



ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA

National Council on the Administration of Justice



ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA

WITH HIGHLIGHTS ON LAWS PROHIBITING ILLICIT TRADE IN KENYA

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MAIN PARTNERS



SUPPORTING PARTNERS



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 high level policy making, implementation and oversight coordinating mechanism as reflected in its membership that is composed of State and Non-State Actors from the justice sector. The NCAJ was officially launched in 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. Specific functions of the NCAJ are to:

Strategic Objectives

Based on the identified strategic issues, NCAJ resolved to focus on the attainment 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

MEMBER

STATE ACTORS

Chief Justice, (as NCAJ Chair) The Chief Registrar Judiciary is the NCAJ Secretary.
 Cabinet Secretary responsible for matters relating to the Judiciary
 Attorney-General
 Director of Public Prosecutions
 Person responsible for exercising command over the National Police Service
 Commissioner of Prisons
 Principal Secretary responsible for matters relating to Cabinet and the Public Service
 Principal Secretary responsible for matters relating to gender, children and women's affairs
 Principal Secretaries responsible for matters relating to labour, environment and land
 Director of the Witness Protection Agency
 Director of Probation and After Care Services

INSTITUTION

Judiciary
 Ministry of Justice
 State Law Office
 Office of the Director of Public Prosecutions
 National Police Service
 Kenya Prisons Service
 Office of the President (Cabinet Office)
 Ministry of Gender, Children and Social Development
 Ministry of Labour, Ministry of Environment and Mineral Resources, Ministry of Lands
 Witness Protection Agency
 Probation and After Care Services

NON-STATE ACTORS

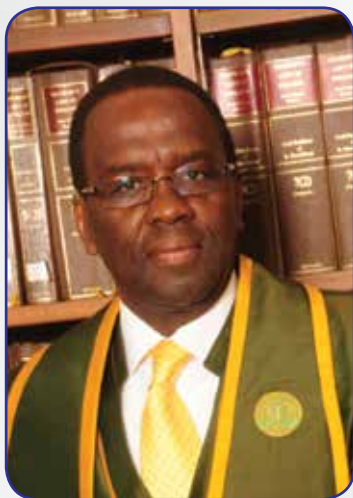
CO-OPTED MEMBERS

STATE & NON-STATE ACTORS

Legal Resources Foundation
 Ministry of Defense
 Kenya Law Reform Commission
 Commission on Administrative Justice
 Kenya National Commission of Human Rights
 CIC
 Community Service Orders Programme
 National Council for Law Reporting
 Independent Electoral and Boundaries Commission

Executive Director, Legal Resources Foundation
 Cabinet Secretary for Defense
 Chair, KLRC
 Chair, CAJ
 Commissioner, KNCHR
 Commissioner, CIC
 Chairman
 Executive Editor
 Director Legal Affairs, IEBC

FOREWORD- CHIEF JUSTICE



Great effort is expended every day around the world to organise trade in order to protect citizens, raise their standards of living and enforce codes of ethics. Despite numerous legislative and regulatory efforts to streamline commerce in Kenya, illicit trade continues to plague the country. There are those who choose not to play according to the rules, circumventing, infringing and violating laws, regulations, licensing regimes, taxation systems and embargoes. Sometimes, illicit trade in Kenya is treated as a victimless crime that law enforcers regard as petty.

Yet, illicit trade poses a serious socio-economic challenge to not only Kenya, but also to the East African region and the world at large. Illicit trade undermines the concept of a free and open market, which is fundamental to improving competitiveness, increasing investment, creating jobs and improving the economic situation of not only Kenya but also of the EAC partner states. Illicit trade undermines industries in the region, poses health risks to consumers, sabotages tourism, stunts innovation and breeds lawlessness.

A country's ability to grow its gross domestic product and improve the standard and quality of life for its citizens can be severely compromised by illicit trade.

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

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

This manual has been developed against the backdrop of escalating incidences of illicit trade in Kenya and the region. It is intended as an aid for law enforcement agencies, including those involved in the prosecution of crimes related to illicit trade and the enforcement of the laws against the trade offenders. It will act a guide for prosecutors handling matters related to illicit trade to assist them to be more effective.

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

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

Hon Dr WILLY MUTUNGA, D. Jur, SC, EGH

CHIEF JUSTICE / President of the Supreme Court of Kenya

ACKNOWLEDGMENTS - NCAJ



This manual was developed through the collaborative efforts of several important players, among them state agencies and non-state actors that are committed to eliminating illicit trade. The endeavour is informed by the need to strengthen the legal framework for dealing with illicit trade in Kenya.

Their generous input and contributions make this manual the fusion of their commitment, dedication and industry. We are forever grateful to these institutions and their staff who were involved in developing this work. It may not be possible to individually acknowledge each and every person and institution that contributed towards the development of this manual. I hope they can accept our thanks.

I wish to acknowledge the special contributions and support of the Hon. Chief Justice Willy Mutunga for his support and encouragement to see through completion of this task. His wisdom and guidance in this quest is greatly appreciated. The National Council on the Administration of Justice continue to provide overall strategic leadership and guidance in the justice arena and played a critical role in making this manual a reality.

The technical team, comprising the Judiciary; the Office of the Attorney General and Department of Justice; the Kenya Bureau of Standards; the Office of the Director of Public Prosecutions; the Ethics and Anti-Corruption Commission; the Kenya Copyright Board; the Kenya Industrial Property Institute; the Kenya Police Service/ Office of the Inspector General of Police; the Directorate of Criminal Investigations; the Anti-Counterfeit Agency; the Kenya Institute for Public Policy Research and Analysis; the National Environmental Management Authority; the Kenya Forest Service; the National Counter-Terrorism Centre; the Kenya Consumer Protection Advisory Committee; the National Intelligence Service; the Kenya National Chamber of Commerce and Industry; The Kenya Revenue Authority; The British American Tobacco - Kenya; and the Kenya Association of Manufacturers for their hard work and industry in conceptualizing the manual and reviewing the drafts.

We are especially grateful to the following institutions in the Republic of Uganda for their hospitality and support during the benchmarking visit while developing this manual: the Ministry of Trade, Industry and Cooperatives; the Judiciary; the Office of the Director of Public Prosecution; the Uganda Police/Criminal Investigations & Intelligence Directorate (CIID); the Consumer Education Trust (Civil Society); the Private Sector Foundation Uganda; the Uganda Manufacturers Association; and the Uganda National Bureau of Standards (UNBS).

The Kenya Association of Manufacturers conceptualised the idea of the manual and working closely with the National Council on the Administration of Justice to realize it. Mr Willis Otieno was the Lead Consultant during the development of this manual, and led the compilation and review from the inception to the final product. He was assisted by Ms. Beatrice Odalo.

A debt of gratitude is owed to the Special Committee led by Hon. AbdulQadir Lorot and included Ms Mary Mwenje (ODPP), Ms Jacqueline Muthoni (ODPP), Ms Alice Naliaka (National Police Service), Dr. John Akoten (ACA), Ms Katra Sambili (NCAJ), Ms Martha Mueni (OCJ), Ms Dorcas Mogere (NCAJ), Mr David Kangara (EACC), Mr Peter Mwangi (WPA), Ms Phyllis Wakiaga (KAM), Mr Juma Mwashuruti (KAM) and Mr Joseph Wairiuko (KAM) for providing technical leadership and support.

MRS. ANNE AMADI

CHIEF REGISTRAR OF THE JUDICIARY

KAM CHAIRMAN'S STATEMENT



Counterfeiting, which is the most prevalent form of Illicit Trade in Kenya, has continued to cost the Kenyan manufacturing sector billions of shillings every financial year. According to our recent study on the vice of counterfeiting in Kenya, which was done in 2012, it is estimated that Kenyan manufacturers are losing at least 40% of their market share to counterfeiters. Shortly before end of 2013, it was estimated that annually, Kshs 30 billion (US\$ 42million) is lost by Kenyan manufacturers while the Government loses Kshs 6 billion (US\$80million) annually as potential tax revenue.

The Kenya Association of Manufacturers, through the continued financial support from our key partners, the Business Advocacy Fund (BAF), has partnered with other Business Membership Organizations (BMOs) in the fight against this menace, which has continued to add to the cost of doing business in Kenya. We thank the BAF for their continued support in our advocacy work around addressing pertinent business issues, with the main objective of lowering the cost of doing business in Kenya.

