



REPUBLIC OF KENYA



2020

PRACTITIONERS GUIDE

FOR ENFORCEMENT OFFICERS

ON COMBATING ILLICIT TRADE





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PRACTITIONERS GUIDE FOR ENFORCEMENT OFFICERS ON COMBATING ILLICIT TRADE

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TABLE OF CONTENTS

TABLE OF CONTENTS	iii
ABOUT THE NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE (NCAJ)	vi
FOREWORD.....	vii
ACKNOWLEDGEMENT	viii
EXECUTIVE SUMMARY.....	ix
ABBREVIATIONS	x

PART I.....	1
INTRODUCTION.....	2
DEFINING ILLICIT TRADE	3
ILLICIT TRADE IN KENYA.....	3
Drug Trafficking	4
Wildlife and Wildlife Products	5
Counterfeit Goods and Other Illicit Commodities	6
Small Arms and Light Weapons (SALW).....	8
Human Trafficking	10
Money Laundering.....	11
IMPORTANCE OF COMBATING ILLICIT TRADE IN KENYA.....	11

PART II	13
LAWS CRIMINALISING ILLICIT TRADE.....	13

PART III.....	22
INVESTIGATIONS	22
Searches and Seizures	23
Search with a Warrant.....	23
Searches Without Warrant.....	24
Search of Persons	27
Preservation, Analysis and Storage of Evidence	27
Identifying Suspects	29

PART IV	31
PROSECUTING ILLICIT TRADE CASES.....	31
Institution of Criminal Proceedings	31
Pre-Trial Detention.....	31
Preparing The Charge Sheet.....	31
Facilitating Witness Protection	33
Bail and Bond	33
Plea Bargaining	35
Diversion	36
The Trial Process.....	37
In Camera Trial.....	38
Presence of Accused Persons.....	38
Presence of Complainant.....	38
Compelling Attendance of Witnesses	38
Examination In Chief	38
Cross Examination	39
Re-Examination	39
Prima Facie Case / Case to Answer	39
Defence Case	39
Sentencing	40
Victim Impact Statements.....	40
Post-Trial Handling of Exhibits.....	40
PART V	42
INTER-AGENCY COOPERATION	42
ANNEXURES	55
ANNEXURE I	55
ANNEXURE II.....	57

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

The problem of illicit trade is a global threat. From the smuggling of counterfeit goods to the trafficking in humans and wildlife, the effects of illicit trade are devastating. The trade in counterfeit goods is not only responsible for an annual deficit of about US\$2.2 trillion on the global economy, but also for up to 116,000 malaria deaths annually in sub-Saharan Africa alone¹. Illegal wildlife trafficking is estimated to generate a value of between US\$7 billion and US\$23 billion each year².

In Kenya, several laws and policies have been put in place in order to combat illicit trade. Despite this, illicit trade continues to thrive in Kenya. Counterfeit goods worth up to KShs 100 million, with a high of KShs 1.5 billion in illicit excisable goods, have been impounded and destroyed³.

It is therefore evident that the problem of illicit trade not only poses a threat to the health and safety of consumers, but also to the prosperity of wildlife and other natural resources, the development of businesses and innovation, and the growth of the economy.

Additionally, illicit trade enables the flourishing of terrorism and related crimes. The trade in illicit firearms as well as human, wildlife and drug trafficking are major financiers to various terrorist activities. Money laundering enables the flow of such monies for use in relation to such terrorist activities. With a rise in the global incidences of terrorism, the enablers of terrorism including illicit trade, must be arrested in order to protect the society from harm.

The Practitioners' Guide for Enforcement Officers on Combating Illicit Trade is a precis to the Enforcement Manual to Combat Illicit Trade in Kenya, 2020. The Practitioners' Guide will assist investigators, prosecutors and judicial officers in the identification and prosecution of crimes relating to illicit trade. The Practitioners' Guide is also meant to raise awareness on the problem of illicit trade and its immense effects on consumers, businesses, wildlife and other natural resources as well as the economy. The Practitioners' Guide highlights the various laws that have been enacted and amended in order to combat illicit trade, as well as the institutions charged with this mandate in Kenya. The Practitioners' Guide also advocates for the strengthening of efforts used to counter illicit trade by recommending the collaboration of the various agencies and institutions tasked with combatting illicit trade.

The Practitioners' Guide is therefore a significant resource for use by investigators, prosecutors, judicial officers and the general public in the identification and elimination of illicit trade in Kenya. Technical leadership and support.

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).



Hon. Justice David K. Maraga, EGH
Chief Justice and President of the
Supreme Court of Kenya

1 TRACIT 2019 Mapping The Impact Of Illicit Trade On The Sustainable Development Goals https://unctad.org/meetings/en/Contribution/DITC2019_TRA-CIT_IllicitTradeandSDGs_fullreport_en.pdf; <https://qz.com/africa/1263133/malaria-kills-many-because-of-fake-drugs/>

2 World Economic Forum <https://www.weforum.org/agenda/2016/09/fighting-illegal-wildlife-and-forest-trade/>

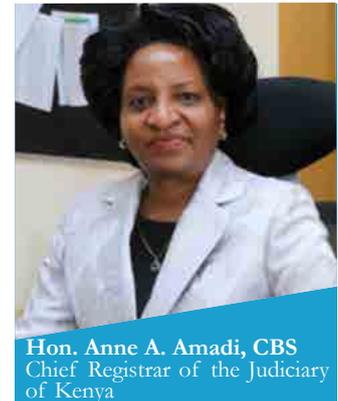
3 ACA 2018 Fake goods worth Sh100m seized at Mombasa Port <https://www.aca.go.ke/media-center/aca-in-the-news/83-fake-goods-worth-sh100m-seized-at-mombasa-port>; <https://www.standardmedia.co.ke/business/article/2001340418/kra-destroys-contraband-worth-sh1-5b>

ACKNOWLEDGEMENT

The Practitioners' Guide for Enforcement Officers on Combating Illicit Trade in Kenya was prepared through the collaborative efforts of several stakeholders, among them state agencies and non-state actors that are committed to eliminating illicit trade. The publication of the Practitioners' Guide is informed by the need to strengthen the legal framework for dealing with illicit trade in Kenya.

This Practitioners' Guide was prepared 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 drafting of this Practitioners' Guide. We would also like to acknowledge the NCAJ for offering strategic direction in the preparation of the Practitioners' Guide.



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

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 (KIPPR); 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 Practitioners' Guide 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), Ms. Irene Omari (NCAJ Secretariat), Mr Isaac Gachoka (KRA), Mr Linstrom Kinoti (KRA), Mr Adan Shibia (KIPPR), 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).

EXECUTIVE SUMMARY

The Enforcement Manual to Combat Illicit Trade in Kenya was first drafted in 2014 through a joint initiative between the Kenya Association of Manufacturers (KAM) and the National Council on the Administration of Justice (NCAJ). The Manual was then launched in 2015.

Following the amendment and enactment of various legislation and policies dealing with the various forms of illicit trade, both KAM and NCAJ saw it fit to update the Enforcement Manual in order to ensure that it remained relevant, reliable and effective reference points for enforcement officers, practitioners and the general public in the fight against illicit trade.



Sachen Gudka
KAM Chairman

In the same light, KAM and NCAJ commissioned the drafting of the Practitioner's Guide. The purpose of this Practitioner's Guide is to summarize the contents of the Enforcement Manual for use by enforcement officers, practitioners and the general public in the fight against illicit trade. It is an easy reference tool that highlights the various forms of illicit trade in Kenya; the national, regional and international laws relating to illicit trade in Kenya; the procedures for the investigation and prosecution of illicit trade; the institutions involved in combatting illicit trade; and various checklists to be used by investigators, prosecutors and judicial officers in the performance of their duties.

Additionally, this Practitioner's Guide aims at strengthening the efforts being made towards combating illicit trade in Kenya. It highlights how the various agencies tasked with combating illicit trade can work together in order to reduce the incidences of illicit trade and its harmful impact on the health and safety of individuals, wildlife and other natural resources, intellectual property protection and the economy, among others.

This Practitioner's Guide is therefore a useful tool in creating awareness on the problem of illicit trade in Kenya, by promoting an understanding of the relevant laws relating to illicit trade in Kenya. The Practitioner's Guide also serves as a source of relevant and reliable information for the identification, investigation and prosecution of various forms of illicit trade in Kenya.

Mr. Sachen Gudka
Chairman, Kenya Association of Manufacturers

ABBREVIATIONS

ACA	Anti-Counterfeit Authority
ACECA	Anti-Corruption and Economic Crimes Act
CPC	Criminal Procedure Code
DCI	Directorate of Criminal Investigations
DPP	Director of Public Prosecutions
EAC	East African Community
EACC	Ethics and Anti-Corruption Commission
FATF	Financial Action Task Force
GDP	Gross Domestic Product
IFF	Illicit Financial Flow
INTERPOL	International Criminal Police Organization
IP	Intellectual Property
IT	Information Technology
ISTAK	Importers and Small Traders Association of Kenya
KAM	Kenya Association of Manufacturers
KEBS	Kenya Bureau of Standards
KECOBO	Kenya Copyright Board
KFS	Kenya Forest Services
KIPI	Kenya Industrial Property Institute
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KPS	Kenya Police Service
KWS	Kenya Wildlife Services
NCAJ	National Council on the Administration of Justice
NEMA	National Environmental Management Authority
NISTA	Nairobi Importers and Small Traders Association
OB	Occurrence Book
ODPP	Office of the Director of Public Prosecutions
OP	Office of the President
PVoC	Pre-Export Verification of Conformity
SME	Small and Mid-size Enterprises
SSA	Sub-Saharan Africa
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office on Drugs and Crime

PART I

INTRODUCTION





PART I

INTRODUCTION

Illicit trade is generally defined as any trade that contravenes the law; there are various forms such as smuggling, counterfeiting, piracy, illicit manufacturing of goods, dumping and trade in prohibited and restricted goods. The United Nations Conference on Trade and Development (UNCTAD) estimates the industry to be worth about US\$ 2.2 trillion annually. Despite worldwide efforts to curb illicit trade, it continues to thrive because of factors such as weak border controls, corruption, consumer demand for cheaper products, inadequate laws and regulations and poor collaboration between relevant agencies. Further, the different forms of illicit trade are interconnected. For example, the proceeds of illicit trade in narcotics are used to fund counterfeiting. In turn, the networks which are used to transport counterfeit goods are also used to smuggle drugs, firearms and humans.

There are a number of products that are prone to illicit trade such as pharmaceutical products and fast moving consumer goods subject to intellectual property rights; and flora and fauna.

Illicit trade has a wide range of effects on the general public, industries and governments. From an economic perspective, illicit trade leads to loss of revenue in the form of taxes, loss of value for manufacturers whose goods are subject to illicit trade and loss of jobs. The revenues which are lost through illicit trade could be used to improve public services, especially in developing countries. Illicit trade leads to the proliferation of goods which have not been subjected to safety standards thus risking the health and safety of the general public. Additionally, the proceeds from illicit trade are often used to fund other illegal activities such as terrorism which threaten national and world security.

In order to combat illicit trade, it is imperative for a country to have in place a strong domestic legal framework and a system for the effective implementation of those laws. It is also necessary for the relevant agencies to coordinate their efforts in order to better combat illicit trade. In Kenya, the relevant agencies are already working together through the Inter-Agency Working Group on Illicit Trade.

This guide has been developed with the aim of enhancing the capability and skills of investigators, prosecutors and judicial officers to adequately detect and handle cases of illicit trade in Kenya. It is particularly intended for those involved in the investigation and prosecution of illicit trade related crimes and the enforcement of the laws against the offenders. It provides practitioners who may be involved in the investigations, prosecution and trial of cases of illicit trade with the necessary knowledge and guidance to handle various aspects of the offense. Through this guide, investigators, prosecutors and judicial officers will find technical and practical information/knowledge and legal tools to assist them in their roles of ensuring enforcement of the law on illicit trade.

DEFINING ILLICIT TRADE

The Ministry of Industry, Trade and Cooperatives of Kenya defines illicit trade as: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.

Therefore, illicit trade in relation to Kenya is any trade that contravenes the Constitution of Kenya, statutes of Kenya or any international treaty that Kenya is party to. Common types of illicit trade include:

- 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

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.

The Kenya Association of Manufacturers (KAM) estimates that Kenya loses approximately US\$42 million annually to illicit trade while the government loses approximately US \$80 million annually in revenue.² Further, it is estimated that Kenya loses about US\$ 400 million a year through illicit financial flows.

KAM estimates that the governments in the EAC region lose about US\$ 500 million in revenue from counterfeit and substandard products.³ 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.

