-battle-op-ed> accessed on 22nd November, 2019

According to the INTA, the following factors contribute to the sale of counterfeits online:¹⁹⁰

- a) The global nature of the internet enables sellers of counterfeit products to sell their goods worldwide as opposed to selling in physical locations which would only limit sales to certain locations;
- b) The fact that payments can be made online eases the process for the sellers of counterfeits;
- c) Since the internet is anonymous, it is easy for sellers of counterfeits to trick consumers into believing that they are buying genuine goods; further, it is easy for the sellers to erase their online presence once they are wary of being apprehended; and
- d) The sales of counterfeit goods made online are less likely to be traced by customs authorities.

Combating online counterfeits

INTA recommends a number of best practices to combat online counterfeiting, which measures are aimed at different players in the online eco-system such as social media sites, search engines, logistics companies, trading platforms, payment service providers among others.¹⁹¹

Search engines

- a) Their terms of service should expressly prohibit advertisements for counterfeit products.
- b) They should have the complaint processes to report advertisements for counterfeit products and they should respond in a timely manner to such reports.
- c) They should have a timely and effective process for trade mark owners to inform them of the illegal sale of counterfeit goods.
- d) To the extent that there are legal frameworks applicable to removal of content on search engines and the legal grounds implicate behavior used by counterfeiters, search engines should provide an efficient process for parties to submit removal requests.

Trading platforms

- a) They should enhance their procedures for identifying and taking action against repeat offenders.
- b) They should employ preventative measures such as filters and identity verifications to reduce the sale of counterfeits by anonymous parties.
- c) They should have an effective take down procedure to make sure that listings for counterfeit products are removed when reported and not reposted.
- d) They should correspond with trade mark owners upon request to learn about infringements to a particular trade mark.

Trade mark owners

- a) They should regularly create awareness about their trade marks to the public and how people can identify counterfeit products bearing their trade marks.
- b) They should regularly monitor online marketplaces and social media sites to identify which sites are selling counterfeit products.

An example of a trade mark owner that is creating awareness about their trade mark is Sollatek, a manufacturer of innovative products in power control, energy saving, temperature control and solar energy. On their website, they have provided a list of places where customers can purchase genuine Sollatek products.¹⁹²

¹⁹⁰ Ibid page 5

¹⁹¹ Supra note 130 pages 10-15

¹⁹² Sollatek, Online Counterfeits VS Genuine Sollatek Products <https://www.sollatek.com/online-counterfeits-vs-genuine-sollatek-products/> accessed on 22nd November, 2019

The BASCAP which is an initiative of the ICC has undertaken research on online counterfeiting. In its report on fighting counterfeiting and piracy in the supply chain, it outlines a number of online intermediaries that are taking voluntary steps to curb online counterfeiting for example:¹⁹³

- a) E-Bay has a Verified Rights Owner (VERO) program which allows intellectual property rights holders to ask eBay to remove certain listings that offer items or contain materials that infringe on their intellectual property rights;
- b) Allegro, an auction site in Poland, has a program called Cooperation in IP Rights Protection that allows rights holders to notify Allegro of infringement, whereby the site will take steps to remove offers of counterfeits; and
- c) A Chinese e-commerce site, Tmall, requires a cash deposit from each vendor as an authenticity certification. If the merchant is caught selling fake goods, then the merchant loses this deposit. Additionally, it offers consumers a refund of five times the price they paid if they receive counterfeit goods from a merchant—a cost that it then requires to be reimbursed by the merchant.

In addition to the best practices suggested by INTA, BASCAP also recommends the use of online seals, trust marks, certifications and customer ratings.¹⁹⁴ For example, Symantec uses VeriSign SSL seals to show that a website has been verified for security and data encryption and that it is safe to enter payment data. Some websites such as Amazon and E-Bay use customer ratings which indicate a seller's trustworthiness based on factors such as shipping time, returns policy, and customer feedback; these ratings enable other consumers to know which sites are trustworthy.

The combating of online counterfeiting requires a joint effort between different players in the eco-system and the initiatives of brand owners. One example of such a joint effort is in the European Union where internet platforms, rights owners and associations signed the Memorandum of Understanding on the sale of counterfeit goods via the internet.¹⁹⁵ As at 16th October 2017, the Memorandum had been signed by eight right owners, five internet platforms and six associations.¹⁹⁶ Even though the Memorandum is not binding, it provides useful guidelines to deal with online counterfeiting such as notice and take down and reporting procedures.