Initially, KAM advocated for the successful enactment of the Anti Counterfeit Act 2008 and its Regulations, which provided for the establishment of the current Anti Counterfeit Agency (ACA) in June 2010. Hardly 3 years down the line, KAM identified gaps in the justice chain related to the enforcement against counterfeits in Kenya which included among others the lack of awareness on the vice and its impact to the society as well as the economy. This was especially among the key players in the justice chain, starting from investigation, prosecution to the courts levels. This also clearly indicated how the various government enforcement agencies in Kenya were disjointedly working together to bring about the much needed strategy of interagency collaboration, cooperation and coordination in addressing illicit trade in Kenya.

KAM approached the Judiciary through the 2013 Kenya Magistrates and Judges Association (KMJA) annual general conference with the idea of collaborating with the Government under the current Public Private Partnership (PPP) platform to develop a one-point-of-reference (a manual) to be used in all matters related to all forms of Illicit Trade in Kenya. We would like to thank the entire KMJA and specifically to our Hon. Chief Justice - Dr. Willy Mutunga, for endorsing the idea which gave way to the development of the "Enforcement Manual to Combat Illicit Trade in Kenya." We would also like to thank the National Council on Administration of Justice (NCAJ) and Hon. Abdul Qadir Lorot, the Chairman of the Special Committee, who was mandated to deliver the manual within the year 2014. We appreciate the work of this Special Committee as it has made the realization of the intended Manual a reality.

It is our hope that, going forth, the Manual will be embraced by all stakeholders and will be used as rich source of information for investigation, prosecution and the court ruling on matters related to illicit trade, including destruction of such seized illicit goods in Kenya. We hope that in our near future, this vice of illicit trade will be reduced if not eliminated, not only in Kenya but also within the EAC region and in return realize new and more investments in the manufacturing sector so that we may be able to realize our Vision 2030. KAM offers its confirmed partnership to all stakeholders in fighting illicit trade.

Mr. Pradeep Paunrana

CHAIRMAN, KENYA ASSOCIATION OF MANUFACTURERS

ABBREVIATIONS

ACA	Anti-Counterfeit Agency
AG	Attorney General
BASCAP	Business Action to Stop Counterfeiting and Piracy
CPC	Criminal Procedure Code
EABC	East African Business Council
EAC	East African Community
GDP	Gross Domestic Product
GFI	Global Financial Integrity
GI	Geographical Indication
ICC	International Chamber of Commerce
ICCPR	International Convention on Civil and Political Rights
IP	Intellectual Property
KAM	Kenya Association of Manufacturers
OECD	Organisation for Economic Co-operation and Development
SME	Small and Medium Enterprises
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organization
WEF	World Economic Forum
WHO	World Health Organization
WIPO	World Intellectual Property Organization

TABLE OF STATUTES

The Constitution of Kenya 2010

The Anti-Counterfeit Act No 3 of 2008

The Alcoholic Drinks Control Act, No. 4 of 2010

The Competition Act Cap 504

The Criminal Procedure Code Cap 75

The Consumer Protection Act No. 46 of 2012

The Copyright Act No 12 of 2001

The Counter-Trafficking in Persons Act, No. 8 of 2010

The Customs and Excise Act No 10 of 1978

The Fertilizers and Animal Foodstuffs Act, Cap 345

The Firearms Act No 40 of 1953

The Industrial Property Act, No 3 2001

The Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994

The Penal Code No 81 of 1948

The Pest Control Products Act, Cap 346

The Pharmacy and Poisons Act,

The Standards Act No 17 of 1973

The Tobacco Control Act, Chapter 245a

The Trademarks Act No 51 Of 1995

The Trade Description Act, Cap. 505

The Weights and Measures Act, Cap 513

The Wildlife Management and Conservation Act, No. 47 of 2013

The Suppression of Noxious Weeds Act, Cap 325

The Seeds and Plant Varieties Act, Cap 326

The Plant Protection Act, Cap 324

The Agricultural Produce (Export) Act, Cap 319

REGIONAL AND INTERNATIONAL INSTRUMENTS-CONVENTIONS AND PROTOCOLS

Agreement on Trade-Related Aspects of Intellectual Property Rights

Anti-Counterfeiting Trade Agreement

Convention against Transnational Organised Crime

Convention on the Elimination of All Forms of Discrimination against Women

Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption

East African Community Customs Management Act, 2004

Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

PREFACE

Illicit trade is a global phenomenon. Despite the numerous legislative and regulatory efforts to streamline trade in Kenya, the plague of illicit trade has continued to thrive in this country. The existence of various laws to curb the vice has not done much to stop illicit trade in Kenya as such crimes have been treated in the past as victimless crimes with law enforcers dismissing such cases as petty crimes. As a result of this misunderstanding, the perpetrators of this vice continue to freely enrich themselves while on the other hand exposes the innocent and ignorant consumers to severe health and safety hazards. What remains to be done then is the establishment of a strict and comprehensive system of edging out the vice in the economy.

Illicit trade undermines the concept of a free and open marketplace which is fundamental to improving competitiveness, increasing investment, generating jobs and improving the economic situation (Vision 2030) not only in Kenya but also in all the EAC partner states collectively. Illicit trade, in its varying forms, poses a huge problem in Kenya. The financial losses it occasions have affected the private sector where investments in new business have decreased due to an increase in the costs of doing business. These losses have also touched the public sector as illicit trade has enabled the evasion of payment of huge amounts of taxes with each passing financial year. Incidences of illicit trade have accompanied the stifling of new innovators and creators who are afraid that they would not benefit from their intellectual property. Due to illicit trade, Kenya's renowned parks, along with their protected flora and fauna, are being diminished at alarming rates. Last but not least, lives have been and continue to be lost as a result of use of or consumption of illicit goods and pharmaceuticals.

Kenya's efforts, including enshrinement of the protection of consumers in Article 46 of the country's constitution, the enactment of other laws and establishment of institutions, to put paid to the menace have not borne the desired results. The fragmented nature of the enacted laws makes it difficult to prosecute illicit trade cases effectively. Institutions working to combat illicit trade have failed to collaborate in combining their efforts when discharging similar mandates. Third, corruption has taken root affecting the prevention and prosecution of the trade. Challenges of accessing up to date and reliable data on illicit trade has made it impossible to fully understand the nature of the trade in the country and therefore articulate ways through which it may be categorically resolved. As a result, the trade has increased steadily over the past few years, necessitating a boost in efforts put towards fighting it.

The development of this Manual stemmed from an understanding and strong consensus among a variety of stakeholders, that illicit trade, due to its far reaching negative impacts cannot be ignored. It is indeed imperative that illicit trade be tackled if Kenya is to see positive development in many of its sectors.

The Manual serves as a source of information to educate stakeholders on illicit trade and further strengthens efforts being made towards combating illicit trade in Kenya. Drawing from a wide selection of credible sources, the Manual seeks to provide information to different parties and institutions on illicit trade, while simplifying the laws that are applicable to and describing the procedures surrounding prosecution of illicit trade and the general fight against the trade. It demonstrates how institutions can work together, pooling their capacities to reduce the incidence of and ultimately end illicit trade and its harmful impacts on Kenyans. Above all, it officially starts what would be a periodic process of critically analysing and therefore understanding illicit trade, its extent, its impacts and its evolution in Kenya.

The Manual is presented as a practical approach to curbing the crime and is expected to go a long way in increasing the knowledge, efficiency and success of those charged with the duty to prosecute such crimes and check the prevalence of illicit trade crimes.

The Manual highlights negative impacts of illicit trade on the Kenyan economy and on the public, thereby painting a clear picture of the negative and far reaching effects thereof. This part of the manual provides a logical basis upon which tackling of illicit trade would be determined to be essential, in not only the Kenyan context, but also the global context.

Moreover the Manual gives a thorough review of the relevant provisions of national and international laws that are key to the prosecution of illicit trade in Kenyan Courts and the procedures that prosecutors need to be abreast of in order to be able to carry out effective prosecution of illicit trade.

The Manual is intended for use by public agencies including investigators, administrators, prosecutors and judicial officers in exercising their respective duties in response to the eradication and punishment of trade in illicit goods. The Manual is also relevant to business persons, academics, students, researchers and members of the public who desire to learn more about anti-illicit trade.

Users of this Manual can utilise it to explore and enhance their understanding of the illicit trade problem in Kenya, the relevant existing legislation and legal procedures in order to effectively and efficiently direct investigations and prosecute the perpetrators of such crimes.

The general public who are the victims of illicit trade can benefit from the information in the Manual which seeks to create awareness of the illicit trade problem and provide direction on the existing mechanisms for reporting instances of illicit trade.