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

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

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, the Proceeds of Crime and Anti Money Laundering Act among others. There are also a number of agencies which are responsible for combatting illicit trade such as the Anti-Counterfeit Authority (ACA), the Kenya Copyright Board (KECOBO), Kenya Wildlife Service (KWS) as well as non-governmental organisations such as KAM.

In April 2018, the Kenyan law enforcement agencies, the private sector, consumer organizations and civil society formed the Inter-Agency Anti-Illicit Working Group to forge a joint action against counterfeits and other forms of illegal commerce.



Delegates during the launch of the Inter-Agency Anti-Illicit Working Group at the Boma Hotel, Nairobi on 3rd April 2018⁴

The most prevalent forms:

Drug Trafficking

According to the Directorate of Criminal Investigations, the common types of drugs trafficked in Kenya are cannabis, heroin, cocaine, and club drugs such as ecstasy, rohypnol, GHB, and Ketamine.⁵ The drugs originate from different places both locally and internationally; for example heroin is said to mainly originate from Afghanistan, Pakistan, Iraq or Turkey while cocaine is said to mainly originate from Brazil, Mexico, Columbia and Venezuela.⁶ Offences relating to drug trafficking are contained in the Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994.

⁴ Inter-Agency Anti-Illicit Working Group Launched in Nairobi to Fight Trade in Counterfeits <https://www.aca.go.ke/media-center/news-and-events/93-press-release-inter-agency-anti-illicit-working-group-launched-in-nairobi-to-fight-trade-in-counterfeits>

⁵ <http://www.cid.go.ke/index.php/sections/specializedunits/anti-narcotics.html>

⁶ Ibid

Due to the proliferation of drug trafficking, the government has in recent years taken tough steps in the fight against the vice. For instance, 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 2018, the Kenyan authorities extradited the Akasha brothers to the United States to face prosecution for drug related offences.⁷



A ship carrying heroin worth over US\$ 10 million is blown up at the Kenyan Coast on Friday 29th August, 2014.⁸

Wildlife and Wildlife Products

Kenya is home to a variety of flora and fauna and that has brought with it the unwanted effect of illicit trade in wildlife and wildlife products. One of the most common forms of illicit trade in wildlife is poaching which is defined in the Wildlife Conservation and Management Act as the illegal hunting, illegal capturing and illegal harvesting of any wildlife.

According to the Kenya Wildlife Society the illicit trade “involves networks of organized dealers, financiers, suppliers, brokers and merchants.” Ivory is the most sought after item. Its illicit trade continues to increase at an accelerated rate. The Kenya Wildlife service also observes that one of its most daunting challenges is that of wildlife poaching, smuggling and/or trafficking of trophies like ivory and rhino horn through Kenya.⁹

In response to the threat of poaching, Kenya has been destroying ivory stockpiles in public; the largest ever cache was destroyed on the Kenya Wildlife Day in 2015.

⁷ <https://citizentv.co.ke/news/akasha-brothers-extradited-to-us-to-face-drug-related-charges-156392/>

⁸ The MV Al Noor is blown up by the Kenya Navy on August 29, 2014 published in the East African on 14th August 2015 courtesy of Nation Newspaper

⁹ KWS Annual Report 2013



15 tons of Ivory set on fire in Kenya on the World Wildlife day, 3rd March 2015¹⁰

Counterfeit Goods and Other Illicit Commodities

KAM estimates that Kenya loses approximately US\$ 2 billion annually to counterfeit goods and illicit trade every year.¹¹ The Anti-Counterfeit Authority identified the following products as being the most prone to counterfeiting;

- Mobile phones
- common medicines and drugs (pharmaceuticals);
- electrical and electric equipment;
- alcoholic beverages;
- cigarettes;
- soap and detergents;
- dry cell batteries;
- pens and pencils;
- motor vehicle and motorcycle;
- tyres, tubes and spare parts;
- seeds and fertilizers;
- shoe polish;
- artistic and musical works; and
- cosmetics, perfumes and hair additions;

Counterfeits and pirated products pose serious risks including great risks to public health and safety. They lead to the loss of international competitiveness by intellectual property owners, loss of government revenue, stifling of creativity and innovation and loss of trade and investment competitiveness.

¹⁰ Voice of Africa, Kenya Burns 15-ton Ivory Pile in Defiance of Trade, published on 3rd March 2015

¹¹ Lobby: Kenya loses Sh200b to counterfeits annually <https://www.standardmedia.co.ke/business/article/2001285663/kenya-loses-sh200b-to-counterfeits-annually>

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’.¹²



Officials of ACA and KAM supervising the destruction of illicit goods in Mombasa in September, 2019¹³

- 12 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
- 13 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>

Small Arms and Light Weapons (SALW)

The Nairobi Protocol on Small Arms¹⁴ defines small arms as those weapons designed for personal use such as revolvers and self-loading pistols and light weapons as those designed for use by several persons serving as a crew such as portable anti-aircraft guns. The illicit trade in small arms and light weapons occurs in all parts of the globe but is more prevalent in areas affected by armed conflict, violence, and organized crime, where the demand for illicit weapons is often highest.¹⁵ Illicit trade is also exacerbated by inadequate regulation of SALW, a lack of and/or proper implementation of legislation, and/or inadequate enforcement of existing regulations and legislation.¹⁶ Illicit trade in SALW is a problem that Kenya continues to grapple with. In 2016, the government in the Annual State of the National Security Report to Parliament reported that there were upto 600,000 illicit arms circulating in Kenya.¹⁷ In 2003, the Kenya National Focal Point on Small Arms and Light Weapons (KNFP) was formed as an interagency directorate within the Office of the President to coordinate the fight against illicit trade in SALW. The KNFP was instrumental in formulating the Kenya National Action Plan for Arms Control and Management in 2006.¹⁸ Due to the persistent threat of SALW, the drafters of the Vision 2030 blueprint included a program on the management and control of SALW. Some of the projects under the program include:¹⁹

- a) **District Awareness Forums:** Public forums at district level will be held to create awareness and interact with communities on the issue of small arms and light weapons. It is expected that these forums will be institutionalized in at least 20 districts in traditionally conflict and crime prone districts across the country.
- b) **SALW Retrieval:** Building on the success of retrievals achieved in the ERS period, law enforcement agents will continue to work closely with defence forces to retrieve illegal SALW.
- c) **SALW Policy Framework:** To formally institutionalize the KNFP, which currently coordinates SALW monitoring efforts through the Provincial Administration, a national policy framework on SALW will be developed and implemented during the MTP period.

The main sources of illicit firearms into Kenya are its neighbouring countries.²⁰ Kenya shares porous borders with some politically unstable countries in Africa such as Somalia and South Sudan. Arms have traditionally found their way into the country through these porous borders. Somalia is perceived to be the main source of most arms in Kenya, but firearms are thought to come from Ethiopia, Uganda, and Southern Sudan as well.²¹ Poor and corrupt policing of the borders between Kenya and its neighbours has facilitated the influx of large quantities of small arms into Kenya.²² A survey carried out by the KNFP revealed the common routes used to transport small arms as follows:

14 Known in full as the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States

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

16 Campaign to Address the Illicit Trade in Small Arms and Light Weapons (SALW) and to Promote the Arms Trade Treaty (ATT) <https://www.pgaction.org/ips/illicit-salw.html>

17 650,000 illegal firearms in circulation in Kenya, report reveals <https://www.standardmedia.co.ke/article/2000198259/650-000-illegal-firearms-in-circulation-in-kenya-report-reveals>

18 Security and firearms proliferation in Kenya: progress and challenges <http://www.smallarmssurvey.org/about-us/highlights/highlight-kenya.html>

19 Small Arms and Light Weapons (SALW) Control and Management <http://vision2030.go.ke/project/small-arms-and-light-weapons-salw-control-and-management/>

20 'Availability of Small Arms and Perceptions of Security in Kenya: An Assessment' Small arms Survey, 2012

21 Ibid

22 Kizito Sabala, "The Proliferation, Circulation and Use of Illegal Firearms in Urban Centers: Case of Nairobi, Kenya." Bonn: BICC, 2002

Region	Main source	Means*	Routes
Nairobi	Somali, Uganda, Sudan	Road, rail, government vehicles, individuals	Garissa- Eastleigh Lodwar-Eldoret-Nakuru Mombasa-Nairobi Maralal-Nyahururu-Nairobi Ethiopia-Moyale-Isiolo-Nairobi
Central Kenya	Somali, Uganda, Sudan	Road, individuals	Isiolo-Nyeri Nairobi-Thika Nairobi-Kiambu
Coast	Somali, Tanzania	Road, people, animals	Lunga Lunga-Mombasa Kiunga-Lamu-Malindi-Mombasa Ocean-various ports & homes - Mombasa
North Eastern	Somalia Ethiopia	Road, people, animals	Somalia-Mandera Somalia-Garissa Mandera-Wajir Ethiopia-Mandera-Wajir
Upper Eastern	Somalia, Ethiopia	Road, animals, traders, government vehicles	Moyale-Marsabit-Isiolo Garissa-Isiolo-Marsabit
North Rift/ Western	Somalia, Ethiopia, Sudan, Uganda	Road, traders, community to community	Sudan-Lockichoggio-Lodwar-Kapenguria-Eldoret Ethiopia-Maralal-Nyahururu Kapenguria-Tot-Kapedo Uganda-Lodwar Uganda-Kapenguria-Kitale-Bungoma
Central Rift	Somalia, Ethiopia, Sudan, Uganda	Road, traders, community to community	Kitale-Eldoret-Nakuru Nairobi-Naivasha-Nakuru Nyahururu-Nakuru
South Nyanza	Tanzania	Road, traders, community	Tanzania-Isebania-Kisii

Human Trafficking

Kenya is a source, transit and destination country for men, women and children who are subjected to forced labor and sex exploitation. Human trafficking mostly takes place for the purposes of labour and it includes an exploitative element of the persons being trafficked.

As a country of origin, Kenyans are trafficked to other African countries and to European countries for the purposes of domestic labour and sexual exploitation and to Middle East and North American countries for domestic work, forced labour and commercial sexual exploitation. Others are lured with promises of overseas jobs but are forced into prostitution in various countries. As a country of transit, victims are trafficked through Kenya enroute to other countries. As a destination country victims are trafficked into Kenya.

Trafficking in persons is a violation of rights to freedom and security of the person, and the freedom from slavery, servitude and forced labor.



Infographic from the Nation Media Group on the menace of Human Trafficking²³

23 Families are four times more involved in the trafficking of children than of adults Nation NewsPlex 27th July 2019

Money Laundering

The Financial Action Task Force defines money laundering as the processing of criminal proceeds to disguise their illegal origin.²⁴ The United Nations Office on Drugs and Crime estimates that the amount of money laundered is in the region of US\$2 trillion.²⁵

In response to the threat of money laundering, Kenya enacted the Proceeds of Crime and Anti Money Laundering Act of 2009. This Act established the Financial Reporting Centre and the Asset Recovery Agency which are responsible for discharging the mandates under the Act.

The Central Bank of Kenya, as the regulator of banks in Kenya, has also released a number of regulations to curb money laundering such as the Anti - Money Laundering Guidelines for the Provision of Mobile Payment Services.

Despite the enactment of laws and regulations to combat money laundering in Kenya, the country still remains at a high risk for money laundering.

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.²⁶

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.²⁷ 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.²⁸

Many SMEs in both developed and developing countries rely heavily on IP rights.²⁹ 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,³⁰ while creating employment opportunities.

24 <https://www.fatf-gafi.org/faq/moneylaundering/>

25 <https://www.unodc.org/unodc/en/money-laundering/globalization.html>

26 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, 26th June 2012

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

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

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

30 Ibid

PART II

LAWS CRIMINALISING ILLICIT TRADE



PART II



LAWS CRIMINALISING ILLICIT TRADE

The prerequisite for any sound national strategy aimed at tackling illicit trade through investigations and prosecutions, is to have a clear understanding of the laws and institutions tasked with combating illicit trade both at the national level and the international level. Investigators must locate the illicit trade offence within the legal framework and be well-versed with the sanctions applicable.

The 2020 Enforcement Manual to Combat Illicit Trade in Kenya (“the Manual”) discusses the various laws governing illicit trade, by outlining the various offences, penalties and elements needed to prove such offences. This section gives a brief summary of the various laws that enforcement agencies and officers can make reference to when handling illicit trade cases.