CRYPTOCURRENCY PAYMENTS

The anonymity of and lack of regulation for cryptocurrency payments makes them an attractive option for people who are involved in illicit trade. According to research from the Faculty of Law of the University of Oxford, cryptocurrencies are used to finance illegal trade (drugs, hacks and thefts, illegal pornography, even murder-for-hire), potential to fund terrorism and money laundering.¹⁹⁷ It is estimated that about US\$76 billion of illegal activity per year involves Bitcoin (one of the most used cryptocurrencies), which amounts to almost half of Bitcoin transactions worldwide.¹⁹⁸

193 BASCAP, Roles And Responsibilities Of Intermediaries: Fighting Counterfeiting And Piracy In The Supply Chain <https://iccwbo.org/content/uploads/sites/3/2015/03/ICC-BASCAP-Roles-and-Responsibilities-of-Intermediaries.pdf> page 50

194 Ibid page 51

195 European Commission https://ec.europa.eu/growth/industry/intellectual-property/enforcement/memorandum-understanding-sale-counterfeit-goods-internet_en accessed on 22nd November, 2019

196 European Commission, Overview of the functioning of the Memorandum of Understanding on the sale of counterfeit goods via the internet <https://ec.europa.eu/docsroom/documents/26602>

197 Oxford Business Law Blog, Sex, drugs, and bitcoin: How much illegal activity is financed through cryptocurrencies? <https://www.law.ox.ac.uk/business-law-blog/blog/2018/02/sex-drugs-and-bitcoin-how-much-illegal-activity-financed-through> accessed on 22nd November, 2019

198 Foley, Sean and Karlsen, Jonathan R. and Putnins, Talis J., Sex, Drugs, and Bitcoin: How Much Illegal Activity Is Financed Through Cryptocurrencies? (December 14, 2018). Review of Financial Studies, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=3102645> or <http://dx.doi.org/10.2139/ssrn.3102645> page 1

In 2015, the Central Bank of Kenya issued a circular on cryptocurrencies such as Bitcoin cautioning the public on their use.¹⁹⁹ According to the circular, some of the risks associated with buying, holding or trading virtual currencies include the following:

- a) Transactions in virtual currencies such as bitcoin are largely untraceable and anonymous making them susceptible to abuse by criminals in money laundering and financing of terrorism.
- b) Virtual currencies are traded in exchange platforms that tend to be unregulated all over the world. Consumers may therefore lose their money without having any legal redress in the event these exchanges collapse or close business.
- c) There is no underlying or backing of assets and the value of virtual currencies is speculative in nature. This may result in high volatility in value of virtual currencies thus exposing users to potential losses.

In order to reduce or completely extinguish the use of cryptocurrency for illicit trade, it is imperative for governments and regulatory agencies to formulate regulations and policies that will tackle the aspects of cryptocurrency that make it lucrative for use in illicit trade.

PROPOSED MERGER OF THE INTELLECTUAL PROPERTY AGENCIES

The suggestion to merge the state agencies in charge of the protection and enforcement of intellectual property rights (The Kenya Copyright Board, The Kenya Industrial Property Institute and the Anti-Counterfeit Authority) into one agency called the Kenya Intellectual Property Office (KIPO) originated from the Presidential Taskforce on Parliamentary Reforms.²⁰⁰

The proposed merger is in line with best practices in other jurisdictions²⁰¹ and is necessitated by the fact that the agencies' functions are complementary and they should therefore be housed in one institution. Under the proposal, the merged agencies will become directorates under the new agency to be formed and the CEOs of the merged agencies will become heads of the directorates.²⁰²

The Report by the Presidential Taskforce also recommended the enactment of an overarching law called the Government Owned Entities Bill to govern the agencies to be formed in line with the recommendations.²⁰³ The Bill was drafted in 2014²⁰⁴ but it has not yet been passed into law. According to the Bill Tracker on the Kenya Law website, the Bill has not yet been presented to Parliament for debate.²⁰⁵

There has also been a suggestion to create an overarching intellectual property tribunal to merge the Industrial Property Tribunal, the Competent Authority under the Copyright Act and possibly the Seeds and Plants Tribunal. This suggestion originated from the Industrial Property Tribunal in response to an objection relating to the jurisdiction of the IPT.²⁰⁶

199 https://www.centralbank.go.ke/images/docs/media/Public_Notice_on_virtual_currencies_such_as_Bitcoin.pdf

200 Report of The Presidential Taskforce on Parastatal Reforms <https://www.cofek.co.ke/Report%20of%20The%20Presidential%20Task%20force%20on%20Parastatal%20Reforms.pdf> page 107

201 There are a number of countries that have an umbrella institution dealing with all intellectual property matters such as the United Kingdom, New Zealand and the Philippines