CHAPTER ONE



INTRODUCTION

Illicit trade comprises both the trade in illegal goods and services, as well as instances where normally legal goods are traded illegally, affecting all aspects of global social and economic lives.¹ This all encompassing effect poses challenges in the evaluation of illicit trade and its effects as illicit trade operates outside of the law and therefore data on the same is difficult to access.² What is certain, however, is that illicit trade is driven by the economic opportunity it offers for illicit vendors to make money illegitimately in an environment wherein opportunity for economic benefit is perceived to outweigh the actual risks involved.³

In 2009, the value of global illicit trade, was estimated at US\$ 1.3 trillion and was said to be increasing at a fast pace.⁴ Research published in 2013 has put that figure at about US\$ 650 billion for goods only and US\$ 2 trillion in total.⁵ This indicates a doubling of the value of the trade in just about 4 years. Despite these alarming figures, international policy to deal decidedly with illicit trade is still deficient and in many cases lacks congruence across jurisdictions.⁶

As the East African Community (EAC) integration deepens with the commencement of the Common Market implementation process that has brought about free movement of goods, East Africa is finding itself in a very uncomfortable position whereby illicit trade continues to increase in absence of strong legal and institutional mechanisms to deal with it.⁷ The Organisation for Economic Co-operation and Development (OECD) estimates that EAC governments lose over US\$ 500 million in tax revenue annually due to the influx of counterfeit and pirated products. It is notable that this figure does not encompass several other forms of illicit trade. The total tax revenue losses from illicit trade would therefore be larger amounts.

Kenya, the largest market in East Africa, serves as the major distribution point to the surrounding countries Uganda, Rwanda, and Ethiopia.⁸ Conversely, it is also the biggest market for counterfeit goods and contraband in East Africa sourced mainly from India and China, rivalling key foreign exchange earners tourism, tea and coffee in terms of earnings.⁹ Networks of cross-border smugglers target fast moving and highly profitable goods to import into Kenya illegally including food stuff, electronics, and cosmetics.¹⁰ Pharmaceuticals also form part of the list with estimates revealing that more than 30 per cent of the total medicines sold in Kenya are counterfeit¹¹ and that about 40 per cent of all malaria drugs in the Kenyan market are counterfeits that may be harmful to users.¹² The personal health implications of illicit goods and pharmaceuticals on consumers are vast and cannot be ignored as they range from the upsurge of new illnesses, the non-curing or deterioration of illnesses and even death.

Kenya is also greatly affected by illicit activities against the environment such as poaching and logging which have become increasingly lucrative businesses for crime syndicates in national and international domains. It is now estimated that illegal wildlife trade is valued at US\$ 15-20 billion annually, making it the fourth largest form of illegal trade falling behind only trafficking in illegal drugs, people and weapons.¹³

1 Karl Lallerstedt & Mikael Wigell, Illicit trade flows; how to deal with the neglected economic and security threat, Finnish Institute of International Affairs, Briefing Paper 151, March 2014.

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

3 SADC Review – Study into the illicit trade in excisable products with particular reference to alcohol and tobacco products, November 2012.

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

5 Global Financial Integrity Report, 2011-2012.

6 JCIC, Illicit Trade Policy and Supply Chain Security, <http://www.jcicinternational.com/illicit-trade-policy-supply-chain-security/> accessed on 12/08/2014.

7 Agatha Nderitu, the Executive Director EABC in an interview with Berna Namata of Business Times Rwanda, 2014.

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

9 Peter Gastrow, Termites at Work: Transnational Organized Crime and State Erosion in Kenya, 2011/ Ken Opala, “Merchants of Fakes Reap Sh70bn and Put Lives and Jobs at Great Risk,” Daily Nation, November 21, 2009, available at www.nation.co.ke/News/-/1056/801882/-/item/1/-/wkyf9/-/index.html.

10 Peter Gastrow, Termites at Work: Transnational Organized Crime and State Erosion in Kenya, 2011.

11 Kenya Association of Manufacturers and Trade Mark East Africa, War on Counterfeits, <http://www.trademarka.com/download/Counterfeits-KAM-Final1-.pdf>,

12 Presentation by the chief executive of Kenya Association of Manufacturers, Betty Maina, “Anti-Counterfeit Bill – We Count on Legislators to Act Rightfully” September 2008, available at www.kam.co.ke/.

13 Office of the Attorney General and the Department of Justice, A Paper Presented by The Hon. Attorney General During The Global Symposium On Environmental Rule Of Law 1st UNEA At UNEP Headquarters Gigiri Nairobi, 24 June 2014.

Shortly before the end of 2013, it was estimated that annually, Kshs 30 billion is lost by manufacturers and Kshs 6 billion by government due to trade in illicit goods.¹⁴ 2014 estimates have put the figures at Kshs 50 billion and Kshs 20 billion respectively.¹⁵ This denotes an increase of almost 100% in less than two years and shows that the same figures could be reasonably expected to rise to more than Kshs 100 billion in total losses for the country in the next few years if no action is taken. On the global level, the size and value of illicit trade is estimated to be as set out in the table below:¹⁶

DEFINITION OF ILLICIT TRADE AND WHAT IT INVOLVES

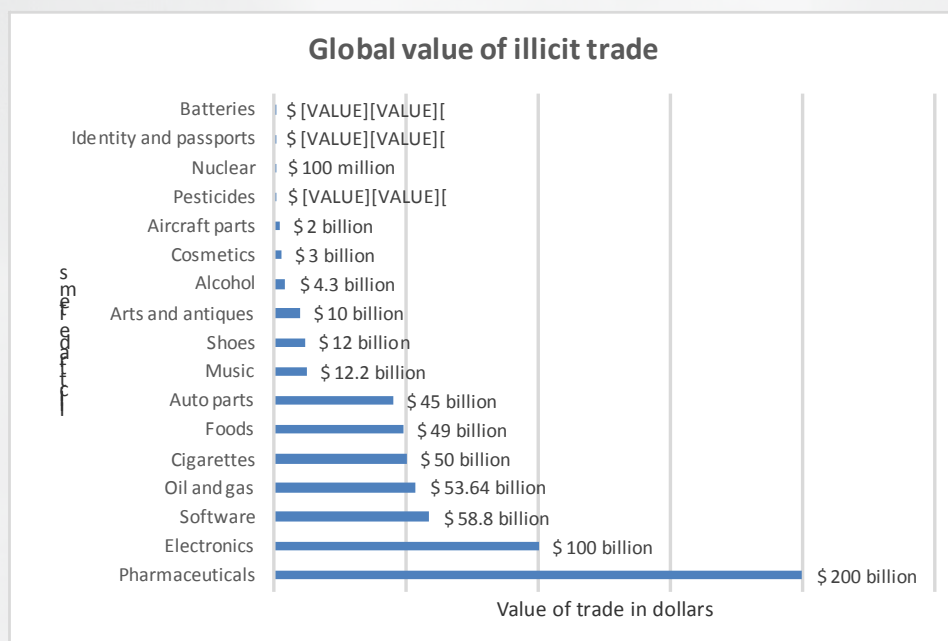


Figure 1: Estimated global value of illicit trade

Illicit trade is a concept that encompasses a fairly wide number of issues. Literature on illicit trade does not contain one fixed definition. There is no statutory definition in Kenya of illicit trade. World Health Organization (WHO) defines illicit trade as “Any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity.”¹⁷ It is also to be distinguished from trade in illicit goods which connotes trade that would be legal but becomes illegal due to the fact that the subjects of the trade-the goods-are illegal e.g. buying and selling pharmaceuticals that are not up to the required standard through normal and legal channels. By this definition, the latter is subsumed in to the former.

By its very nature, illicit trade is difficult to quantify. This presents problems for economic and legal policy making.¹⁸ But beyond this, the unregulated trade imposes enormous revenue losses for governments which directly affect the governments’ debt levels and their ability to fund programmes that would be beneficial to the growth and development of their people.¹⁹ In parallel, illicit trade

¹⁴ Presentation by the chief executive of Kenya Association of Manufacturers, Betty Maina, “Anti--Counterfeit Bill – We Count on Legislators to Act Rightfully,” available at <http://www.kam.co.ke/index.php/opinion--pieces/147--anti--counterfeit--bill--we--count--on--legislators--to--act--rightfully>, 25 October 2013.