Summary of Selected Statutes on Illicit Trade

Legislation	Purpose
Alcoholic Drinks Control Act, No. 4 of 2010	<p>The Act provides for the regulation of the production, sale and consumption of alcoholic drinks. One of the objectives of the Act is to adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting.</p> <p>The Act prohibits the manufacture, production, sale, importation and exportation of alcoholic drinks without a license. The procedure for obtaining such license is outlined in the Act, and various District Alcoholic Drinks Regulation Committees are established for this purpose. The Act also allows authorized officers to enter and inspect premises and seize any alcoholic drinks sold in contravention of the Act.</p> <p>Some of the offences include:</p> <ul style="list-style-type: none">(a) Failure to prominently and conspicuously display a license in premises in which alcohol is sold; and(b) Failing to display that the sale of alcohol is prohibited to minors.
Agricultural Produce (Export) Act, Cap 319	<p>The Act provides for the grading and inspection of agricultural produce to be exported. The purpose of the Act is to better the regulation of the preparation and manufacture of such produce. The Act also makes provision for the inspection of animal produce intended for export, and the inspection of the premises in which animals are slaughtered, or in which produce is prepared or manufactured.</p> <p>It prohibits the exportation of unsound produce including any animal produce which is infected with any disease, rendering such produce unfit for human consumption. It allows for seizure and destruction of such produce. It also includes provisions for regulating the use of slaughter houses. Inspectors under the Act have the powers to enter and inspect premises where any Agricultural produce or animal produce intended for export, is kept.</p>

Legislation	Purpose
<p>Anti-Counterfeit Act, No. 13 of 2008</p>	<p>The main purpose of the Act is to prohibit trade in counterfeit goods and to establish the Anti-Counterfeit Authority (“ACA”).</p> <p>The Act now includes additional inspection powers for Anti-Counterfeit inspectors such as the:</p> <ul style="list-style-type: none"> a) power to investigate any offence related to counterfeiting even though that offence is not provided for under this Act; b) same powers as are exercised by a customs officer with regard to importation of counterfeit goods under the East African Community Customs Management Act, 2005 c) power to enter any premises suspected to contain evidence of the commission of an offence. The inspector must apply to a magistrate for a warrant. The warrant is only valid for one month; d) power to take any other persons and such equipment for the purpose of entering the premises stated above. <p>Additionally, under the Act, the Executive Director of the ACA has been given similar powers to the Commissioner of the KRA to give orders to seize and detain all suspected counterfeit goods under the Act.</p> <p>The Act now also includes the following additional offences¹:</p> <ul style="list-style-type: none"> a) Importing into or transit through Kenya/ Having in possession or control in the course of trade any packaging material on which, a counterfeit mark has been applied to, the use of which is likely to deceive consumers as to the origin of the goods (including labels etc.) b) Importing into Kenya, any goods or items bearing a trade mark, trade name or copyright that has not been recorded with the ACA. c) Importing into Kenya, in the course of trade, any unbranded goods or items except raw materials. <p>Lastly, the Act also outlines the procedure for making complaints by intellectual property rights holders.</p>
<p>Anti-Doping Act, No 5 of 2016</p>	<p>The purpose of this Act is to give effect to the World Anti-Doping Code and the United Nations Educational Scientific and Cultural Organization Convention Against Doping in Sport. The Act also regulates sporting activities free from the use of prohibited substances and methods in order to protect the health of athletes. The Act further provides for the establishment and management of the Anti-Doping Agency.</p> <p>Some of the offences under the Act include:</p> <ul style="list-style-type: none"> a) Unlawfully transporting or transferring prohibited substances, within or outside Kenya; b) Stocking prohibited substances in an unlawful manner; c) Administering, applying or generally causing an athlete to use prohibited substances; d) Using or causing another person to use a prohibited substance or method in a gym, fitness centre, private club etc.
<p>Competition Act, No. 12 of 2010</p>	<p>The Act aims to protect consumers from unfair and misleading market conduct in order to increase efficiency in the production, distribution and supply of goods and services; promote innovation; protect consumers and create an environment conducive for investment, both foreign and local. It provides for the establishment of the Competition Authority and the Competition Tribunal.</p> <p>The Act provides for offences relating to the commission of any of the listed restrictive trade practices under Section 21 of the Act, including:</p> <ul style="list-style-type: none"> (a) collusive tendering; and (b) using an intellectual property right in a manner that goes beyond the limits of fair, reasonable and non-discriminatory use. <p>The act also criminalises false representation, in the course of trade, of the standard, quality, value, grade, composition, style or model of any goods/services.</p>

Legislation	Purpose
Consumer Protection Act, No. 46 of 2012	<p>The Act aims to protect consumers against unfair trade practices. It prohibits unfair practices such as false representation of goods and services, including in terms of quality, grade, style or model and unconscionable representation. It outlines rights and obligations of various consumer agreements and provides for consumer representation in all regulatory bodies.</p> <p>Some of the offences include: the advertisement of illegal internet gaming sites and charging consumers for unsolicited goods or services.</p>
Copyright Act, No. 12 of 2001	<p>The Act provides for the recognition and protection of copyright in literary, musical and artistic works, audio-visual works, sound recordings, and broadcasts. It also establishes the Kenya Copyright Board.</p> <p>The Act now allows for the issuance of a takedown notice to Internet Service Providers (ISPs) to remove any infringing content.</p> <p>The Act also now includes the following additional offences²:</p> <ul style="list-style-type: none"> (a) Making for sale or hire any infringing copy (b) Importing into Kenya otherwise than for private and domestic use any infringing copy (c) Making or having in possession a contrivance used or intended to be used for the purpose of making an infringing copy (d) 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 (e) Falsely or maliciously lodging a takedown notice or a counter notice under this section
Counter-Trafficking in Persons Act, No. 8 of 2010	<p>The Act implements Kenya's obligations under the United Nations Convention against Transnational Organized Crime particularly, its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The Act also comprehensively covers the offence of trafficking in persons and other related offences, modalities of trial of offenders and an elaborate system on victim assistance. It further establishes a Fund for victims of trafficking.</p> <p>Some of the offences include financing the trafficking of persons and adoption of children for purposes of trafficking.</p>
Customs and Excise Act, Cap 472	<p>The Act provides for the management and administration of customs and the assessment, charge and collection of customs duties. It outlines the goods which are subject to customs control, which include all goods imported into Kenya, regardless of the means of importation.</p> <p>It also lists prohibited and restricted goods in relation to both import and export. It gives custom officers the power to examine goods subject to customs control at any time and outlines the procedure to be used in examining such goods. The Act further provides for the procedure of warehousing of goods; manufacture of goods under bond as well as manufacture of excisable goods. Duties to be levied on goods and the manner of computation of such duty is outlined in the Act.</p> <p>Elaborate provisions to prevent smuggling and evasion of duty are outlined, including powers of officers to search premises, vessels and persons. Offences and penalties are also outlined as well as the process of instituting legal proceedings.</p> <p>Some of the offences include:</p> <ul style="list-style-type: none"> a) Depositing transit goods in a place other than one appointed by the Commissioner of KRA; b) Entering or leaving port through un-appointed area; and c) Interfering with goods subject to customs control without lawful authority.

Legislation	Purpose
Excise Duty Act, No. 23 of 2015	<p>The main purpose of the Act is to provide for the charge, assessment and collection of excise duty.</p> <p>It is important to note that pursuant to the Excise Duty Act, 2015 and Legal Notice 53 of 30th March, 2017 (Excisable Goods Management System Regulations), all licensed manufacturers, importers, distributors and retailers of bottled water, juices, energy drinks, soda and other non-alcoholic beverages manufactured in, or imported into Kenya, are required to affix excise stamps on their products.</p> <p>Only licensed manufactures and importers of Excisable goods can obtain Excise stamps in accordance with Section 15 of the Excise Duty Act.</p> <p>Some of the offences include the:</p> <ol style="list-style-type: none"> a) Manufacture and importation of excisable goods without a license; and b) Buying or receiving or having in possession, any excisable goods that have been manufactured contrary to the provisions of the Act, without proper authority.
Environmental Management and Co-ordination Act, No. 8 of 1999	<p>The Act provides for the management of the environment and the establishment of the National Environment Management Authority (NEMA) and the National Environment Tribunal.</p> <p>Some of the offences include:</p> <ol style="list-style-type: none"> a) Contravention of any conservation measure prescribed by the Authority; and b) Releasing or causing to be released into the coastal zone any polluting or hazardous substances contrary to the provisions of the Act.
Fertilizers and Animal Foodstuffs Act, Cap 345	<p>The main purpose of the Act is to regulate the importation, manufacture and sale of agricultural fertilizers and animal foodstuffs and substances of animal origin intended for the manufacture of such fertilizers and foodstuffs.</p> <p>It imposes restrictions on the importation, manufacture and sale of agricultural fertilizers and animal foodstuffs unless they conform to the standards listed under the Act. It provides for the appointment of inspectors and empowers them to enter and inspect premises where there are reasonable grounds for believing that there is any fertilizer, animal foodstuff or sterilizing plant or records pertaining to the importation, manufacture or sale of fertilizer or animal foodstuff or to the operation of such sterilizing plant.</p> <p>The Act further provides for the establishment of the Fertilizer and Animal Foodstuffs Board of Kenya.</p> <p>Some of the offences include:</p> <ol style="list-style-type: none"> a) Dealing with unapproved fertiliser. This includes importing, manufacturing, compounding, mixing or selling fertiliser; and b) Importing fertiliser containing bone or substance obtained from carcass.
Fisheries Management and Development Act, No. 35 of 2016	<p>The Act provides for the conservation, management and development of fisheries and other aquatic resources in order to enhance the livelihood of communities dependent on fishing. The Act also provides for the establishment of the Kenya Fisheries Service.</p> <p>Some of the offences include:</p> <ol style="list-style-type: none"> a) Importation of live fish/ releasing of any live fish imported into Kenya into the fishery waters without written approval of director general; and b) Buying, selling, possessing or otherwise trading in fish, fish products, or other fisheries resources which have been obtained in contravention of this Act.

Legislation	Purpose
Forest Conservation and Management Act, No. 34 of 2016	<p>The main purpose of the Act is to give effect to Article 69 of the Constitution with regard to forest resources. The Act provides for the development and sustainable management, including conservation and rational utilization of all forest resources for the socio-economic development of the country. It also provides for the establishment of the Kenya Forest Service.</p> <p>The Act outlines the activities prohibited in a forest and gives forest officers powers to search persons, vehicle and vessels for forest produce. It specifically prohibits growing of any plant from which narcotic drugs can be extracted. It also prohibits counterfeiting or affixing marks on forest produce in order to indicate that the forest produce has been lawfully cut or removed, or is the property of the Kenya Forest Service. Some of the offences include:</p> <ol style="list-style-type: none"> Felling, cutting, taking, burning, injuring or removing any forest products; Allowing any livestock to be in the forest; Clearing, cultivating or breaking up land for cultivation or for any other purpose in a forest; and Capturing or killing any animal, setting or being in possession of any trap, snare, etc., or digging 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.
Firearms Act, Cap 114	<p>The Act regulates the licensing, controlling, manufacture, importation, exportation, transportation, sale, repair, storage, possession and use of firearms, ammunition, air guns and other destructive devices.</p> <p>It outlines the process of application and grant of firearms certificates and permits and lists offences relating to specified firearms as well as unlawful use of firearms by public officers. It also establishes the Firearms Licensing Board.</p> <p>Some of the offences include:</p> <ol style="list-style-type: none"> Purchasing, acquiring, having in possession firearms or ammunition without a firearm certificate; Hiring or otherwise unlawfully permitting another person to take possession of, or use a firearm or ammunition to advance the course of organized criminal activity; and Concealment of a serial number.
Health Act, No. 21 of 2017	<p>One of the objectives of the Act is to provide for the regulation of health care service and health care service providers. The Act criminalises the charging of a fee in exchange for a human organ.</p>
Industrial Property Act, Cap 509	<p>The Act provides for the process of grant and regulation of patents, utility models and industrial designs. It also provides for the scope and term of granted patents and industrial designs.</p> <p>Some of the offences include the infringement of a patent or registered utility model or industrial design.</p>
Merchant Shipping Act, No. 4 of 2009	<p>The Act provides for among others, the carriage of bulk and dangerous cargoes, the prevention of pollution, maritime security and the liability of ship-owners.</p> <p>Some of the offences include:</p> <ol style="list-style-type: none"> Trading in Kenyan waters contrary to provisions of the Act; and Carriage of dangerous goods contrary to the provisions of the Act.
Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994	<p>The Act prohibits the possession of, and trafficking in, narcotic drugs and psychotropic substances and cultivation of certain plants. It outlines sanctions for possession of narcotic drugs, trafficking in narcotic drugs, other acts connected to narcotic drugs, and cultivation of certain plants. It also provides for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances.</p> <p>Some of the offences include:</p> <ol style="list-style-type: none"> Being in possession of any narcotic drug or psychotropic substance, without license or authorisation; Trafficking in any narcotic drugs or psychotropic substances or any substance represented or held out to be a narcotic drug or psychotropic substance; and Handling any parcel, package, container which the person knows/believes contains narcotic drugs or psychotropic substances.