202 Supra note 144, page xxiv

203 Supra note 144, page xx

204 Government Owned Entities Bill 2014- Working Draft <https://www.cofek.co.ke/Government%20Owned%20Entities%20Bill%202014-%20Working%20Draft.pdf>

205 The Bill does not appear on the list of Bills presented to the National Assembly between 2014 and 2019 <http://kenyalaw.org/kl/index.php?id=9091> accessed on 22nd November, 2019

206 George Ragui Karanja v Moras group ltd, Naivas supermarket & Safaricom ltd available at <https://www.cipit.org/index.php/fellowships/databases/1434-case-george-ragui-karanja-v-moras-group-ltd-naivas-supermarket-safaricom-ltd-12-02-2013> accessed on 22nd November, 2019

Before the relevant legislation to effect the merger of agencies is passed, the agencies involved in the fight against illicit trade may collaborate in other ways such as the formation of multi-agency teams. One example of the teams is the Inter-Agency Anti-Illicit Trade Executive Forum and Inter Agency Anti-Illicit Trade Technical Working Group which comprise of officials from ACA, KECOBO, KIPI, KAM, the Ministry of Trade, Industry and Co-operatives among others. The Forum and the Working Group were established vide Gazette Notice number 7270.²⁰⁷ Some of the functions of the Forum and the Working Group are as follows:

1. Advising the Cabinet Secretary responsible for trade and industry on all matters involving illicit trade;
2. Advising the Cabinet secretary responsible for trade and industry on policy, laws, and regulations to strengthen the war against illicit trade;
3. Co-ordinate with other ministries, departments and agencies and county governments with regard to issues of illicit trade;
4. Develop a National Strategy on combating illicit trade in Kenya;
5. Individual institutions to develop specific institutional policies/strategies as per their mandate;
6. Co-ordinate the surveillance and investigations of the sources of merchandise that infringe on various laws, regulations and policies which form part of illicit trade;
7. Co-ordinate the enforcement of various laws, regulations and policies on illicit trade;

The agencies should also pursue information sharing to enable them to be more effective in the fight against illicit trade.

TRAINING BY WCO

The WCO is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of Customs administrations.²⁰⁸ Currently, the WCO represents 183 customs administrations across the world who collectively process approximately 98% of world trade.²⁰⁹

One of the functions of the WCO is to offer training and capacity building services to its members. In its Strategic Plan for 2019-2022, one of the strategic objectives listed is provision of tools and capacity building to members in accordance with their expressed needs, and/or needs identified through performance measurement tools.²¹⁰

One of the tools that the WCO has developed is the Compliance and Enforcement Package (CEP) which contains WCO's approach in providing assistance to members in their compliance and enforcement activities for some of the high risk areas such as drug trafficking, proliferation of weapons, counterfeiting of goods and piracy, among others.²¹¹ Some of the instruments and tools under the CEP include the following:²¹²

²⁰⁷ http://kenyalaw.org/kenya_gazette/gazette/download/Vol.CXX-_No_.85_1.pdf accessed on 10th December, 2012

²⁰⁸ <http://www.wcoomd.org/en/about-us/what-is-the-wco.aspx> accessed on 22nd November, 2019

²⁰⁹ Ibid

²¹⁰ WCO Strategic Plan 2019-2022 <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/administrative-documents/wco-strategic-plan-2019-2022.pdf?db=web> page 6

²¹¹ <http://www.wcoomd.org/en/topics/key-issues/cep/overview.aspx> accessed on 22nd November, 2019

²¹² Instruments and Tools under the CEP <http://www.wcoomd.org/en/topics/key-issues/cep/instruments-and-tools.aspx> accessed on 22nd November, 2019

- a) Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters;
- b) Declaration on Transnational Organized Crime;
- c) Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance;
- d) Recommendation on the Pooling of Information concerning Customs Fraud;
- e) Recommendation concerning the use of Advance Passenger Information (API) and Passenger Name Record (PNR) for efficient and effective Customs Control;
- f) WCO Guidelines for Post-Clearance Audit; and
- g) WCO Customs Enforcement Guidance against Commercial Fraud Related to Consumer Health and Safety Requirements.