¹⁵ Kenya Association of Manufacturers Chairman Polycarp Igathe speaking to Rajab Ramah, Strict law enforcement key to ending counterfeit scourge in Kenya, http://sabahionline.com/en_GB/articles/hoa/articles/features/2014/06/20/feature-01?change_locale=true, 20 June 2014.

¹⁶ Jeannie Cameron, (2012) ‘Benefits of Track and trace Ecosystems’.

¹⁷ Joostens and Raw “From cigarette smuggling to illicit tobacco trade” *Tobacco Control* 2012 21 230-4 at 231. The definition utilised by Joostens and Raw is found in the World Health Organization “Framework Convention on Tobacco Control”. Geneva: World Health Organization, 2003.

¹⁸ Grant Thorton “Illicit Trade: an Irish and Global Challenge” available at <http://www.grantthornton.ie/db/Attachments/Grant-Thornton-Illicit-Trade-Report-2014.pdf>.

¹⁹ Grant Thorton “Illicit Trade: an Irish and Global Challenge” available at <http://www.grantthornton.ie/db/Attachments/Grant-Thornton-Illicit-Trade-Report-2014.pdf>.

creates a supply of products that require high regulation (e.g. pharmaceutical medicines) or are often illegal (e.g. narcotics) in the first place thus imposing on society.²⁰

Illicit trade therefore is, any form of trade that infringes the rules, laws, regulations, licenses, taxation systems, embargos and all procedures that countries use to organise trade, protect citizens, raise standards of living and enforce code of ethics. Illicit trade involves money, goods or value gained from illegal and otherwise unethical activity.²¹ It involves a wide encompassing variety of illegal trading activities. It additionally includes all actions or conduct intended to facilitate such activities.

Illicit trade includes the following examples-

- a) smuggling of excisable goods;
- b) intellectual property infringements;
- c) trading with illegal weights and measures;
- d) human trafficking;
- e) environmental crime;
- f) illegal trade in natural resources;
- g) trade in illegal, harmful or substandard goods or substances that may carry serious health and safety risks;
- h) trade in illegal drugs;
- i) trade in illegal plants parts, seeds and animal material
- j) illegal manufacturing;
- k) illicit arms trade; and
- l) Illicit financial flows.²²

The definition of illicit trade is broad enough to encompass a wide range of activities and thus the illustrations above serve only as a guide to a developing concept and not as a limit or restraint.

CATEGORIES OF ILLICIT TRADE AND DEFINITIONS

Illicit trade manifests itself in 4 major and interrelated ways:

- a) Smuggling
- b) Counterfeiting, piracy and substandard goods
- c) Transit fraud/dumping
- d) Trade in prohibited goods or products.²³

a) Smuggling

Smuggling refers to the illegal trading of products across borders.²⁴ What product can be smuggled is significantly vague only because no fixed term can be given to it as it is a circumstantial situation. However, what must be noted is that there must be a distinction between the two instances that can occur. The first instance is whereby the trade of the product is illegal while the product itself is not. For instance, the illicit trade of tobacco; tobacco is not an illegal substance in most jurisdictions. Most significantly, it is not illegal in Kenya. However, it can be traded in a manner that does not conform to the rules prescribed in Kenya. The second instance is when the product itself is illegal and by extension its trade is also be illegal. An ideal example is the trading of illegal drugs such as

cocaine or heroin. These substances are prohibited by the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994 (The Narcotic Drugs Act) and their trade is prohibited by the same instrument.

Illicit-Trade-Report-2014.pdf.

20 Grant Thorton "Illicit Trade: an Irish and Global Challenge" available at <http://www.grantthornton.ie/db/Attachments/Grant-Thornton-Illicit-Trade-Report-2014.pdf>.

21 World Customs Organization "Illicit Trade Report, 2012". Brussels: World Customs Organization, 2013.

22 WCO "Illicit Trade Report, 2012". Brussels: World Customs Organization, 2013.

23 Allen "The Illicit Trade in Tobacco Products and How to Tackle it?" *World Customs Journal* Volume 6 No 2 121 at 122.

24 Joostens and Raw "From cigarette smuggling to illicit tobacco trade" *Tobacco Control* 2012 21 230-4 at 231.

A key aspect of smuggling is that the product that is smuggled must be traded. In this regard, a distinction must be made between tax avoidance and tax evasion. In cases where a product is bought for the use of a traveller/his family/friends the buying behaviour is legal and can be described as tax avoidance.²⁵ Tax evasion on the other hand includes the purchase of smuggled or illicitly manufactured products and subsequent sale of the products.²⁶ Thus, if a product is brought into a country while circumventing customs requirement, but is not subsequently sold, that will not fall within the definition of smuggling.

Human Smuggling and Trafficking

Finally and perhaps the most chilling aspect of smuggling is the growing global phenomena of human smuggling and trafficking. Human smuggling does not traditionally fit into the definition of smuggling in terms of the nature of the product and also in terms of the trade. Migrant smuggling and human trafficking are now more entrenched than ever in many regions, with efforts to combat both—within a narrow criminal frame—largely unsuccessful and often counterproductive.²⁷ Human smuggling is an individual's crossing of a State's international border without the State's authorisation and with the assistance of paid smugglers. Human trafficking occurs when an individual who has been smuggled across the border is coerced, especially into forced labour or prostitution.²⁸ The key distinction between human smuggling and human trafficking is coercion, whether through direct application of physical force or the threat of the use of force.²⁹

The Palermo Protocol defines human trafficking as

*“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”*³⁰

Human trafficking is a highly complex and multifaceted phenomenon cutting across the globe. It is as much a national problem as it is a regional and international problem. Third world countries especially in the Asia and Africa have been adversely affected as being the primary countries of origin while Europe has been the preferred destination for traffickers. Modern forms of human trafficking include: Child trafficking; domestic servants' confinement; sex tourism and industry; abduction and early marriages; and drug couriers.

b) Counterfeiting, Piracy and illicit manufacturing of goods

Product counterfeiting is defined as the unauthorised manufacturing of articles which mimic the characteristics of genuine goods and which may pass themselves off as registered products of licit companies.³¹ Pirated goods are products that are reproduced and used without the necessary authorisation from the owner.³² The trade of pirated and counterfeit goods massively affects industries and can also compromise standards and endanger people depending on the product

Trade in counterfeit and pirated goods has developed into a substantial threat for many industries.³³ The problem of counterfeit goods is no longer confined to prestigious, easy to manufacture products (such as knock off designer products) which consumers knowingly purchase as cheap imitations.³⁴ Today counterfeiting affects pharmaceuticals, electronic components, fast moving

25 Joostens and Raw “From cigarette smuggling to illicit tobacco trade” *Tobacco Control* 2012 21 230-4 at 230.

26 Joostens and Raw “From cigarette smuggling to illicit tobacco trade” *Tobacco Control* 2012 21 230-4 at 230.

27 Kyle and Koslowski *Global Human Smuggling: Comparative Perspectives* 2 ed (John Hopkins University, Maryland 2011) at vii.

28 Kyle and Koslowski *Global Human Smuggling: Comparative Perspectives* 2 ed (John Hopkins University, Maryland 2011) at 4.

29 Kyle and Koslowski *Global Human Smuggling: Comparative Perspectives* 2 ed (John Hopkins University, Maryland 2011) at 5.

30 United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children, also known as “Palermo Protocol”, Article 3(a).

31 Staake and Fleisch *Countering Counterfeit Trade: Illicit Markets Insights, Best-Practice Strategies, and Management Toolbox* (Springer-Verlag, Berlin 2008) at 4.

32 Staake and Fleisch *Countering Counterfeit Trade: Illicit Markets Insights, Best-Practice Strategies, and Management Toolbox* (Springer-Verlag, Berlin 2008) at 4.

33 Staake and Fleisch *Countering Counterfeit Trade: Illicit Markets Insights, Best-Practice Strategies, and Management Toolbox* (Springer-Verlag, Berlin 2008).