Legislation	Purpose
Penal Code, Cap 63	Outlines various offences, including offences regarding illicit trade and provides punishment for each offence.
Pharmacy and Poisons Act, Cap 244	<p>The Act provides for regulation of pharmacies and poisons. It provides for the process of registration of pharmacies as well as obtaining of relevant licenses. It also establishes the National Drug Quality Control Laboratory and the Pharmacy and Poisons Board.</p> <p>The Act now includes the following additional offences:</p> <p>Manufacture, importation, exportation, compounding, storage, promotion or distribution of medicinal substances that are:</p> <ol style="list-style-type: none"> 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; unfit for human and animal use; adulterated; contains any counterfeit starting materials; and stored in insanitary conditions.
Plant Protection Act, Cap 324	<p>The Act aims to prevent the spread of disease and pests that are destructive to plants. It contains provisions on the disinfection, treatment, destruction and disposal of any unhealthy plants, or of any plant appearing to be infected with any pest or disease and prohibits the cultivation of such plants. It also outlines the methods of planting, cleaning, cultivating and harvesting to be adopted, and the precautions and measures to be taken by any person for the purpose of preventing or controlling attacks by, or the spread of, any pest or disease.</p> <p>The Act places a duty on occupiers of land to take certain measures necessary for the eradication, reduction or prevention of the spread of any pest or disease. It also gives appointed inspectors the right of entry into buildings and destruction of infectious pests or diseases.</p> <p>The Act also makes provisions for regulating the importation and exportation of any plants which are likely to lead to pest or disease infection. Some of the offences under the Act include introducing pest or disease into cultivated land.</p>
Prevention of Organised Crimes Act, No. 6 of 2010	<p>The Act defines and provides for the prevention and punishment of organized crime. The Act also provides for the recovery of the proceeds of organised criminal group activities.</p> <p>Some of the offences under the Act are:</p> <ol style="list-style-type: none"> Hiring or otherwise unlawfully permitting another person to take possession of, or use a firearm or ammunition to advance the course of organised criminal activity; and Willfully interfering with material which is likely to be relevant to a police officer's investigation into the activities of an organised criminal group.
Prevention of Terrorism Act, No. 30 of 2012	<p>The Act provides for various measures for the detection and prevention of terrorist activities. The Act also amends both the Extradition (Commonwealth Countries) Act and the Extradition (Contiguous and Foreign Countries) Act.</p> <p>Terrorism is connected to some of the various forms of illicit trade such as trafficking in firearms, human trafficking, money laundering etc.</p> <p>Some of the offences under the Act include:</p> <ol style="list-style-type: none"> Provision of weapons to terrorist groups; and Possession of weapons for terrorist purposes.
Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009	<p>The Act provides for the offence of money laundering and introduces measures to combat the offence. It also provides for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime.</p> <p>Some of the offences under the Act include:</p> <ol style="list-style-type: none"> entering into any agreement in connection with property which forms part of the proceeds of crime; and Tipping off a person as to a report being prepared in relation to money laundering or the proceeds of crime.

Legislation	Purpose
Seeds and Plants Varieties Act, Cap 326	<p>The Act regulates transactions in seeds, and provides for the sampling, testing and certification of seeds. It provides for the establishment of an index of names of plant varieties and imposes restriction on the introduction of new varieties. It makes provisions for the control of the importation of seed and authorizes measures to prevent injurious cross-pollination. It also provides for the grant of proprietary rights to persons breeding or discovering new varieties and establishes the Seeds and Plants Tribunal.</p> <p>Some of the offences include:</p> <ul style="list-style-type: none"> (a) Selling seed of a plant variety for which a name is given in the Index of names of plant varieties, using some name not given in the Index for that plant variety; and (b) False representation of plant breeders' rights.
Standards Act, Cap 496	<p>The Act promotes the standardization of the specification of commodities. The Act also provides for the standardization of commodities and codes of practice. The Act further establishes the Kenya Bureau of Standards (KEBS) and the Standards Tribunal.</p> <p>The Act provides for the powers of inspectors under the Act. They include the power to:</p> <ul style="list-style-type: none"> (a) enter upon any premises at which there is, or is suspected to be a commodity in relation to which any standard specification or standardization mark exists; (b) inspect and take samples of any commodity or any material or substance used, or likely to be, or capable of being used in manufacturing or production, / cause any container containing/ suspected to contain any such commodity, material or substance, to be opened; (c) inspect any process or other operation which is carried out in connexion with the manufacture or production, of any commodity in relation to which a standard specification or a standardization mark exists; (d) seize and detain, for the purpose of testing, any goods in respect of which the inspector has reasonable cause to believe that an offence has been committed. <p>Some of the offences include:</p> <ul style="list-style-type: none"> a) Applying a standardization mark to any commodity that does not comply with the relevant Kenya Standard or approved specification; and b) Applying a standardization mark except under a permit issued by KEBS or a person acting under its authority.
Tobacco Control Act, No. 4 of 2007	<p>The Act aims to control the production, manufacture, sale, labeling, advertising, promotion and sponsorship of tobacco products.</p> <p>The objectives of such control include the:</p> <ul style="list-style-type: none"> (a) protection of the health of individuals in light of scientific evidence on the effects of tobacco and (b) protection purchasers or consumers of tobacco products from misleading and deceptive inducements to use tobacco products. <p>It also aims to protect the health of persons under the age of 18 years by preventing their access to tobacco products. The Act also establishes the Tobacco Control Board.</p> <p>Some of the offences include:</p> <ul style="list-style-type: none"> (a) Manufacturing, importing or distributing a tobacco product that does not conform to the requirements of the Act; and (b) Selling Tobacco via a vending machine.
Trade Description Act, Cap 505	<p>The Act prohibits the misdescription of goods, services and facilities and prohibits false or misleading indications as to the prices of goods.</p> <p>Some of the offences include applying a false trade description to any goods/ supplying goods of such description and importation of goods bearing false indication of origin.</p>

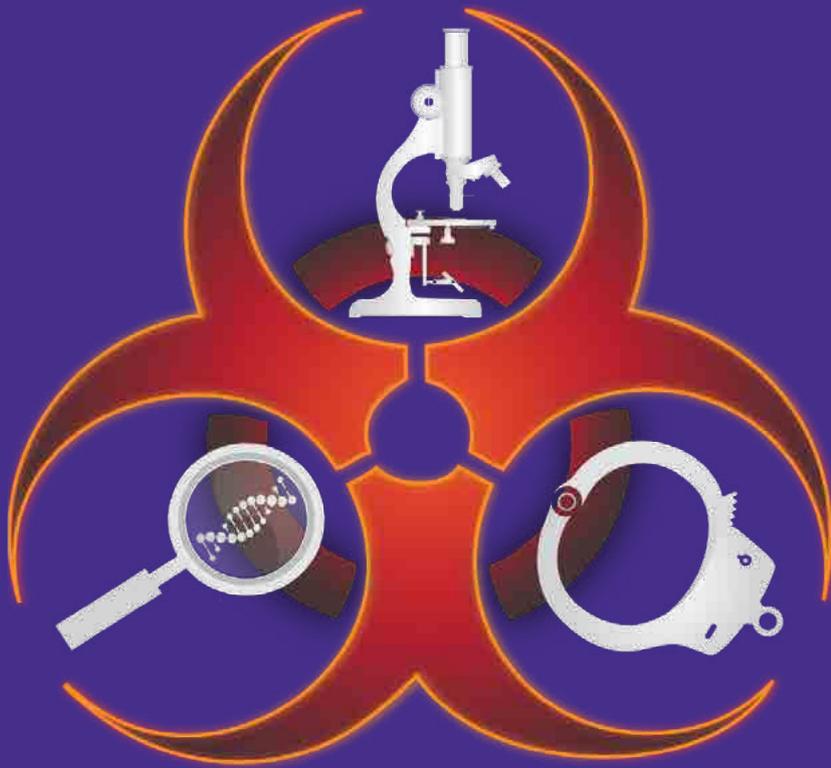
Legislation	Purpose
Trademarks Act, Cap 506	<p>The Act provides for the procedures for registration and administration of trade marks, and creates various offences which are meant to protect integrity of trademarks and prevent falsification or misrepresentation regarding trademarks.</p> <p>Some of the offences include:</p> <ul style="list-style-type: none"> a) Falsely representing a trade mark as registered; and b) Falsification of entries in register
Weights and Measures Act, Cap 513	<p>The main purpose of the Act is to regulate the manufacture and sale of weights and measures and to provide for the introduction of an International System of Units (SI). The Act sets out the units and standards of measurement in Kenya. It also outlines provisions for weights and measurement for trade purposes.</p> <p>The Act also outlines offences relating to false or unjust weights, measures, or weighing and measuring instruments, as well as offences relating to fraud in the use of weights, measures, or weighing and measuring instruments. It makes provisions on information in regard to quantity that should be stated in specific goods. It also provides for appointment of inspectors and the powers of the appointed inspectors, including the power of search and seizure of goods which are not weighed according to the Act.</p>
Wildlife Conservation and Management Act, No. 47 of 2013	<p>The Act makes provision for protection, conservation, sustainable use and management of the country's wildlife resources.</p> <p>It establishes the Kenya Wildlife Service. The Act also outlines and provides for sanctions for various offences.</p> <p>The Act now includes the following additional offences³:</p> <ul style="list-style-type: none"> (a) Dealing in a wildlife trophy of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES, without a permit or exemption issued under this Act. (b) Dealing in a live wildlife species of any of critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES without permit or exemption issued under this Act. (c) Possession of any live wildlife species or trophy of any critically endangered or endangered species as specified in the Sixth Schedule or listed under CITES Appendix 1, without permit or exemption issued under this Act. (d) Manufacturing an item from a trophy of a critically endangered or endangered species specified under the Sixth Schedule or listed under CITES Appendix I without a permit or exemption.

(Footnotes) - Selected Statutes on Illicit Trade

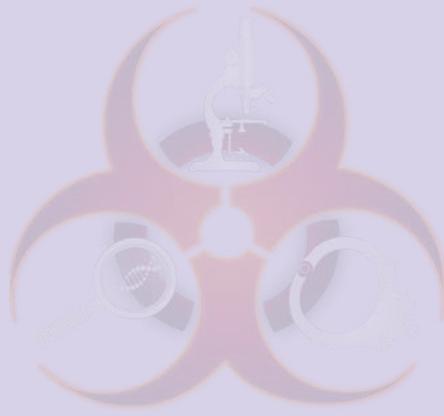
- 1 See Section 32(h) to (n) of the Anti-Counterfeit Act, No. 13 of 2008
- 2 See Sections 35B, 38 and 46E of the Copyright Act, No. 12 of 2001
- 3 See Section 92 of the Wildlife Conservation and Management Act, No. 47 of 2013
- 4 Section 4 of the Standards Act
- 5 Section 63 Forest Conservation and Management Act
- 6 In Kenya includes trade marks, patents, utility models, industrial designs and technovations. KIPi also protects and promotes trade mark rights.
- 7 Section 6 Kenya Plant Health Inspectorate Services Act
- 8 <https://www.export.gov/article?id=Kenya-customs-regulations> accessed on 22nd November 2019
- 9 Section 44 (1) of the Pharmacy and Poisons Act
- 10 Section 5 of the Anti-Doping Act
- 11 Section 4 of the Kenya Citizens And Foreign Nationals Management Service Act, 2011

PART III

INVESTIGATIONS



PART III



INVESTIGATIONS

Investigative functions are typically carried out by the Police and spelt out in the National Police Service Act, Number 11A of 2011 and the National Police Service Standing Orders. The National Police Service comprises of the Kenya Police Service, The Administrative Police Service and the Directorate of Criminal Investigations all of which have the powers to maintain law and order, collect criminal intelligence, preserve peace and investigate crimes³¹.

Other agencies may also be mandated by Parliament to carry out investigations through various Acts of Parliament. As concerns combating illicit trade, these include the Ethics and Anti-corruption Commission³², Anti-Counterfeit Authority³³, Anti-Doping Agency³⁴, Competition Authority³⁵ and the National Environment and Management Authority³⁶ among others.

Investigations may be triggered through:

- i. A complaint or a report of a crime made to the police and other government agencies.
- ii. Information given to the police from any source
- iii. Intelligence gathering by the police or various agencies
- iv. Following the direction of the Office of the Director of Public Prosecutions to the police³⁷ or other government agencies.

An investigator should, as soon as he becomes aware that there are grounds for suspicion that a criminal offence has been committed take necessary steps to discover it and investigate it. These steps include visiting the scene of the crime, identifying and interviewing witnesses, identifying suspects, collecting and gathering all relevant information and evidence.