The training by the WCO is key in enabling customs administrations to combat illicit trade. The following are some of the members that the WCO has trained in the recent past:

- a) The WCO trained the Bahamas Customs and Excise Department on organizational and human resources development;²¹³
- b) The WCO helped in the development of customs laboratories and training of staff in Tanzania, Ethiopia, Ghana and Ecuador²¹⁴
- c) The WCO runs the Master Trainer Program (MTP) in East Africa which is a program aimed at sustainable training capacity within the Customs administrations by developing a pool of well-experienced trainers and regionally featured training materials and program to be used by these trainers.²¹⁵

The WCO also runs an online academy where representatives from the trade community are able to access e-learning courses, webinars, books and news.²¹⁶

THE DESTRUCTION OF ILLICIT GOODS

Once illicit goods are seized by regulatory agencies, they may be used as evidence in legal proceedings after which they will most likely be destroyed; one of the goals of destruction of goods is to ensure that they are completely removed from all trade channels.²¹⁷ Some of the common methods for destruction of illicit goods are open air burning, shredding, crushing, burying in landfills.²¹⁸

In Kenya, illicit goods such as ivory and counterfeit products are mainly destroyed through burning. The ACA regularly destroys stockpiles of counterfeit products²¹⁹ while the Kenyan government publicly burns ivory in a bid to deter the illicit trade in ivory; in 2016, Kenya burnt over 100 tonnes of ivory, which was the largest ever cache.²²⁰ It is believed that public destructions of goods help build respect for intellectual property.²²¹

213 <http://www.wcoomd.org/en/media/newsroom/2019/november/wco-bahamas-customs-and-excise-department.aspx> accessed on 22nd November, 2019

214 <http://www.wcoomd.org/en/topics/key-issues/customs-laboratories/activities-and-programmes/technical-assistance-and-training.aspx> accessed on 22nd November, 2019

215 <http://www.wcoomd.org/en/media/newsroom/2019/october/another-step-towards-developing-pool-of-trainers-on-pca-in-east-africa.aspx> accessed on 22nd November, 2019

216 <https://academy.wcoomd.org/> accessed on 22nd November, 2019

217 WIPO Magazine Disposing of counterfeit goods: unseen challenges https://www.wipo.int/wipo_magazine/en/2012/06/article_0007.html accessed on 22nd November, 2019

218 Ibid

219 Anti Counterfeit Authority destroys counterfeit goods in Mombasa <https://www.standardmedia.co.ke/article/2001342101/anti-counterfeit-authority-destroys-counterfeit-goods-in-mombasa> accessed on 22nd November, 2019

220 The Guardian, Kenya burns largest ever ivory stockpile to highlight elephants' fate <https://www.theguardian.com/environment/2016/apr/30/kenya-to-burn-largest-ever-ivory-stockpile-to-highlight-elephants-fate> accessed on 22nd November, 2019

221 Supra note 160

Article 46 of the Agreement on the Trade Related Aspects of Intellectual Property provides the following on destruction of infringing goods:²²²

“In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce”

In the recent past however, there have been debates regarding the destruction of goods *viz* whether such destruction is necessary at all and whether such destruction is detrimental to the environment, considering the volume of illicit goods that are impounded every year. Some of the detrimental effects include:²²³

- a) Open-air burning of IP-infringing goods releases large volumes of toxic fumes and smoke composed primarily of dioxans and furans that are pollutants resistant to environmental degradation, and which can lead to extensive pollution of adjacent soils.
- b) Exposure to the smoke in open-air burning can cause a wide range of respiratory ailments in humans, and the pollutants are also considered carcinogenic.
- c) Plants or crops that are grown in these polluted areas can absorb the pollutants.
- d) Disposal into non-sanitary landfills can result in environmental and the escape of toxic materials, potentially polluting waterways and groundwater.
- e) When such landfills are heavily scavenged, individuals can be exposed to potentially harmful material, and if not fully destroyed prior to disposal some goods may re-enter channels of commerce.

There is therefore, a growing need for environmentally sound methods of destruction such as proper incineration in “fit for purpose” commercial incinerators, shredding or crushing of the goods, or encapsulation, which entails encasing the infringing goods in a sand, gravel, cement mix to form solid inert blocks that can then be dumped into a landfill site.²²⁴

As an alternative to destruction, it is possible for illicit goods to be recycled or donated to charity, with the agreement of the intellectual property right holders.²²⁵ The following are examples of recycling and donations of illicit goods impounded in the United Kingdom, which traditionally incinerated illicit goods:²²⁶

²²² Available at https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

²²³ WCO News <https://mag.wcoomd.org/magazine/wco-news-86/storage-and-destruction-of-counterfeit-goods-the-safety-and-environmental-challenges/> accessed on 22nd November, 2019

²²⁴ Ibid

²²⁵ WIPO Advisory Committee on Enforcement: A Study Relating To Existing Methods Of Disposal And Destruction Of Counterfeit Goods And Pirated Goods Within The Asia Pacific Region, https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_6/wipo_ace_6_8.doc page 11

²²⁶ http://www.southwark.gov.uk/info/200098/trading_standards/1777/anti-counterfeiting/3

- a) Clothing & footwear is now collected by a registered charity “His Church” who de-brand items and export them as humanitarian aid e.g. remote orphanages in Liberia;
- b) Fake handbags/purses/DVD cases are donated to Police for use in the training of detector dogs;
- c) DVD's, CD's and other plastic goods are shredded and used in the manufacture of pens, pencil cases and binders; and
- d) Fake batteries are recycled safely and in an environmentally sensitive manner by the local Council's waste contractors.