34 Staake and Fleisch *Countering Counterfeit Trade: Illicit Markets Insights, Best-Practice Strategies, and Management Toolbox* (Springer-Verlag, Berlin 2008).

consumer goods and cigarettes. These are only a few examples; the illicit trade of counterfeit goods is so far reaching that it generates US\$ 250 billion a year globally.³⁵

Illustration of main actors in illicit trade

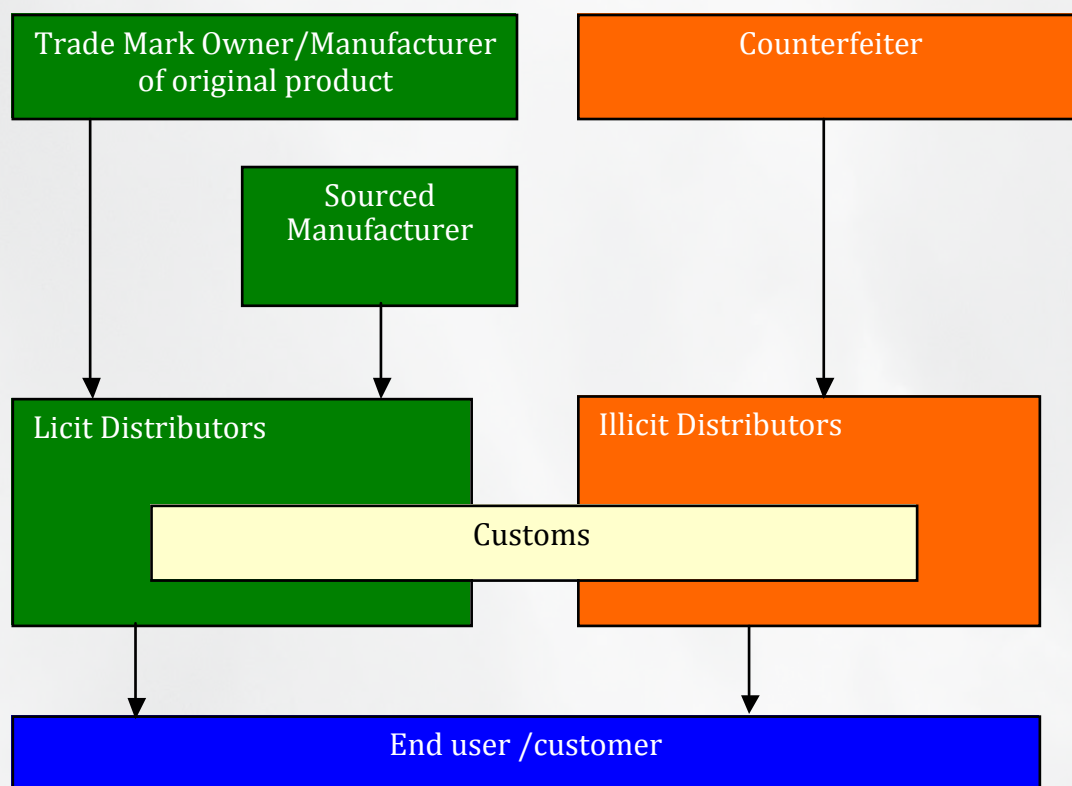


Figure 2: Role of Different Actors in Counterfeit Trade

Key to figure 2

The trademark owner is the most affected player in counterfeiting market system. To mitigate the negative effects, it is in the interest for the trademark owner to be engaged in anti-counterfeiting activities. The anti-counterfeiting activities of the trademark owner are indeed important for the success of any kinds of counter measures.

Often trademark owners do not discuss the problem in public for fear of their competitors. This is because companies consider the risk of negative publicity to be higher than possible benefits from public awareness.

Manufacturers of counterfeit products seek ways to increase their profits illegally by forging or copying the trademark of the brand owner.

Outsourced manufacturers working under licenses of trademark owners expose the brand to the risk of counterfeiting. This is associated with the transfer of knowledge, work force, and machinery to counterfeit manufacturers which is easier from the outsourced manufacturer than from the original manufacturer and which can be controlled more tightly by the trademark owner. In addition, once the outsourced manufacturer has the ability to produce original products, is relatively easy for them to continue producing branded products after the license is due, turning themselves into counterfeit manufacturers. In these cases the counterfeit products manufactured are to the original and become difficult to detect.

The licit distributor consists of entities that distribute the original products and also have permission to do so. There are many cases where licit and illicit distribution channels cross and it can be hard to draw a line between them; for example, counterfeit and original products can travel in the same consignment in different containers.

The illicit distributor consists of different players who try to make sure that the counterfeit products find their way to the end consumers.

Illicit distribution channels include many steps from different kinds of logistics operations to the actual retailer, which can be a

³⁵ These statistics are derived from a press release by the United Nations Office of Drugs and Crime in support of its campaign: “Counterfeit don’t buy into organised crime” available at http://www.unodc.org/documents/counterfeit/PressRelease/Press_Release_-_English_-_Counterfeit_Campaign_2014.pdf.

market, bazaar, or a store that sells counterfeit products. The main motivation for players in the illicit distribution channel is higher profit through cheaper products.

Customs Authority is a very important organization in the fight against illicit trade. One of the goals of customs is to detect and seize counterfeit products as they pass through borders. Customs provide brand owners with ways to protect the trademarks through collaboration, but have limited means if the brand owner is not actively committed to trademark protection. Another goal of customs is to facilitate international trade, which sometimes conflicts with anti-counterfeiting because it calls for checking fewer products. As a consequence, the resources that customs has for finding counterfeit products is very limited.

The consumer has a twofold role in trade with counterfeit products. On the one hand, consumers buy some fakes knowingly, creating the demand for counterfeit goods. Here consumers typically benefit from low prices of counterfeit goods and consider the fakes as good bargains, despite their unknown origin and possibly lower quality. On the other hand, there are cases where the end-users and consumers have to be protected from buying unknowingly non-perceptively, as the fakes can threaten their health, safety, or security.

Kenya has an extensive legislative framework to address counterfeiting, piracy, the protection of intellectual property rights and illicit manufacturing of goods. The framework includes; the Anti-Counterfeit Act No. 13 of 2008, the Trademarks Act Cap. 506, Industrial Property Act No 3 of 2001, The Copyright Act No 12 of 2001, the Standards Act Cap. 496 and The Penal Code Cap. 63. The exact scope of these legislative frameworks as relates to illicit trade is discussed in more detail later in the manual.

c) Transit Fraud/ Dumping

Transit fraud involves the evasion of customs duties and taxes. It may also involve the avoidance of existing restrictions or prohibitions through abuse of the transit regulations governing the passage of goods through specific customs territories.³⁶ These activities normally include the diversion of goods into the local commerce, the substitution of inferior and lower quality goods or the use of substituted and false documents.³⁷

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

- a) **Immediate exportation**—foreign goods are exported from the port of arrival without payment of duty.
- b) **Transportation and Exportation**—foreign goods transiting the territory are stored in-bond for exportation to a destination port, without the payment of duty.
- c) **Immediate Transportation**—foreign goods arrive at a port of entry and are transported to another port where the initial entry in the port will be filed by the importer or broker in order to pay less or no duty.³⁸

Diversion may occur when goods that should have been exported from the country are illegally entered into the commerce of the country. Another instance is when imported containers which are supposed to be in transit are removed before they reach their intended destination. Diversion can also occur when there is a “turn around” between the initial port of entry and the alleged port of export. Other forms of diversion include the diversion and subsequent commercial consumption of goods that have entered into a free zone,³⁹ or imported goods improperly described and not physically examined by customs, entered into the territory. The implications of transit fraud are not necessarily limited to the government revenue. Unauthorised access to, and/or the diversion of the goods under customs transit could have significant impacts on public health and security.⁴⁰

The World Trade Organization Anti-Dumping Agreement provides that a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from

³⁶ WCO “Illicit Trade Report, 2012”. Brussels: World Customs Organization, 2013.

³⁷ WCO “Illicit Trade Report, 2012”. Brussels: World Customs Organization, 2013.

³⁸ WCO “Illicit Trade Report, 2012”. Brussels: World Customs Organization, 2013.

³⁹ A Free Zone is described as a part of the of the territory of a contracting party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned as being outside the customs territory. This definition is found in Customs Co-operation Council (World Customs Organization). International Convention on the Simplification and Harmonisation of Customs Procedures, (as amended), Revised Kyoto Convention, Brussels: WCO, 1999.

⁴⁰ WCO “Illicit Trade Report, 2012”. Brussels: World Customs Organization, 2013.

one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.⁴¹

The East African Community Customs Union Protocol defines dumping (an probable additional way in which transit fraud occurs) in article 1 as;

“the situation where the export price of goods imported or intended to be imported into the Community is less than the normal value of like goods in the market of the country of origin as determined in accordance with the provisions of the protocol.”