In illicit trade offences, like in most criminal cases, collection and discovery of information and evidence pointing to the suspicion that a criminal offense has been committed forms the crux of the case and determines whether or not a conviction will be secured.

31 Sec 24, 27 and 35 of the National Police Service Act, No.11A 2011 and Chapter 2 Section 4, Chapter 3 section 4 and Chapter 4 Section 4 of the National Police Service Standing Orders

32 Eitic and Anti-Corruption Commission Act, No.22 of 2011

33 Anti-Counterfeit Act, No 13 of 2008

34 Anti-Doping Act No 5 of 2016

35 Competition Act, No 10 of 2012

36 Environmental Management and Coordination Act, No 8 of 1999

37 Article 157 (4) of the Constitution of Kenya, 2010

Searches and Seizures

Article 31 (a) of the Constitution specifically provides that every individual has the right not to have their person, home or property searched. The right can however be limited by law and to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account relevant factors as provided by Article 24 of the Constitution.

In most cases involving illicit trade, search and seizure of illicit goods is important. The search and seizure procedures enable investigators to enter and search premises or vessels and collect evidence to be used in prosecuting suspects of illicit trade.

Seizure of objects or goods is aimed at obtaining evidence and is an especially important procedural action which can be taken both during the investigation and before the formal institution of the criminal proceedings. Seizure of objects not only secures evidence which is important for a successful conduct of criminal proceedings, but may also be useful for providing safety to persons (removing dangerous objects and substances to preclude the perpetration of a criminal offence).

Objects that are the subject of seizure include such objects that can be used or that have been used for the perpetration of a criminal offence, or resulting from the perpetration of the offence. An assessment as to what needs to be seized is made on a case-to-case basis and will depend on the characteristics of the case, i.e. of the criminal offence.

Search and seizure may be conducted with or without a warrant.

Search with a Warrant

During the investigation of a crime and collection and gathering of evidence a search warrant is a key and critical document. Search warrants will normally be issued only upon strong justification which shows that in the interest of public safety and public order, the right to privacy should be limited.

A search warrant is an order in writing, issued by a judge or judicial officer, commanding a law enforcement officer to search a specified person or premises for specified property and to bring it before the judicial authority named in the warrant.

In this regard, the investigating officer must state on oath the basis for seeking the warrant. The courts will not insist on a very high threshold but the police officer or investigator must show reasonable suspicion of an offence being about to be committed or already committed.

Section 118 of the CPC Provides that “where it is proved on oath to a court or a magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law.”

Contents of a search warrant³⁸

- i. Signature of the judge or magistrate as well as the seal of the court.
- ii. The offence with which the person, place or thing being searched is related.
- iii. Name and description of the person, place or thing to be searched.
- iv. An order directed to the executor of the warrant to seize the products and produce them in the court issuing the warrant or any other court with jurisdiction.

A warrant remains in force until it is executed or until it is cancelled by the issuing court.

Typically, a search warrant is to be executed between sunrise and sunset. However, the court may authorize the police officer or other person to whom it is addressed to execute it at any hour.

Once issued with a search warrant the executor can compel any owner or resident of a building to allow him access to conduct the search. However, he must produce the search warrant to validate his entry³⁹.

Where a police officer enters a house pursuant to a warrant he may not only seize goods in respect of the warrant but also any other goods which he believes on reasonable grounds to be material evidence.

The Anti-corruption and Economic Crimes Act, Number 3 of 2003 empowers the Ethics and Anti-corruption commission, to enter upon and search any premises, with a search warrant, for any record, property or other thing reasonably suspected to be in or on the premises and that has not been produced by a person⁴⁰. Similarly, under **the Narcotics Drugs and Psychotropic Substances Control Act**, Number 4 of 1994 provides that searches upon premises may happen upon issuance of a search warrant⁴¹.

Searches Without Warrant

Section 26 of the CPC allows for a search to be conducted without a warrant:

A police officer or other person authorized in writing in that behalf by the Commissioner of Police may stop, search and detain:

- i. any aircraft, vessel or vehicle in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found; or
- ii. any aircraft, vessel or vehicle which there is reason to suspect has been used or employed in the commission or to facilitate the commission of an offence under the provisions of Chapters XXVI, XXVIII and XXIX of the Penal Code i.e Theft, robbery and extortion and burglary, housebreaking and similar offences.
- iii. any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained.

Searches without warrant may raise an issue of illegally acquired evidence and thus the prosecutor must prove that reasonable suspicion existed before the search was conducted. The decision must be based on objective grounds and not personal factors (such as age) or stereotypes alone.

³⁸ Section 102 of the Criminal Procedure Code Cap 75

³⁹ Section 120 CPC

⁴⁰ Section 29 Anti-corruption and Economic Crimes Act

⁴¹ Section 73 Narcotics Drugs and Psychotropic Substances Control Act

Searches without warrant may also be permissible in circumstances where delay in obtaining the warrant may lead to loss or destruction of evidence.

Anti-Counterfeit Act

Section 23 of the Anti-Counterfeit Act empowers inspectors designated under the Act the following powers with regard to search and seizure:

- (a) Enter upon and inspect any place, premises or vehicle where or in which goods that are reasonably suspected of being counterfeit goods are to be found, or on reasonable grounds are suspected to be manufactured, produced or made. Inspectors are allowed to search such place, premises or vehicle and any person found in such place, premises or vehicle, for such goods and for any other evidence of the alleged or suspected act of dealing in counterfeit goods, and for purposes of entering, inspecting and searching such a vehicle, an inspector may stop the vehicle, wherever found, including on any public road or at any other public place;
- (c) seize detain, and, where applicable, remove for detention, all the goods in question found at, on or in such place, premises or vehicle;
- (d) 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.

Narcotics Drugs and Psychotropic Substances Control Act

Section 72 of the Narcotics Act provides that:

- (1) Any police officer, or any other person authorized in writing by the Commissioner of Police for the purposes of this section, who has reasonable cause to suspect that any person is in possession of, or is removing, any narcotic drug or psychotropic substance in contravention of this Act may—
 - a) stop and search that person and any conveyance in which he is and any package in his possession or under his control;
 - b) seize and detain for the purposes of proceedings under this Act any narcotic drug or psychotropic substance or any other thing (including any conveyance) which appears to be evidence of the commission of an offence under this Act, found in the course of the search; and
 - c) arrest and detain the person until he can be brought before a magistrate as soon as is reasonably practicable, and dealt with according to law
- (2) Any police officer, or any other person authorized in writing by the Commissioner of Police for the purposes of this section, who has reasonable cause to suspect that any motor vehicle, aircraft, ship, carriage or other conveyance was, or is being, made use of in the commission of any offence under this Act may stop and enter and search the motor vehicle, aircraft, ship, carriage or other conveyance and may for that purpose break open any door and remove any other impediment or obstruction to such entry.
- (3) A police officer or authorized person referred to in subsection (1) or (2) may use such assistance and such force as may be reasonable for carrying out his functions under those subsections.

Environmental Coordination and management Act

Section 117 empowers an environmental inspector to enter any land, premises, vessel, motor vehicle or ox-drawn trailer without a warrant and make examinations and enquiries to determine whether the provisions of this Act are being complied with. Further, the inspector may seize any article, vessel, motor vehicle, plant, equipment, substance or any other thing, which he reasonably believes has been used in the commission of an offence under the Act.

Copyright Act

Section 40 grants copyright inspectors appointed under the Act, the power to enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connexion with such premises, ship, aircraft or vehicle any contravention of the Act.

Standards Act

Section 41 empowers inspectors appointed under the Act to enter upon any premises at which there is, or is suspected to be a commodity in relation to which any standard specification or standardization mark exists and further the inspectors may seize and detain any goods or documents which he has reasonable cause to believe may be required as evidence in any proceedings for any offence under the Act.

Anti-Doping Act

Section 30 of the Act provides that an authorized/ compliance officer may:

- a) enter upon any premises, vessel or vehicle in which prohibited substances are reasonably suspected of being stored and make a record in the prescribed form; or
- b) seize, detain, and where applicable remove for detention the prohibited substances found in such premises, vessel or vehicle.

Further the officer may interrogate any person found in the premises and record a statement from that person; or demand from that person any book, document, article, object or substance which may assist in identifying any prohibited substance or person dealing in prohibited substances.

Competition Act

Section 32 empowers persons authorized in writing by the Competition Authority to, in the course of investigations, enter any premises in the occupation or under the control of a trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter or other person believed to be in possession of relevant information and documents and inspect the premises and any goods, documents and records situated thereon.

Upon entering the premises, the persons authorized shall, before proceeding to conduct an inspection of the premises, goods, documents and records situated thereon, inform the person present who is or who reasonably appears to be for the time being in charge of the premises of his intention to exercise his powers.

Search of Persons

Searches should adhere to respect for human dignity and decency. In this regard a search on a woman should only be conducted by another woman⁴² and similarly a male person should only be searched by a fellow male⁴³.

Section 25 of the Civil Procedure Code allows a police officer to search an arrested person and place in custody all articles found upon that person, other than the necessary wearing apparel.

Preservation, Analysis and Storage of Evidence

The procedure following seizure of evidence is provided for under the relevant laws governing illicit trade.

The **Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations, 2006** provide that:

Immediately following the seizure of a substance, the police officer in charge of the seized substance shall take all reasonable steps to ensure that-

- a) all material evidence relating to the seizure is collected and processed;
- b) the original condition of the whole amount of the seized substance at the scene is documented;
- c) the seized substance is marked for identification and inventory thereof made; and
- d) The seized substance is weighed, displayed and photographed, videotaped or otherwise recorded to depict it as originally packaged.

In cases where it is not physically possible to store the seized substance as a single unit, wherever practicable—

- a) the seized substance shall be placed in sturdy containers carrying about 15 to 20 kilograms of the seized substance;
- b) each container shall be completely encircled with a fibre tape and an evidence sticker placed where the ends of the fibre tape meet; and
- c) The evidence sticker shall contain all relevant information relating to the case, including the case name and number, exhibit number, place and date of seizure and signatures of witnesses and shall accompany the evidence throughout the process of storage, analysis, transportation and ultimate disposal of the seized substance.

The officer in charge of the seized substance shall ensure that all items of evidentiary value relating to the seized substance are stored in secure and appropriate conditions for the prevention of loss, theft or any other form of misappropriation, as well as accidental or accelerated deterioration.

Section 74 (a) guides investigators on procedures of analysis and thereafter destruction of seized narcotics, providing that where the substance seized is to be used in evidence, the Commissioner of Police and the Director of Medical Services or a police or a medical officer respectively authorized in writing by either of them for the purposes of this Act (herein referred to as “the authorized officers”) shall, in the presence of where practicable (the accused, his Advocate, a designated analyst, an analyst appointed by the accused) weigh the whole amount seized, and thereafter the designated analyst shall take and weigh one or more samples of such narcotic drug or psychotropic substance and take away such sample or samples for the purpose of analyzing and identifying the same.

⁴² Section 27 Criminal Procedure Code, Cap 75

⁴³ Section 76 Narcotic Drugs and Psychotropic Substances (Control)

After analysis and identification of the sample or samples taken, the same shall be returned to the authorized officers together with the designated analyst's certificates for production at the trial of the accused person. Upon receipt of the designated analyst's certificates and the samples analysed, the authorized officers shall, where the drug is found to be a narcotic drug or psychotropic substance within the meaning of the Act, arrange with a magistrate for the immediate destruction by such means as shall be deemed to be appropriate of the whole amount seized (less the sample or samples taken as evidence at any subsequent trial or any contemplated trial particularly where the accused person's identity is not yet known or the accused person is outside the jurisdiction of Kenya at the time of taking such samples). The destruction of drugs and psychotropic substances shall be carried out by the authorized officers in the presence of the Magistrate and the accused person, where practicable, and his advocate (if any) and thereafter the magistrate shall sign a certificate in the prescribed form relating to such destruction. The production in court by either one of the authorized officers at the trial of an accused person of the sample or samples together with the designated analyst's certificates and the magistrate's certificate of destruction shall be conclusive proof as to the nature and quantity of the narcotic drug or psychotropic substance concerned and of the fact of its destruction in accordance with the provisions of this section.

Investigating officers should note that where an analyst's certificate is not produced, there is a high chance of the offender being released. Further, a certificate indicating the value of narcotics must be obtained.

Section 86 (1) of the Act provides: -

“Where in any prosecution under this act any fine is to be determined by the market value of a narcotic drug, psychotropic substance or prohibited plant, a certificate under the hand of **the proper offer of the market value of such narcotic drug or psychotropic substance shall be accepted by the court as *prima facie*** evidence to the value thereof.