JUDICIAL MECHANISMS IN THE FIGHT AGAINST ILLICIT TRADE

There are a number of gaps that exist in Kenya in relation to the judicial handling of illicit trade matters. The first is the lack of a specialized court or division of a court that handles both civil and criminal cases relating to illicit trade. It is prudent for Kenya to have a specialized court/court division in which judicial officers would be specially trained on the aspects of illicit trade so that they can make sound and practical decisions in those cases. A specialized court will also increase the speed at which illicit trade matters are heard; this is especially imperative since the delay of illicit trade cases leads to proliferation of illicit goods in the market which subsequently affects the health and safety of consumers.

Alternatively, the judiciary may train certain judicial officers in order to equip them to handle illicit trade matters within the existing court system.

The second is the shortage of specialized prosecutors who are trained on handling matters relating to illicit trade. As per the Constitution of Kenya, the prosecutorial power lies with the ODPP and may be delegated to other parties vide an Act of Parliament. The ODPP should therefore train more officers who can handle illicit trade matters.

Thirdly, there are a number of gaps in the regulations which apply to handling of illicit trade cases. For example, there are no guidelines on the destruction of goods which have been the subject of illicit trade; therefore, courts do not follow up to ensure that the goods have been destroyed. There are also no guidelines on the forfeiture of movable property which has been used to carry out illicit trade. In some cases, such movable property may be owned by innocent parties who are not party to the illicit trade transactions. The Kenya Law Reform Commission may carry out a study on the procedural gaps in illicit trade law and recommend the areas that may be regulated upon.

CHAPTER SEVEN

INTERNATIONAL BEST PRACTICE IN THE FIGHT AGAINST ILLICIT TRADE-RECOMMENDATIONS



INTERNATIONAL BEST PRACTICE IN THE FIGHT AGAINST ILLICIT TRADE-RECOMMENDATIONS

Illicit trade is a global problem that continues to grow leading to great risks to the society and the global economy. The national, regional and international regimes employed to prevent and mitigate the effects of illicit trade are diverse and intricate. Nonetheless, the criminal organisations behind illicit trade exploit the gaps and discrepancies between the policy and its enforcement. Further, the criminal organisations are constantly evolving in their tactics and using the latest technology to defeat the law.

The following practices have been implemented in various countries and have been of great assistance in combating illicit trade:

PROMOTING LEGITIMATE TRADE

The government is tasked with providing a conducive environment for the striving of legitimate trade. A conducive business environment for legitimate business will give incentive for the private-public partnership. Where legitimate businesses can thrive and have a competitive edge, they will be able to offer goods and services to the public at affordable prices which will eliminate the enticement of cheap prices offered by criminals. The government can ensure the thriving of legitimate business through the enactment of enabling laws and regulations and Providing a Conducive and competitive business environment.

ASSESSING THE MAGNITUDE OF ILLICIT TRADE

It is understandable that illicit trade in its nature is difficult to quantify since it is carried out in secret with the aim of avoiding detection. However, to effectively put mechanisms in place it is paramount for governments to have an estimate of the level of illicit trade within its own borders. Properly understanding the magnitude of the problem enables the proper allocation of resources and the direction of government policy.

To this end two methods have been popularly used in estimating the magnitude of illicit trade²²⁷.

a Residual Methods

Under this method, governments compare certain statistics in a bid to establish the trade gap filled by illicit trade. For instance, in estimating illicit tobacco trade, governments may compare reported sales based on declared and paid taxes with the self-reported cigarette consumption based on population surveys. In 2015 Senegal relied on GAT's surveys on the total cigarette consumption of the country and compared that information with the known legal market for tobacco to get an estimate of the illicit trade.²²⁸ This method is best characterized as indirect, as there are almost always other, non-illicit, reasons for different sources to yield different results. Therefore, certain assumptions must be made by researchers to produce proper estimates of the magnitude of illicit trade.

²²⁷ National Research Council. 2015. Understanding the U.S. Illicit Tobacco Market

²²⁸ World Bank Confronting Illicit Tobacco Trade: A Global Review of Country Experiences

b. Direct Measurement

This entails the carrying out of surveys to establish firsthand the magnitude of the illicit trade. This is similar to the Countrywide Baseline Survey on the size and impact of counterfeiting in Kenya carried out through the partnership of the ACA and TMEA.