Dumping is regulated by the Customs and Excise Act No. 10 of 1978 in Sections 125 and 126 which provide for the imposition of a dumping tax on goods that are found to have been brought into Kenya in circumstances deemed to be dumping. Dumping is thus not in itself prohibited, however, if one imports goods in circumstances equivalent to dumping and fails to pay the necessary anti-dumping, the subsequent trade of those goods can be deemed as illicit.

d) Trade in Prohibited and Restricted Goods or Products

A distinction must be made between smuggling and trade in prohibited goods. Smuggling refers to illegal trade across borders. Trade in prohibited or illegal goods or products refer to trade within the borders of a country, of goods the possession of which is prohibited. “To trade” is defined as the “sale or expose or offer for sale goods for the purpose of profit, or to transfer possession of goods in the giving of service or profit”.⁴²

Prohibited or illegal goods refer to goods and services that are unlawful e.g. narcotic drugs and animal tusks (e.g. trade in ivory from Elephants and Rhinos). There exists a comprehensive legal framework which regulates the possession and trade of goods that are prohibited or illegal. These include the Narcotics Drugs and Psychotropic Substances Act, the Penal Code and The Trading in Prohibited Goods Act amongst others.

CONTRIBUTING FACTORS TO ILLICIT TRADE

Illicit trade encompasses a wide variety of activities therefore different factors may contribute to different illicit trade activities. This Section will discuss in a generalised manner, the factors that contribute on illicit trade without focusing on detailed aspects of particular instances of such trade. Illicit trade is supply and demand driven.⁴³ Consumers seek to buy cheap products while criminals seek to take advantage of the lack of payment of taxes to make high profits with low risk of being penalised. Contributory factors include-

- a) unbalanced fiscal policies;
- b) disparities in tax-driven prices between neighbouring jurisdictions;
- c) protectionist policies;
- d) Corruption. This weakens the enforcement of existing regulations and undermines any controls put in place;
- e) weak enforcement (this includes low detection rates and low levels of prosecution, easy payment of fines⁴⁴);
- f) porous borders;
- g) Strong networks that deal with drug trafficking, prostitution, sale of human body parts, money laundering and terrorism, inter alia;
- h) The development of information and communication technologies (ICT), which have dramatically blurred geographical barriers and aided trade on a massive scale;
- i) Weak border controls. This has led to rise of smuggling;

⁴¹ Article 2 WTO Anti- Dumping Agreement

⁴² Trading in Prohibited Goods Act 5 of 1996.

⁴³ Allen “The Illicit Trade in Tobacco Products and How to Tackle it?” *World Customs Journal* Volume 6 No 2 121 at 124.

⁴⁴ WCO “Illicit Trade Report, 2012”. Brussels: World Customs Organization, 2013.

- j) Inadequate sanctions. Sanctions imposed do not sufficiently act as a deterrent because the balance of risk and reward is not weighed against the offenders;
- k) inadequate or out of date legislation;
- l) growth of an illegal distribution network;
- m) Public tolerance;⁴⁵ and consumer behaviour. In many markets, consumers are aware that they are purchasing smuggled or counterfeit goods but they are happy to buy, because of the lower price as without demand, there would be no supply;
- n) illicit trade in some areas such as counterfeiting can be more profitable than other illegal activities such as trafficking of narcotics and people;⁴⁶
- o) lacking cooperation, coordination and information sharing at national and international levels, as well as lacking of a common strategic impetus;⁴⁷
- p) the ease of operating in a country; and
- q) The prevalence of organised crime networks.⁴⁸
- r) Globalisation. This involves taking advantage of an integrated global financial structure created to facilitate the movement of financial flows. This global structure includes tax havens, secrecy jurisdictions, disguised corporations, anonymous trust accounts, fake foundations, correspondent banks, falsified pricing and money- laundering techniques.
- s) Increasing economic divisions between the developing and the developed world. The economic front also presents an opportunity for the smuggler and illicit vendor to make money and the consumer to save money. The motivation occurs where there is economic benefit to be obtained and the benefit is perceived to outweigh the risks.
- t) Disparities in laws developed by the partner States within the region.

COMMODITIES MOSTLY AFFECTED BY ILLICIT TRADE

The Anti counterfeit Agency identified the following products as having the greatest appeal to counterfeiters;⁴⁹

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

⁴⁵ Allen "The Illicit Trade in Tobacco Products and How to Tackle it?" *World Customs Journal* Volume 6 No 2 121 at 124.

⁴⁶ UNODC "Focus on: The Illicit Trafficking of Counterfeit Goods and Transnational Organised Crime". Vienna: United Nations Office on Drugs and Crime, 2013.

⁴⁷ WCO "Illicit Trade Report, 2012". Brussels: World Customs Organization, 2013.

⁴⁸ Joostens and Raw "From cigarette smuggling to illicit tobacco trade" *Tobacco Control* 2012 21 230-4 at 232.

⁴⁹ Kenya Association of Manufacturers (KAM), Survey on Counterfeiting in Kenya Report, December, 2012.

Other mostly counterfeited products include;

- agrochemicals,
- building appliances,
- computer software and hardware,
- audio and visual disks,
- automotive spare parts
- Poaching for trade in game meat and trade in game trophies- ivory and rhinoceros horns
- branded stationery e.g. rulers and geometrical sets

COMMON MODES OF COUNTERFEITING PRODUCTS

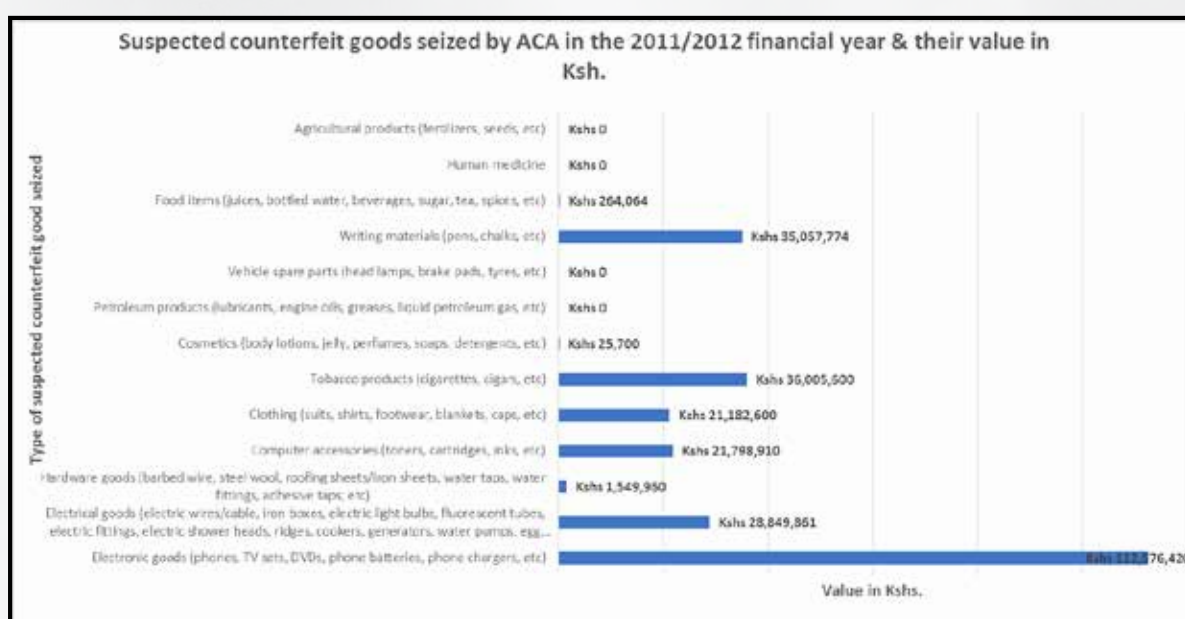


Figure 3: Estimated value of seized counterfeit goods by the ACA

The Kenya Anti-Counterfeit Agency (ACA) has identified various methods through which counterfeit products are made including; labelling, packaging, adulterations, direct imports, transit goods, and even locally manufactured counterfeit goods.⁵⁰ These come in different forms as listed below.

- i) **Printing of fake labels** that occur mostly with alcoholic beverages soft drinks and juices and mineral water where genuine packaging materials are used to depict the original cover while the contents of the product is fake, although in some cases bearing the similar content of the true product.
- ii) **Direct import goods** are those coming into the country already counterfeited from their sources of origin either in neighbouring countries or overseas. Here, packaging and labelling are mostly used to cheat the unsuspecting consumer.
- iii) **Adulteration of products** is mostly found in cosmetics and beauty products, cooking oil, pens, rice, and branded stationery.
- iv) **Transit goods to neighbouring countries** play a vital role in counterfeits' proliferation in the domestic market. Counterfeits find their way to the market through different points at the borders while in transit.