However, failure to produce the said valuation certificate is not a ground for quashing a conviction. The Court of Appeal in **Kabibi Kalume Katsui v Republic [2015] eKLR** held that:

*“The valuation certificate whose importance cannot be gainsaid as it conquers the awkward position the court is put in to second guessing the value, was not produced. **However**, all is not lost, we take note that PW4 and PW2 were part of the Anti-Narcotic Police Unit that recovered the drugs. It can be safely presumed that as they frequently interacted with drug-users or even dealers they brushed on the minute idea of the retail value of the drugs as at that time. We shall take the value to be as stated but with caution, we are not giving the police a free-hand by doing this, no! They must pull-up their socks.”*

The court of Appeal in that case further held: -

“The law is clear on the offence of trafficking, the quantity of the drugs and its value only goes to the consideration to be given in sentencing and not on the gravity of the offence itself.”

The valuation certificate is thus only meant to assist the court in imposing the appropriate sentence.

The Anti-Counterfeit Act provides that any goods seized shall be stored and kept in safe custody at a counterfeit goods depot and only dealt with in accordance with a Court order.

Under the **Wildlife Conservation and Management Act** where anything seized and detained is subject to speedy and natural decay, and it is not reasonably practicable to take effective steps to preserve the same, the officer by whom the same is seized may, without obtaining any order from a court, destroy or otherwise dispose of that thing if he considers it desirable so to do. Care must however be taken to preserve all the evidence or samples which are required for successful prosecutions.

Identifying Suspects

An investigator's work, other than collecting the necessary evidence, also includes identifying suspects who may be prosecuted for the crime investigated. Careful consideration should be given not only to conduct that constitutes manifestations of illicit trade as such but also what can be called "supporting" conduct (conspiracies, participation in organized criminal groups, corruption related offences, laundering of proceeds of crime and obstruction of justice).

Other than the person who actually commits an offence, several persons can be charged with actual commission of the offence.

Section 20 of the Penal Code provides that where an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it:

- (a) Every person who actually does the act or makes the omission which constitutes the offence;
- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids or abets another person in committing the offence;
- (d) Any person who counsels or procures any other person to commit the offence,

Further, when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Upon gathering all the relevant information and evidence, the investigator makes a report to the Officer in Charge of the Station who forwards the file to the Director of Public Prosecution (DPP) for directions. A decision to prosecute will be determined by a number of factors, key of which is whether the evidence discloses an offence and the strength of the evidence to support the charge.

After perusing the file, the DPP or his representative may do any of the following:

- Recommend institution of prosecution by sanctioning the charges recommended if satisfied that the evidence discloses an offence
- Request the police (or other agency) to investigate the case further before or even after charging the suspect;
- Decline to prosecute and opt for other non-criminal resolution;
- Decline to prosecute and close the file.

PART IV

PROSECUTING ILLICIT TRADE CASES



PART IV



PROSECUTING ILLICIT TRADE CASES

Institution of Criminal Proceedings

Where the DPP determines that a criminal offence has been committed and recommends prosecution of a person or specific persons, it falls upon the public prosecutors in the Office of the DPP to draw up a charge sheet and have the person presented to court⁴⁴.

Pre-Trial Detention

Police officers and Investigators should take note of the constitutional requirement that an arrested person must be presented to court within 24 hours of his arrest. Article 49 (f) of the Constitution provides that an arrested person has the right to be brought before a court as soon as reasonably possible, but not later than 24 hours after being arrested; or if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day. The period of detention can before commencement of a case can only be extended by a Court upon solid justification.

Preparing The Charge Sheet

As the Officer set out to prepare a charge sheet, care should be taken to consider if there are offences falling under other statutes which would require cooperation and participation of relevant agencies regulating that particular area in developing the charge sheet. It is advisable that Officer drafting charge sheet should seek the input of lead agencies to ascertain that the charge sheet as drafted covers all offences and their penalties.

The charge sheet is a formal written accusation drawn up against an accused person and used in Court as a basis for the trial proceedings.

⁴⁴ The DPP revoked all prosecutorial power donated to other state agencies vide gazette notice Vol. CXXXI Number 176 of 27th December 2019

Section 137 (a) of CPC provides that:

- (i) A count of a charge or information shall commence with a statement of the offence charged, called the statement of offence;
- (ii) the statement of offence shall describe the offence shortly 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) After the statement of the offence, particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary.

It is important that a charge be carefully and correctly framed before trial commences. It is further important to disclose the exact offence in the charge sheet. A defective charge sheet will lead to the offender being set free. When framing charges for illicit trade, prosecutors should resort to the specific laws governing the offence committed. In drug related charges for instance, for a charge of trafficking to stand, the charge sheet must indicate clearly which mode or element of ‘trafficking’ the person is being charged with. It is as such not enough for the charge sheet to simply indicate ‘trafficking’. See *Madline Akoth Barasa & Another –vs-Republic [2007] eKLR – Criminal Appeal No.193 of 2005* where the Court of Appeal stated that **“It is evident from the definition of trafficking that the word is used as a term of art embracing various dealings with narcotic drugs or psychotropic substance. In our view for the charge sheet to disclose the offence of trafficking the particulars of the charge must specify clearly the conduct of an accused person which constitutes trafficking. In addition, and more importantly, the prosecution should at the trial prove by evidence the conduct of an accused person which constitutes trafficking. In this case neither the charge sheet nor the evidence discloses the dealing with the bhang which constituted trafficking.”**

Defective charge sheets have the effect of affecting the conduct of trials and may even lead to dismissal of charges. Under the CPC⁴⁵, a person can be discharged if the charge sheet does not disclose an offence. As such, it is crucial that a charge sheet be prepared with the necessary care, taking care to indicate the exact offence.

It is possible to join several persons in a charge sheet, particularly⁴⁶;

- a) persons accused of the same offence committed in the course of the same transaction. Persons accused of an offence and persons accused of abetment, or of an attempt to commit the offence;
- b) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code or of any other Act or law) committed by them jointly within a period of twelve months;
- c) persons accused of different offences committed in the course of the same transaction;
- d) persons accused of an offence under Chapters XXVI to XXX, inclusive, of the Penal Code, and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by an offence committed by the first-named persons, or of abetment of or attempting to commit either of the last-named offences;
- e) persons accused of an offence relating to counterfeit coin under Chapter XXXVI of the Penal Code, and persons accused of another offence under that Chapter relating to the same coin, or of abetment of or attempting to commit any such offence

⁴⁵ Section 89 (5)

⁴⁶ Section 136 of the CPC

Facilitating Witness Protection

Witnesses play an indispensable and crucial role in the criminal justice system. In most illicit trade cases, witnesses may be afraid to give evidence for fear of retaliation. Witnesses may be compromised through intimidation, inducement or threats to their lives or the lives of their loved ones. Investigators must ensure that witnesses are provided with effective protection from potential retaliation or intimidation. In Kenya, cases may be thrown out for lack of witnesses. At the earliest stage, therefore, investigators must liaise with the Witness Protection Agency where they intend to rely on testimonies of witnesses at risk, and request the Agency to assess and admit those witnesses into a protection scheme.

Bail and Bond

The issue of whether a person accused of an illicit trade offence should be granted bail or bond will arise either before or after the person is presented to Court. There are several guiding provisions.

Article 49(1) (h) of the Constitution of Kenya gives an arrested person the 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.

The CPC provides at Section 123 provides that a person (other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any drug related offence) may be admitted to bail either by an OCS or a court. In this regard, the amount of bail should be fixed with due regard to the circumstances of the case, and should not be excessive. Further, the Officer or Court may, instead of taking bail from the person, release him on his executing a bond for his appearance.

The National Police Service Act⁴⁷ also empowers a police officer investigating an alleged offence (not being an offence against discipline) to require any person to execute a bond in such sum and in such form as may be required, subject to the condition that the person shall duly attend court if and when required to do so. This power is to be exercised in strict accordance with the CPC. The following factors shall be considered in relation to the police bail:

- 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

While every accused person is entitled to bail or bond, where compelling reasons exist, a person may be denied such bail or bond. Some of the factors which may be considered as justifying the non-grant of bail include:

- *the nature of the charge*
- *the gravity of the punishment in the event of a conviction;*
- *the probability that the accused may not surrender himself for trial;*
- *the likelihood of the accused interfering with witnesses, or that he may suppress any evidence such as incriminates him;*

⁴⁷ Section 53

- *Character and antecedents of the accused.*
- *the likelihood of further charges being brought against the accused;*
- *The need to protect the victim or victims of the crime from the accused person*
- *Public order, peace or security*
- *detention for the protection of the accused person;*

Whether or not the accused will come before the Court on the scheduled trial date is often a very strong basis for determining *whether* there are “compelling reasons” for not granting bail/bond as contemplated under the Constitution (See ***Ali Mcheni Ali alias Shee Lako vs. Republic, Misc. Application Number No. 7 of 2011***). Further, in illicit trade cases, the likelihood that an accused person may interfere with witnesses presents a strong justification for not granting bail.

Prosecutors must bear in mind that the burden of proving compelling reasons is on the state. The task of the accused is only to cite the relevant provision of the Constitution, and make the prayer for bail or bond; but the **burden then shifts** to the state, to argue the “compelling reasons” which should make for the Court limiting the right claimed. (See ***Ali Mcheni Ali alias Shee Lako vs. Republic, Misc. Application Number No. 7 of 2011***).

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 to attend court where there is failure on the part of the accused.

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 looking after, and if necessary, use powers/or position of authority over the accused to prevent his escape. Sureties must have also 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 security documents such as a title deed, a log book or an insurance bond. Additionally, the court may require a valuation report revealing the value of the security. Upon acceptance of the security document(s), the court makes an order against the transfer of the property and the it 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 reason(s) 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 a 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.

Renewal and Appeal of Bail Terms

Section 123(3) 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 to the High Court for review of the terms and appeal.

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 person(s) can intimidate witnesses not to record statements but once statements are recorded, this minimises that fear.

Plea Bargaining⁴⁸

Plea bargaining is a legal concept provided for in Section 137(A) to 137 (O) of the 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 that⁴⁹:

⁴⁸ Legal Notice number 47 of 19th February 2018

⁴⁹ Plea Bargaining Guidelines-general principles

- 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. 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.
- 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, his family, his 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.⁵⁰ The court does not participate in plea bargains. 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.⁵¹

When the court accepts the plea agreement, it must record the facts informing the plea. The facts the accused admits to must also be recorded to ensure they support the offence. Where the court rejects the plea agreement, it must record the reasons for the rejection and inform the parties.⁵²

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.

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 public⁵³.

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.

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

51 Section 137 F of the CPC

52 Judicial Criminal Procedure Bench Book 2018

53 ODPP Diversion Policy paragraph 8

Diversion is guided by the following key principles⁵⁴:

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

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 but 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 categories⁵⁵:

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 instance, would be taken to a rehabilitation center and used as an informant to enable the police to arrest the dealers, instead of being prosecuted.

The Trial Process

The criminal trial process in illicit trade cases follows the laid down procedure in the CPC. Once an accused person is presented to court and the charges read out to him, he answers by either pleading guilty or not guilty. If the accused person pleads guilty the court proceeds to hear his/her mitigation and pass a sentence. In such a case, the accused is convicted on his/her own plea of guilt.

⁵⁴ Ibid paragraph 12

⁵⁵ Clause 25 General Prosecution Guidelines 2015

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. 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: where 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.

In Camera Trial

The sensitive nature of prosecuting suspects of 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.

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 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.

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 person(s). The decision to acquit must be exercised judicially i.e where the court has determined that the complainant's absence is deliberate or repeated.

Compelling Attendance of Witnesses

Prosecutors should do all within their power to ensure witnesses in illicit trade cases are assured of their security/safety and protected during the trial process. This is because stakes are often high in illicit trade cases and witnesses are placed in a state of vulnerability especially to retaliation from accused persons. As such their security/safety must be assured at all times.

The CPC has provisions for compelling attendance of witnesses. Pursuant to Section 144, a court may issue summons to a person who is in possession of material evidence in a case and who refuses to voluntarily attend court to give such evidence. Where a person for whom summons have been issued disobeys such summons and the court is satisfied that the person will not attend unless compelled to do so, a warrant of arrest may be issued.

Examination In Chief

The burden of proof in criminal cases is on the prosecution who must generally 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. 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 cannot 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. 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.

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) of the 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. S/He may ask leading questions to witnesses during cross examinations. The aim of cross examination is to raise doubt about the accuracy of the evidence given by the witness in examination in chief.

Re-Examination

Once the accused person has concluded cross examination, the prosecution is given an opportunity to ask any question in re-examination. The purpose is to respond to any issue that was raised by the accused person in cross examination. New matters cannot be introduced in re-examination.