A direct measurement may also be undertaken through expert groups such as manufacturers, law enforcement, industry representative amongst others.

POLITICAL GOODWILL AND SUPPORT

In the UK, there is a parliamentary group²²⁹ focused only on the combat of illicit trade within the UK. The group consists of parliamentarians from different parties and its main objective is to create awareness on the effect and impact of illicit trade and to come up with new ideas for tackling illicit trade. The group has been able to direct government policy toward the fight against illicit trade.

PUBLIC-PRIVATE PARTNERSHIP

Representatives from both the public and private sector should be pulled together into a group whose focus should be preventing and reducing incidences of illicit trade through education (awareness creation) and intelligence sharing. Scotland has been able to reduce the magnitude of illicit trade through its border by such a forum. The Scottish Anti-Illicit Trade Group (SATG) has been able to seize over 29 million Euros worth of illicit goods within 18 months of its establishment.²³⁰

It is also critical to appreciate the role of private business in aiding illicit trade and thus the role they should play in countering it. Some private businesses have been aiding illicit trade due to lack of information on how to tackle it, for instance commercial banks.²³¹ Other businesses of concern include the digital market players. By having the private sector brought on board, the government is able to leverage information availed by business to better allocate its resources in the fight against illicit trade.

STRENGTHENING ENFORCEMENT

This includes empowering of key agencies by strengthening their legislative powers and providing an inter-agency information sharing and coordination platform which will ensure effective regulatory recourse.

EDUCATION AND AWARENESS CREATION

The focus of trainings should not only be limited to law enforcement but should also extend to manufacturers, importers and the general public. Particularly, engaging consumers on illicit trade through awareness campaigns, training and other initiatives to communicate the impact and incidence of illicit trade will lighten the burden on the enforcement agencies. An informed society is able to offer better support in the fight against illicit trade. The public should be informed of the specific roles of the different agents to ensure that the fight against illicit trade is streamlined as per its varied forms.

²²⁹ Illicit trade All Party Parliamentary Group created in 2017

²³⁰ Scotland Police, 2018 submission before the APPG

²³¹ Bloomberg, 16 January 2015, "One Thing Gangs Smuggling Latin Migrants Over the Border Can't Do Without: Big U.S. Banks," <https://www.bloomberg.com/news/articles/2015-01-16/one-thing-gangs-smuggling-latin-migrants-over-the-border-can-t-do-without-big-u-s-banks>

HARNESSING TECHNOLOGY

Although technology has been used to drive illicit trade, it can also be used to counter it. Technology has been used in the tobacco industry for tracking and tracing of genuine products which has played a role in reducing the magnitude of illicit trade. In South Africa, the introduction of LoRaWAN (long-range wide area network) technology has made tracking of goods at various stages of the supply chain, particularly when it comes to the tracking of transported goods over long distances, affordable and easy²³². The technology has been deployed by traders in the tobacco industry to achieve an end-to-end supply chain audit trail designed to combat theft.

Satellite tracking has been used to tackle illicit fishing. The Pew Charitable Trusts has partnered with Satellite Applications Catapult to pioneer a system that enables government officials and other analysts to identify and monitor unlawful activities in global waters, particularly illegal, unreported, and unregulated fishing, sometimes referred to as pirate fishing. This cutting-edge technology merges satellite tracking and imagery data with other sources of information, such as fishing vessel databases and oceanographic data, to help monitor seas across the globe.

Technology may be used in Kenya especially in tracking wildlife in our reserves to eliminate poaching. Further, KeNIC may be vital in the bringing down of websites selling illicit goods. KeNIC should be empowered especially as it relates pirated, fake or counterfeit goods sold online.

REGIONAL AND INTERNATIONAL CO-OPERATION

Illicit trade is a cross-border problem and thus governments should cooperate in tackling it²³³. The establishment of an Anti -Illicit Trade Regulatory framework at a regional level for instance EAC will go a long way in eliminating illicit trade within the region²³⁴. Such a regulatory framework should include; inter alia: inter-agency coordination mechanism, information-sharing platforms, punitive measures for offenders, stronger enforcement measures and regional cooperation. Beyond the establishment of the regional framework, enforcement agencies such as customs official may set up an information sharing platform to easily capture criminals throughout the cross-border transaction.

Acceding to and nationalizing international treaties on the combat of illicit trade is also advisable so as to leverage on the techniques effected in other parts of the world.