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

- v) **Locally manufactured goods.** Cases have been reported and police raids undertaken to apprehend unlawful production of goods which resemble legally manufactured goods by registered companies in various parts of the country.
- vi) **Counterfeiters can be subcontractors of the original producers** and may illegally use original production equipment, models and infrastructure. In such a case, counterfeit goods may share the very same quality of the original ones (e.g. when subcontractors overproduce in order to sell part of the production on their own).

IMPACT OF ILLICIT TRADE

As can be deduced from the above Section which discusses the varying forms of illicit trade, we are all at risk from illicit trade in its most banal forms and certainly in its most serious forms. Private citizens, companies and governments are confronted with the real possibility of illicit trade that affects well being, operations and public service delivery respectively.⁵¹ The impacts of illicit trade can be felt on: the economy and business, the public's health and safety and the environment, on wildlife and on several other areas.

a) Impacts on the Economy and Business

As earlier mentioned, illicit trade leads to the loss of billions in government taxes every year, thereby depriving the public sector of significant revenues and legitimate industries of deserved profits. Clear examples are seen in most cases of illegal extraction of natural resources through logging, oil extraction and mining of resources such as gypsum, limestone, mercury etc. in Kenya, where duties may not be paid to the State which is the owner of the resources.⁵² At the very least the effects of such losses mean that governments have less funds to direct towards delivery of public services such as education and health or towards development initiatives such as the construction of infrastructure in the countries affected. It also means that legitimate manufacturers are exposed to possible closure of their companies.⁵³

Counterfeiting and other forms of illicit trade also cost the society more as a result of additional law enforcement and policing expenses, through higher medical and social security costs owing to injuries and illness, and through increased costs for law-abiding consumers who have to pay more to cover the additional costs for producers related to security and tracing systems, litigation and civil enforcement.⁵⁴

Illicit trade often exacerbate a weakened or corrupted state that is unable to assert the rule of law, thereby creating a hostile environment for legitimate business and discouraging local and foreign investment.⁵⁵ Investment is also discouraged by costs of doing business which are increased significant threats to the safety and security of personnel and facilities.⁵⁶

Illicit trade, especially counterfeiting, undermines value of authentic products and the investments in the form of time and money that legitimate business put into their brands;⁵⁷ counterfeit products are manufactured cheaper in order to enable them to be sold cheaply while ensuring that profit margins remain high. Counterfeiters also do not incur any costs related to advertisement of their products.⁵⁸ The actions of counterfeiters undermine the value of investments that legitimate companies devote to their products; they also undermine company reputations when companies or manufacturers are associated with products of inferior quality.

51 Global Agenda Council on Illicit Trade & Organized Crime 2012-2014, *Out of the Shadows: Why Illicit Trade and Organized Crime Matter to All of Us*, 22-25 January 2013.

52 World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

53 International Chamber of Commerce, *Promoting and protecting Intellectual Property in Kenya*, 2012.

54 United Nations Office on Drugs and Crime, *Focus On- The Illicit trafficking of Counterfeit Goods and Transnational Organized Crime*, 2013.

55 World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

56 World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

57 JTI, *Anti-Illicit Trade*, <http://www.jti.com/how-we-do-business/anti-illicit-trade/global-issue/> accessed on 12/08/2014.

58 International Chamber of Commerce, *Promoting and protecting Intellectual Property in Kenya*, 2012.

Illicit trade also stifles innovation as there is reluctance to innovate in conditions that will see the innovations illegally traded and will provide no profit or benefit to the innovators.⁵⁹

Where illicit traders use the infrastructure of the legitimate economy to conduct their business, various costs and risks are imposed onto legitimate business. These costs and risks may be individual (monitoring, compliance, liability, reputation, health and safety of consumers) and/or systemic (e.g. possible major disruptions of the global supply chain).⁶⁰

Additionally, when global supply chains are disrupted or sabotaged due to illicit trade activities, the market share for suppliers, distributors & retailers is also disrupted,⁶¹ mainly due to the introduced obstacles that may affect products reaching the market. This in turn undermines investment in supply and distribution networks as investors become wary of not making any profit in situations whereby there are no safeguards against illicit trade and the effects thereof on their supply and distribution networks.⁶²

The effect of all the above is that if illicit trade remains unchecked, we lose the financial and moral incentive for countries, companies and individuals to join and effectively contribute to the formal economy.⁶³

b) Impacts on Public health and safety

Illicit trade exposes consumers to products that have been developed devoid of any health regulations. This means that these products made with a focus for making profit rather than effectiveness may be harmful to peoples' health and may even cause deaths. Medicines in this category have been found either to contain the wrong dose of active ingredients, or none at all, or to have a completely different ingredient included.⁶⁴ Globally, it is reported that each year 700,000 people are killed by counterfeit malaria and tuberculosis medication.⁶⁵

African markets are flooded with poor quality or altogether counterfeit medicines.⁶⁶ The number of persons in Africa that die from counterfeit medicines each year stands at 100,000.⁶⁷ In Kenya in May 2014, deaths related to the consumption of illicitly produced and traded alcohol surpassed 90.⁶⁸ More than 100 people were hospitalised as a result of consuming illicit alcohol during the same period.⁶⁹

More than five million people worldwide die each year from tobacco-related causes including cancer, heart disease and respiratory diseases. The figure is projected to reach about eight million by 2030.⁷⁰ Minors' access to tobacco increases as a result of illicit trade.⁷¹ Firstly, illicit trade in tobacco products contributes to tobacco consumption by making cigarettes available cheaply even to minors,⁷²

59 OECD Workshop, "Assessing the harms posed by illicit trade and the illegal economy for global supply chain integrity, economic growth and market security" <http://www.oecd.org/governance/risk/Illicit%20Trade%20Workshop%2026%20October%202012-rev.pdf>, 26 October 2012.

60 World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

61 JCIC, Illicit Trade Policy and Supply Chain Security, <http://www.jcicinternational.com/illicit-trade-policy-supply-chain-security/> accessed on 12/08/2014.

62 JCIC, Illicit Trade Policy and Supply Chain Security, <http://www.jcicinternational.com/illicit-trade-policy-supply-chain-security/> accessed on 12/08/2014.

63 Global Agenda Council on Illicit Trade & Organized Crime 2012-2014, Out of the Shadows: Why Illicit Trade and Organized Crime Matter to All of Us, 22-25 January 2013.

64 United Nations Office on Drugs and Crime, Focus On- The Illicit trafficking of Counterfeit Goods and Transnational Organized Crime, 2013

65 *International Policy Network.

66 Jocelyn Sambira, Africa Renewal Online, Counterfeit drugs raise Africa's temperature, <http://www.un.org/africarenewal/magazine/may-2013/counterfeit-drugs-raise-africa%E2%80%99s-temperature>, May 2013.

67 *International Policy Network

68 NACADA, Summary Report of Morbidity and Mortality Caused by Alcohol Consumption in Various Parts of the Country as at 11th May 2014 and WHO Global Status Report on health and Alcohol, 2014.

69 NACADA, Summary Report of Morbidity and Mortality Caused by Alcohol Consumption in Various Parts of the Country as at 11th May 2014.

70 World Health Organization, WHO Report on the Global Tobacco Epidemic, 2011.

71 Japan Tobacco International, Anti-Illicit Trade, <http://www.jti.com/how-we-do-business/anti-illicit-trade/global-issue/> accessed on 13/08/2014.

72 Framework Convention Alliance for Tobacco Control, The illicit trade on tobacco-how international cooperation can save lives and billions of dollars, <http://www.ftc.org/publications/media-briefings/illicit-trade/47-the-illicit-trade-in-tobacco-how-international-cooperation-can-save-lives-and-billions-of-dollars>,

and secondly the objective of counterfeiters and smugglers to make a profit often trumps the need to ensure that minors who do not fully understand the devastating effects of smoking on their health are not afforded the opportunity to acquire and smoke cigarettes. This fuels the availing of cigarettes to minors.

Counterfeit parts have permeated the supply chains of safely manufactured related products as well as the automobile and aviation industries specifically. These counterfeit parts are much less reliable and much more likely to fail than standard parts.⁷³ This exposes all persons who use these parts in their work or for transport purposes to unnecessary accidents that may cause bodily harm.