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. 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 established, 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. S/he will then be put on his/her defence.

Defence Case

Once an accused person is put on his/her defence, the court shall inform him/her that s/he has a right to give evidence on oath from the witness box, in which case s/he shall be liable for cross examination. The accused may also elect to give an unsworn statement in which case s/he shall not be liable to cross-examination. The accused may also decide to remain quiet. No adverse inference should be drawn when the accused decides to offer unsworn evidence or decides to remain silent. Whichever option the accused person chooses; s/he 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 and 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 s/he 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). After listening to the arguments from both sides the court will proceed to write the judgment. It will then proceed to take the convict's mitigation if a guilty verdict is returned and pass the sentence.

Throughout the criminal trial process, the guilt or innocence of the accused is determined by the nature and weight of evidence adduced. As such, investigators and prosecutors in illicit trade cases must ensure that the evidence adduced is sufficient to establish the accused person's guilt, beyond a reasonable doubt.

Sentencing

In Kenya, certain offences carry a mandatory death sentence upon conviction. In such an 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 irrational 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 met.

Section 216 of the CPC provides that the court may receive such evidence before passing sentence or making an order against an accused 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 is the practice 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, 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 of CPC 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.

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, 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.

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 same. 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) is 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.

PART V

INTER-AGENCY COOPERATION





PART V

INTER-AGENCY COOPERATION

As seen in Part II above, there exist various pieces of legislation that govern/touch on the various forms of illicit trade. One of the objectives of such laws is the establishment of the various agencies and institutions that are tasked with combating illicit trade.

It is not uncommon to find various areas of overlap in relation to the roles that such agencies play in the fight against illicit trade. For example, the Kenya Copyright Board (KECOBO) is mandated under the Protection of Traditional Knowledge and Cultural Expressions Act, 2016, 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 containing information relating to traditional knowledge and cultural expressions, collected and documented by the county government.

It is therefore clear that in order to successfully investigate and prosecute offences relating to illicit trade, the different agencies tasked with combating illicit trade must work together. In particular, greater information sharing between these various agencies is key. Developing an interconnected network of national, regional and cross-regional centers for intelligence sharing in combating illicit trade remains an important component of a successful comprehensive approach.

Additionally, although the responsibility for law enforcement lies with the competent law enforcement authorities, various members from the private sector could play an important role in the fight against illicit trade. Particularly, since such members tend to possess special knowledge and expertise that some enforcement agencies may not, they could provide useful information during the investigation and prosecution of offences relating to illicit trade.

For example, since rights' holders are naturally interested in ensuring the successful outcome of actions aimed at disrupting criminal operations that infringe on their rights, they may, for instance, assist law enforcement officers to distinguish their products from fake products, through briefings and trainings. Moreover, many private companies have their own investigative capacity or recruit private investigators to collect information on infringement of rights and prepare case files to transmit to relevant law enforcement agencies.⁵⁶

Law enforcement authorities should therefore proactively seek out and establish collaborative relationships with private actors to combat illicit trade. Below is a list of some of the various agencies which are crucial in providing information, investigating and prosecuting illicit trade.

⁵⁶ See INTERRPOL: *Countering Illicit Trade in Goods: A Guide for Policy-Makers* (June 2014)

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
<p>The National Anti-Illicit Trade Coordination Centre</p>	<p>It consists of Principal Secretaries of line ministries responsible for promoting fair trade practices, members from the private sector and a Chairperson to be appointed by the President.</p> <p>The roles of the centre include to:</p> <ul style="list-style-type: none"> a Advise the Cabinet on all matters involving illicit trade including policy, laws, and regulations to strengthen the war against illicit trade; b Oversee the coordination with other ministries, departments and agencies and county governments with regard to issues of illicit trade; c Consider and approve the National Action Plan on Combating illicit trade; d Mobilize resources to implement the National Action Plan; e Develop a financing strategy with legal backing to compel inter-agency institutions to contribute towards the implementation of the Action Plan; f Dispute resolution involving agencies; g Submit an annual report on its work to the Cabinet; and h Perform any other functions as directed by the Cabinet. 	
<p>The Executive Forum</p>	<p>It consists of Chief Executive Officers (CEOs) of enforcement agencies, ministries, private sector and the working group.</p> <p>The roles of the Executive Forum include to:</p> <ul style="list-style-type: none"> a Coordinate with other ministries, departments and agencies and county governments with regard to issues of illicit trade; b Develop the national Action Plan on combating illicit trade; c Coordinate the surveillance and investigations of the sources of merchandise that infringe on various laws, regulations and policies which form part of illicit trade; d Coordinate the enforcement of various laws, regulations and policies on illicit trade; e Coordinate with county governments on enforcement of laws to combat illicit trade; f Coordinate with KRA on the importation and exportation of merchandise that are illicit in nature; g Monitor and review the implementation of the Action Plan; h Review the work of the Multi-Agency working groups on a quarterly basis; i Submit semi-annual report on its work to the Coordination Committee; j Perform any other functions as directed by the Coordination Committee. 	

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
Outreach Working Group	<p>The roles of the Outreach Working Group include to:</p> <ul style="list-style-type: none"> a. Design and conduct joint campaigns against illicit trade; b. Design and conduct joint training on illicit trade; c. Design and conduct joint research on illicit trade; d. Develop a means to receive and organize information regarding illicit trade from domestic and international law enforcement agencies; e. Collect and integrate information on illicit trade from domestic and international law enforcement agencies; f. Develop an overall communication strategy on enforcement-related activities including the use of social media networks and the design and development of an exclusive enforcement related website in close cooperation with the private sector; g. Design nationwide awareness campaigns, which will educate the public and decision makers on the harms and costs of illicit trade and raise awareness. 	
Enforcement Working Group	<p>The roles of the Enforcement Working Group include to:</p> <ul style="list-style-type: none"> a. Undertake surveillance and investigations of the sources of merchandise that infringe on various laws, regulations and policies which form part of illicit trade; b. Enforce various laws, regulations and policies on illicit trade; c. Take measures to stop the importation and exportation of merchandise that are illicit in nature; d. Engage in international interdiction of merchandise destined for Kenya that are illicit in nature; e. Develop and implement risk-based alert systems, in coordination with KRA, to improve the targeting of persons that deal with illicit trade; f. Coordinate with the Offices of the Director of Public Prosecutions (ODPP) in order to develop expertise in, and assist with the investigation and prosecution of, crimes relating to illicit trade. 	

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
Anti-Counterfeit Authority	<p>The Authority is mandated with:</p> <ol 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; and Coordinating with national, regional or international organizations involved in combating counterfeiting. 	<p>Head Office National Water Plaza, 3rd Floor, Dunga Road Junction Industrial Area, P.O. Box, 47771-00100 (GPO), Nairobi, Kenya.</p> <p>Email: info@aca.go.ke intelligence@aca.go.ke</p> <p>Tel: +254 20-2280000, Fax: +254-20-2225124/31 Mobile: +254 717 430 640</p>
Kenya Bureau of Standards (KEBS)	<p>The core function of the Bureau is Standards development, Metrology, Conformity Assessment and provision of Training and Certification services. Specific functions include⁴:</p> <ol style="list-style-type: none"> To promote standardization in industry and commerce; 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; 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; To control, in accordance with the provisions of this Act, the use of standardization marks and distinctive mark; and To prepare, frame, modify or amend specifications and codes of practice. 	<p>Head Office P.O. Box 54974 – 00200 Nairobi, Kenya. Tel : + 254 (20) 694 8000 Mobile: 0722 202 137 or 0734 600 471/2 PVOC : 0724 255 242</p> <p>Coast Region P.O. Box 99376 - 80100, Mombasa Tel: +254(041) 231 7050/2 Mobile: +254 724 111 116, Fax: +254(041) 2229448, 2317055 Email: kebs-msa@kebs.org</p>
Kenya Copyright Board (KECOBO)	<p>KECOBO is mandated with the administration and enforcement of copyright and related rights. The Board is responsible for:</p> <ol 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>Head Office 5th Floor NHIF Building - Community Ragati Road/ Ngong Road P.O Box 34670 – 00100, Nairobi - Kenya</p> <p>Tel: +254 20 2533869/59 Mobile: 0713761758, 0756460413 Corruption Hotline: 0703885033 Email: corruption@copyright.go.ke Email: info@copyright.go.ke Twitter: @KenyaCopyright Facebook: KenyaCopyrightBoard</p>

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
	<p>Please note that under the Protection of Traditional Knowledge and Cultural Expressions Act, 2016, 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 containing information relating to traditional knowledge and cultural expressions collected and documented by the county government.</p>	
<p>Kenya Forest Service (KFS)</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 Service have the 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 is 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; e. seize and detain any livestock found in a national, county or provisional forest without any person in charge of them; f. confiscate any equipment or receptacle placed without authority in a national, county or provisional forest. <p>Further, the Service's officers may be granted firearms for the lawful conduct of their functions⁵.</p>	<p>Headquarters Director's Office: 020 250 2508</p> <p>KFS Headquarters: 020-2014663</p> <p>General Enquiries: 020-2689882</p> <p>Customer Feedback: 020-2014663</p> <p>Hotline Number: 020-2017027</p>

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
Kenya Industrial Property Institute (KIPI)	<p>The Institute's core mandate is to protect and promote industrial property rights⁶ 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>Note: There exists an overlap of roles between KIPI and the Pharmacy and Poisons Board (PPB). The Industrial Property Act limits the rights of patent holders by allowing for parallel importation, while the PPB is mandated with considering applications for the registration of parallel imported drugs, poisons, listing of herbal, complementary medicines and cosmetics.</p> <p>There is no requirement for the registration of parallel imports relating to other types of patented goods.</p>	<p>KIPI Centre, Kabarsiran Avenue, Off Waiyaki Way, Lavington P.O. Box 51648-00200, Nairobi.</p> <p>Tel: 020-6002210 /11, 6006326/29/36, 2386220</p> <p>Mobile: 0743463407 0702002020 0732487412 0734515312 0736002020</p> <p>E-mail: info@kipi.go.ke Facebook: @kipikenyaa, Twitter: @kipikenyaa Website: www.kipi.go.ke</p>
Kenya Plant Health Inspectorate Service (KEPHIS)	<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:⁷</p> <ol style="list-style-type: none"> 1. The Plant Protection Act, (Cap. 324); 2. The Seeds and Plant Varieties Act, (Cap. 326) 3. The Agricultural Produce (Export) Act (Cap. 319) 4. 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><u>KEPHIS Headquarters</u></p> <p>P.O BOX 49592-00100, NAIROBI Tel: 020 661 8000 Cell: 0709 891 000 Email: director@kephis.org / kephisinfo@kephis.org</p> <p><u>Plant Inspection Unit</u> Jomo Kenyatta International Airport P.O BOX 19164-00501, Nairobi Cell: 0722 209 504 Email: kephisiu@kephis.org</p> <p><u>Plant Quarantine and Biosecurity Station</u> Muguga P.O BOX 49421-00100, Nairobi Cell: 0722 209 505 Email: pqs@kephis.org</p>

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
Kenya Revenue Authority (KRA)	<p>The core functions of the Authority are:</p> <ul style="list-style-type: none"> a To assess, collect and account for all revenues in accordance with the written laws and the specified provisions of the written laws. b 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. c To perform such other functions in relation to revenue as the Minister may direct. <p>The Customs Services Department of the KRA implements bilateral, regional, and international trade arrangements. The department also supports global enforcement efforts against smuggling, illegal importation and exportation of arms and drugs of abuse through control of entry and exit points. Further, as the government agency 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.⁸</p>	<p>Head Office Times Tower Building Haile Selassie Avenue P. O. Box 48240 - 00100</p> <p>Tel: +254 20 281 0000 Email: callcentre@kra.go.ke</p>
The Department of Weights and Measures	<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> <ul style="list-style-type: none"> a. Establishment of a uniform system of measurement in trade, b. Control of weighing and measuring equipment in use for trade, c. Control of the sale of goods, and d. 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>Weights & Measures Building, South C Popo Road, Off Mombasa Road P. O. Box 30430-00100 Nairobi, Kenya</p>
Firearms Licencing Board	<p>The Board is responsible for regulating, licensing and controlling the manufacture, importation, exportation, transportation, sale, repair, storage, possession and use of firearms, ammunition, air guns and destructive devices. The officers may be of help in the prosecution of offences in relation to illicit trade in small arms and light weapons.</p>	