232 Paul Stuttard, *New technologies in the fight against illicit trade* 2019

233 JCIC, *Illicit Trade Policy and Supply Chain Security*, <http://www.jcicinternational.com/illicit-trade-policy-supply-chain-security/> accessed on 22nd November 2019

234 COMESA Business Council, 2015 *Promoting manufacturing competitiveness in COMESA: Towards the establishment of A Framework for combating Illicit Trade in COMESA*

A Samsung laptop is shown from a top-down perspective, open. The screen displays a composite image featuring a wooden gavel with a gold band, a pair of silver handcuffs, and a red leather-bound book. The word "ANNEXURES" is overlaid in large, blue, sans-serif capital letters across the center of the screen. The laptop's keyboard and trackpad are visible below the screen.

ANNEXURES

ANNEXURE 1- SUMMARY OF BILATERAL, REGIONAL AND INTERNATIONAL INSTRUMENTS DEALING WITH ILLICIT TRADE

The table below provides a summary of the relevant international instruments and the forms of illicit trade they cover.

GOODS/Form of Illicit Trade	INTERNATIONAL INSTRUMENTS
Counterfeit and pirated products	Trade Related Aspect of Intellectual Properties Agreement; Paris Convention for the Protection of Industrial Property; Berne Convention for the Protection of Literary and Artistic Works
Human Trafficking, Forced Labor	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; supplementing the United Nations Convention against Transnational Organized Crime; Convention on the Rights of the Child
Narcotics and Psychotropic Substances	Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol; Convention on Psychotropic Substances of 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988
Protection of Endangered Species of Wild Fauna and Flora and illicit trade in Natural Resources	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Weapons and Arms	Trade in Arms Treaty; Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime
Excisable goods	WHO Framework Convention on Tobacco Control

ANNEXURE 2-AUTHORISED AGENTS PER REGIONS AS AT DECEMBER 2019

The regions and the authorised agents for purposes of the verification are as below:

REGION	COUNTRIES	PARTNER AGENT(S)
United Kingdom	Ireland, United Kingdom	Intertek, SGS, Bureau Veritas
China	China Mainland, Hong Kong, Taiwan, Mongolia	Bureau Veritas, Cotecna, Intertek, SGS
Indian Subcontinent	India, Pakistan, Sri Lanka, Bangladesh, Afghanistan, Myanmar, Nepal	Intertek, SGS, Bureau Veritas
Far East	Japan, Korea (South and North), Indonesia, Malaysia, Philippines, Thailand, Singapore, Vietnam, Cambodia	Intertek, Cotecna, SGS
Australia, New Zealand and Polynesia Islands	Australia, New Zealand, Papua New Guinea, Samoa, Polynesia Islands	Intertek, SGS
Central America and Caribbean	Mexico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Venezuela, Colombia, Brazil, Ecuador, Peru, Bolivia, Paraguay, Uruguay, Argentina, Chile, Cuba, Jamaica, Guyana, Dominican Republic	Intertek, SGS
Americas	USA, Canada	Intertek, SGS, Bureau Veritas
Ex-Soviet Union Republics	Latvia, Estonia, Lithuania, Belarus, Ukraine, Georgia, Armenia, Azerbaijan, Turkmenistan, Uzbekistan, Kazakhstan, Kyrgyzstan, Tajikistan, Russia	Intertek, SGS
Eastern Europe	Czech Republic, Slovakia, Romania, Hungary, Bosnia-Herzegovina, Serbia, Montenegro, Bulgaria, Macedonia, Albania, Poland, Moldova	Intertek, SGS
Mediterranean Europe	Turkey, Greece, Spain, Portugal, Malta, Cyprus	Intertek, SGS, Bureau Veritas
Central Europe	Italy, France, Switzerland, Belgium, Germany, Austria, Netherlands, Luxembourg, Liechtenstein	SGS, Bureau Veritas
Nordic Countries	Norway, Sweden, Finland, Iceland, Denmark	Intertek, SGS
Middle East	Iran, Iraq, Saudi Arabia, Oman, Jordan, Syria, Lebanon, Israel, Yemen, Bahrain, Qatar, Kuwait	Intertek, SGS
UAE	UAE	Intertek, Cotecna, SGS, Bureau Veritas
Maghreb Countries	Algeria, Morocco, Western Sahara	Intertek, SGS
North Africa	Egypt, Tunisia, Libya, Sudan, Chad, Eritrea, Ethiopia, Djibouti	Cotecna, SGS
West Africa	Mauritania, Senegal, Guinea, Mali, Burkina Faso, Cote D'Ivoire, Ghana, Togo, Nigeria, Equatorial Guinea, Niger, Cameroon, Gambia, Liberia, Guinea Bissau, Sierra Leone, Cape Verde, Benin	Intertek, SGS
Central Africa	DRC, Gabon, Congo Brazzaville, Angola, Central Africa Republic	Intertek, SGS
Southern Africa	Zambia, Malawi, Mozambique, Madagascar, Seychelles, Namibia, Lesotho, South Africa, Botswana, Zimbabwe, Swaziland, Mauritius	Intertek, SGS, Bureau Veritas

ANNEXURE 3- INSTITUTIONS' CONTACTS

Kenya Police Headquarters

Vigilance House
2240000/0726-035455/020341411
Or any nearest Police Station or Police Post

Anti-Counterfeit Authority

National Water Plaza,
3rd Floor, Dunga Road Junction Industrial Area,
P.O. Box, 47771-00100 (GPO), Nairobi, Kenya.
Phone: +254 20-2280000, Fax: +254-20-2225124/31, Mobile: +254 717 430 640
Email: info@aca.go.ke Homepage: <http://www.aca.go.ke>

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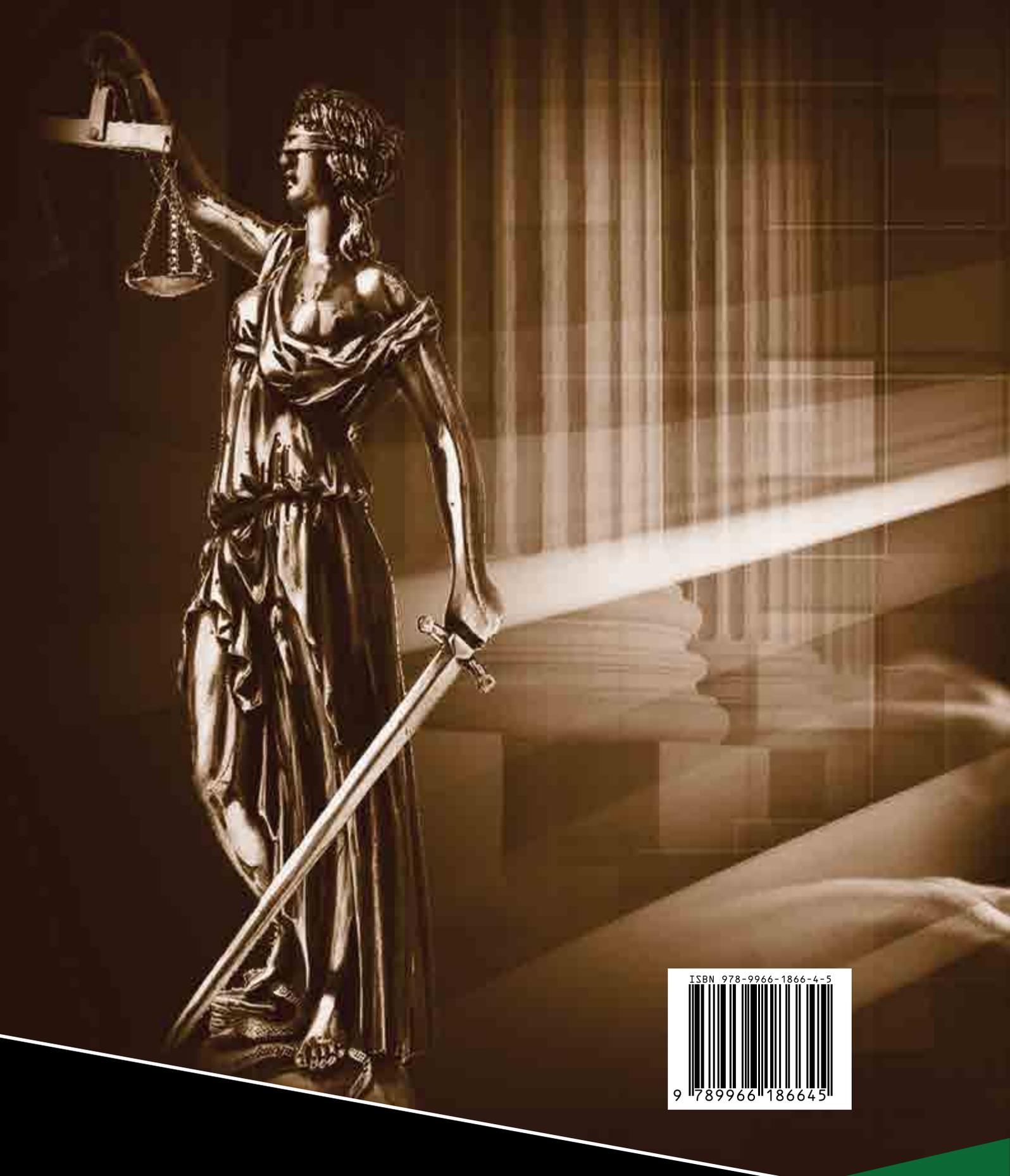
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