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
Financial Reporting Centre (FRC)	<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"> a Sharing information collected by it with investigating authorities and supervisory bodies to facilitate the administration and enforcement of the laws of Kenya; b Ensuring compliance with international standards and best practice in anti-money laundering measures; c 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>	<p>UAP Towers, Upper Hill, 29th Floor, P.O. Box Private Bag Nairobi 00200 Kenya</p> <p>Tel: +254 0709 858000 Email: info.frc@centralbank.go.ke Website: http://www.frc.go.ke</p>
The Assets Recovery Agency (ARA)	<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> <ul 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; and 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; and d. Recovery of assets from all suspects of illicit trade and restoring the asset to the state or their rightful owners. 	<p>UAP Towers Upper Hill, 29th Floor, P.O. Box Private Bag Nairobi 00200 Kenya</p> <p>Tel: +254 0709 858000 Email: info.frc@centralbank.go.ke Website: http://www.frc.go.ke</p>
Kenya Maritime Authority	<p>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, if any.</p>	<p>Head Office Contacts</p> <p>White House, Moi Avenue, Mombasa P.O. Box 95076 - 80104 Mombasa, Kenya</p> <p>Mobile: +254 - 724 - 319344 +254 - 733 – 221322 Email: info@kma.go.ke</p>

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
<p>Pharmacy and Poisons Board</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.⁹ 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; 	<p>P.O. Box 27663 – 00506, Nairobi. Lenana Road Opp. DOD</p> <p>General Enquiries: enquiries@pharmacyboardkenya.org</p> <p>Pharmacy Questions: info@pharmacyboardkenya.org</p> <p>Report a Medicine Problem: pv@pharmacyboardkenya.org</p> <p>Tel: +254 709 770 100</p>

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
	<p>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;</p> <p>h. inspect and license all manufacturing premises, importing and exporting agents, wholesalers, distributors, pharmacies, including those in hospitals and clinics, and other retail outlets;</p>	
<p>The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA)</p>	<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. <p>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.</p>	<p>Head Office P.O. Box 10774 00100 NAIROBI NSSF Building, Block A, Eastern Wing 18th Floor</p> <p>Tel: +254 (020) 2721997/93 Email: info@nacada.go.ke</p>
<p>National Environment Management Authority (NEMA)</p>	<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 licenses or registers, take samples and seize any articles which the officer believes have been used in the commission of an offence under the Act.</p>	<p>Popo Road, South C, off Mombasa Road P.O. BOX: 67839-00200, Nairobi</p> <p>Fax: + (254)-020-6008997 Mobile: 0724 253398 0735 013046, Email: dgnema@nema.go.ke Website: www.nema.go.ke Incident line: 0786-101100 or 0741 101 100 Email: incidence@nema.go.ke</p>
<p>Anti-Doping Agency of Kenya</p>	<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 Kenya¹⁰. 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>	<p>Head Office ADAK Offices at Parklands plaza Chiromo Road, Westlands, Nairobi P.O BOX 66458 -00800, Nairobi, Kenya</p> <p>Email: info@adak.or.ke</p>

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
National Police Service (Kenya Police, Administrative Police, Directorate of Criminal Investigations)	The functions of the service include to: <ul style="list-style-type: none"> a Collect and provide criminal intelligence; b Undertake investigations on serious crimes including illicit trade; c Maintain law and order; d Detect and prevents crime; e Apprehend offenders; f Maintain criminal records; and g Coordinate country Interpol Affairs 	Headquarters Vigilance House, Harambee Avenue, PO BOX 30083, Nairobi, Kenya. Tel: (020) 341411/6/8
Office of the Director of Public Prosecution (ODPP)	The Office of the Director of Public Prosecution is tasked with: <ul style="list-style-type: none"> a Directing and supervising public prosecutions of criminal cases; b -Deciding which cases should be prosecuted; c Determining the appropriate charges to be preferred in all cases; d Preparing cases and presenting them in court; e Providing information; and f Providing assistance and support to victims and prosecution witnesses. 	ODPP House, Ragati Road, Upper Hill P.O. Box 30701-00100. Nairobi, Kenya Tel: +254 2732090/2732240 Mobile: 0723202880/0787880580 Fax: +254 2 2243524/2251808 Email: info@odpp.go.ke
Witness Protection Agency	The Agency provides the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.	Milimani Law Courts, 4 th Floor, Room 413 Tel: +254 412 013 747 / 7121337/8 Tel: +254 706 211 203 Tel: 0711222441, 0725222442 (Hotlines) Tel: 0800 720 460 (Toll Free) Email: info@wpa.go.ke Website: www.wpa.go.ke

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
Directorate of Immigration and Citizenship	<p>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.</p> <p>Immigration officers are able to verify the authenticity of travel documents such as passports in cases of trafficking and smuggling of persons.</p> <p>In summary, the directorate is:</p> <ol style="list-style-type: none"> Responsible for registration of persons; Responsible for the provision of immigration services; Responsible for Border Management; Responsible for Management of refugees; and Responsible for Maintenance of an integrated population registration system. 	<p>Nyayo House, 20th Floor Kenyatta Avenue P.O Box 30191-00100, Tel: 020-2222022 +254-202217544</p>
Kenya Citizens and Foreign Nationals Management Service	<p>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.¹¹</p>	<p>Nyayo House ground floor, Kenyatta Avenue/Uhuru Highway P.O Box 30191 Tel: +254 202 222 022 / +254 202 217 544 Email: infomirp@kenya.go.ke</p>
Counter - Trafficking Advisory Committee	<p>Advises the Minister on inter-agency activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons.</p>	<p>Bishops Road, Social Security House P.O. Box 40326 - 00100, Nairobi Tel: +254 (0) 2729800 Fax: +254 020-2726497 Email: principalsecretary@labour.go.ke or info@labour.go.ke Website: www.labour.go.ke</p>
INTERPOL Regional Bureau for East Africa	<p>The bureau is instrumental in combating illicit trade at the international level. Priority areas include:</p> <ol style="list-style-type: none"> Drugs and organized crimes; Financial and high-tech crimes; Motor vehicle theft crimes; Public safety and terrorism; Environmental crime; and Maritime piracy. 	<p>Contact at: https://www.interpol.int/en/Who-we-are/Member-countries/Africa/KENYA</p>

AGENCY	ROLES AND RESPONSIBILITIES	CONTACTS
Kenya Wildlife Service (KWS)	<p>The mandate of the Service is to conserve and manage wildlife in Kenya, and to enforce related laws and regulations.</p> <p>The 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>This mandate includes:</p> <ol style="list-style-type: none"> undertaking and conducting enforcement activities such as anti- poaching operations, wildlife protection, intelligence gathering, investigations and other enforcement activities for the effective carrying out of the provisions of the Act. formulate policies regarding the conservation, management and utilization of all types of fauna (not being domestic animals) and flora; advise the Government on establishment of National Parks, National Reserves and other protected wildlife sanctuaries; manage National Parks and National Reserves; sustain wildlife to meet conservation and management goals; and administer and coordinate international protocols, conventions and treaties regarding wildlife in all its aspects in consultation with the Minister. 	<p><u>KWS Headquarters</u> P.O. Box 40241 – 00100 Nairobi, Kenya</p> <p>Tel: +254 (20) 2379407 +254 (20) 2379408 +254 (20) 2379409</p>
The Kenya National Focal Point (KNFP) on Small Arms and Light Weapons	<p>Mandated to coordinate all action in addressing small arms issues in Kenya. This includes:</p> <ol style="list-style-type: none"> developing policy guidelines and research; monitoring efforts to combat, prevent and eradicate illicit trade in small arms and light weapons in all its aspects; and coordinating collection and destruction of small arms and light weapons. 	<p>Bruce House, 14th Floor (South Wing), Standard Street PO Box 30510 – 00100 Nairobi, Kenya Tel: +254 20 343 462/8 Fax: +254 20 31 33 35 (fax/direct line) Email: knfp.info@gmail.com www.knfparms.go.ke</p>
Competition Authority	<p>Mandated to, among other roles, investigate impediments to competition, including entry into and exit from markets, in the economy as a whole and publish results of such investigations. The Authority is also mandated to make representations to government, government commissions, regulatory authorities and other bodies on matters relating to competition and consumer welfare.</p>	<p>Kenya Railways Staff Retirement Benefit Scheme Block 'D', 1st Floor, Haile Selassie Avenue. P.O. Box 36265-00200 Nairobi, Kenya</p> <p>Telephone: Direct Line: +254 20 2628233 Pilot Line: +254 20 2779000 Complaints complain@cak.go.ke complain@cak.go.ke</p>
Tobacco Control Board	<p>The Board advises on national policy to be adopted with regard to the production, manufacture, sale, advertising, promotion, sponsorship and use of tobacco and tobacco products.</p>	<p>Dereshe Towers, Suite 6.5 Murang'a Road - Ngara, Nairobi P.O. Box 30958 - 00100, Nairobi, Kenya Email: info@ketca.org</p>

ANNEXURES

ANNEXURE I

SAMPLE CHARGE SHEET

THE KENYA POLICE CHARGE SHEET

POLICE CASE NO.....

DATE TO COURT.....

OB NO.....

COURT FILE NO.....

Christian names in full	Surname or father's name	Identity	Sex	Nationality	Age	Address
CHARGE COUNT 1						
PARTICULARS OF OFFENCE (See second schedule of CPC)						
If Accused Arrested	Date of arrest	With/ Without warrant	Date of Appearance to Court	Bond or Bail and Amount	Is Application for summons to issue	
Remanded or adjourned						
Complainant and address						
Witnesses						
Sentence, Court and Date						

.....

For Officer in Charge.....Police Station

INVESTIGATORS ACTION	Date	Time	Initials of Recording Officer
Accused Informed of Charge Fingerprints taken by Fingerprints to Bureau Fingerprints from Bureau Completed certificate of previous conviction to Bureau First Information and Progress Report to KACA Final Report to KACA Charge Register Completed and Closed			

2. Antecedents of the Accused (As known to Investigating Officer)

3. Brief circumstances of case (Evidence of Arrest etc)

ALTERNATIVE TO COUNT ONE
PARTICULARS OF OFFENCE

COUNT TWO
PARTICULARS OF OFFENCE

COUNT THREE
PARTICULARS OF OFFENCE

.....
Officer in Charge.....Police Station

ANNEXURE II

ENFORCEMENT OFFICERS CHECKLISTS

i) Investigators Checklist

Enforcement Officers Investigators	Comments
Training and sensitization of Officers on illicit trade Regional Mapping of rampant modes of illicit trade in the area Identify community partners and other State Agencies for collaboration and partnerships Reporting of illicit trade incident <ul style="list-style-type: none"> • Enter Report in Occurrence Book/ Incidents Diary • Enter Police/ Agency Case Number 	
From Reporting to action : Take down statements of persons reporting Inform other agencies who may have a role in investigating the matter Visit scene to recover items Collect exhibits. Where applicable scene of crime to take pictures Proper handling of exhibits. Care to be taken in case of hazardous exhibits. Proper storage of exhibits. Enter exhibits in Exhibits Inventory Arrest of suspects implicated in trade Take fingerprints of suspects Forward exhibits for examination where necessary (in some cases) Identify Provision of Statute creating Offence Draft Appropriate Charge Sheet Prepare Police File/ Case File Bond witnesses to attend court	

ii) Prosecutors' Checklist

No.	Prosecutors Checklist	Comments
1.	Determine competency to prosecute- State Counsel, Public Prosecutor	
2.	Check charge sheet is properly drafted and signed	
3.	Confirm provisions of Statute creating offence and prescribing penalty are correctly cited	
4.	Confirm witnesses are bonded to attend court	
5.	Confirm exhibits are properly preserved and available for trial	
6.	Confirm expert witnesses are available where need be	
7.	On bail and bond- bring out dangers of illicit trade and chances of absconding trial if real fear exist	
8.	Ensure witnesses are available for trial	
9.	Witness Statements are shared with defense in time	
10.	Produce relevant exhibits during trial	
11.	Address Court on impact of illicit trade on the country at mitigation stage in arguing for stiffer sentence	
12.	Apply for destruction of exhibits at conclusion of trial/ Release to owner if not illicit items	

iii) Presiding Officer's Checklist

No.	Judicial Officers Checklist	Comments
1.	Accused Person present in Court – Warrants of arrests to issue if absent	
2.	Charge Sheet read to suspect in a language he/she understands	
3.	Proceedings are conducted in a language accused person understands –If need be ensure an interpreter is availed	
4.	Exhibits produced in Court – Take inventory of exhibits <ul style="list-style-type: none"> • List at the back of the file the witnesses • What document/exhibit they marked and produced • Where exhibit is located • Sign the documents • For illicit cash flows- note the serial numbers Ensure clerks file necessary documents	
5.	Exhibits are properly stored- toxic exhibits to be properly handled and stored	
6.	Consider impact of illicit trade on country if proved	
7.	Pass appropriate sentence as provided in the law	
8.	Ensure destruction of exhibits	



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