With no regulation, the production and disposal of counterfeit goods can present particular challenges to the environment. Toxic dyes, chemicals disposed of unlawfully and unregulated air pollution are just some of the ways that counterfeiting could contribute to environmental harm.⁷⁴ Seized counterfeit electronic goods for instance, can be difficult to dispose of in an environmentally friendly manner; the same applies to the disposal of counterfeit chemicals used in the production of fake goods.⁷⁵

Poaching and trafficking of endangered wildlife species for the production of traditional medicines, for trade and other uses destroy vital habitats and ecosystems. They result in governments and citizens robbed of their natural resources and national treasures.⁷⁶ This is aggravated by the fact that illicit activities such as logging and fishing, occurring outside of the law, do not prioritise required national and international standards for sustainability of the natural resources.

Kenya experiences challenges related to the control and treatment of disease, the provision of appropriate healthcare services and the treatment of illnesses that can be attributed to crimes related to illicit drugs and illicit environmental activities. These bring about negative effects on a significant portion of the population and would require the implementation of special measures to combat. Kenya would therefore be served by considering the specific effects of illicit trade on health and how, considering the relationships between them, they can be solved.

c) Impact on National Security

Illicit trade diminishes security. It encourages widespread criminality, as it funds organised crime. The profits generated by organised crime are used to further expand their networks and to finance other crime and terrorism; their illicit trade networks are used to launder funds from other criminal activities.⁷⁷ It has been reported that the resources required by many national and international law enforcement officials to fight terrorism and organised crime have increased significantly in the past decade due mainly to the increase in funding that members of organised crime rings and terrorists have acquired through illicit trade activities.⁷⁸

Powerful transnational criminal networks constitute a direct threat to the State itself, not through open confrontation but by penetrating state institutions through bribery and corruption and by subverting or undermining them from within. Governments that lack the capacity to counter such penetration, or that acquiesce in it, face the threat of state institutions becoming dysfunctional and criminalized, and the very foundations of the state being undermined. This report examines whether Kenya faces such a threat. Transnational organized crime and corruption have therefore set Kenya back and could cause it to slide in the direction of becoming a captured and criminalized state.⁷⁹

Persons perpetrating illicit trade are able to make a lot of money and have been known to fiercely defend their turfs against invasion by others in order to maintain their earnings. It is not unheard of that, criminals engage in competitive violence with rival groups and with law enforcement to protect their markets. Unfortunately, this compromises the security of non-participants caught up in the turf wars and often in crossfires.⁸⁰

⁷³ World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

⁷⁴ United Nations Office on Drugs and Crime, Focus On- The Illicit trafficking of Counterfeit Goods and Transnational Organized Crime, 2013

⁷⁵ Soentgen, Judith. "Disposing of counterfeit goods: unseen challenges", WIPO Magazine, November 2012. Available from: http://www.wipo.int/wipo_magazine/en/2012/06/article_0007.html.

⁷⁶ David M Luna, The Destructive Impact of Illicit Trade and the Illegal Economy on Economic Growth, Sustainable Development, and Global Security, <http://www.state.gov/j/inl/rls/rm/199808.htm>, 26 October 2012.

⁷⁷ BASCAP presentation by Alexandra Iliopoulou, Illicit trade and the nexus with organized crime, 3 July 2014.

⁷⁸ World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

⁷⁹ Peter Gastrow, "Termites at Work: A Report on Transnational Organized Crime and State Erosion in Kenya— Comprehensive Research Findings," New York: International Peace Institute, December 2011.

⁸⁰ World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

d) Impact of illicit trade on Wildlife

The demand for illegal ivory and wildlife is growing steadily and at an alarming rate.⁸¹ Decades of conservation gains are under threat of being overturned due to the unprecedented spike in illegal wildlife trade.⁸² This is so because vulnerable wild animals are being pushed closer to extinction when nature cannot replenish their stocks fast enough to keep up with the alarming rate of human consumption.⁸³ There is involvement from illicit traders and demand (primarily from China and also Thailand, Vietnam and Philippines) has reached such a high level that the price payable to the poacher for raw ivory is reported to be as high as Kshs 20,000 per kilogram - or Kshs 400,000 for a 20kg tusk.⁸⁴

During the months of January to March 2014, Kenya lost 51 elephants to poaching, the total population of which was at 38,000 by that time. By the end of March, Kenya lost another rhino, putting the number of rhinos lost at 19 while the country has a total of 1,039 rhinos alive.⁸⁵

Kenya's tourism revenue as of 2011 was said to be 5 percent of its GDP but is now being threatened as poaching depletes tourist attractions and the extent of poaching causing far reaching effects to that sector.

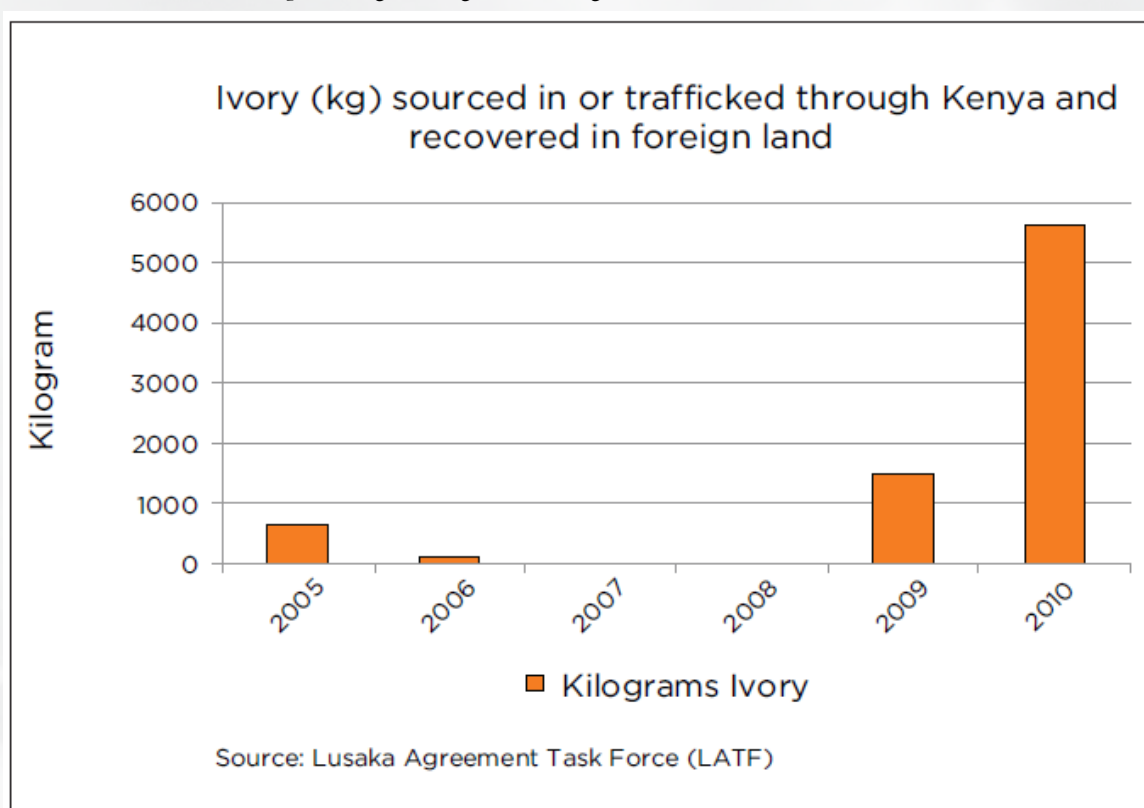


Table showing Ivory trafficked from Kenya and discovered in other countries per kg

⁸¹ AMARA Conservation, Elephant Poaching, <http://amaraconservation.org/our-issues/elephant-poaching>.

⁸² WWF, Illegal Wildlife Trade, <http://www.worldwildlife.org/threats/illegal-wildlife-trade>.

⁸³ WWF, Illegal Wildlife Trade, <http://www.worldwildlife.org/threats/illegal-wildlife-trade>.

⁸⁴ Richard Vigne, CEO of Ol Pejeta Conservancy speaking about the escalation in the poaching of ivory over the last 2 years, <https://www.eawildlife.org/the-news/eawlsnews/235-ivorypoachinginkenya> and National Geographic, Christine Dell'Amore, Beloved African Elephant Killed for Ivory—"Monumental" Loss <http://news.nationalgeographic.com/news/2014/06/140616-elephants-tusker-satao-poachers-killed-animals-africa-science/>, 16th June 2014.

⁸⁵ Judie Kaberia Kenya has reason to worry over poaching, <http://www.capitalfm.co.ke/news/2014/04/kenya-has-reason-to-worry-over-poaching-expert/>, 2nd April 2014.

e) Other Negative Impacts of Illicit Trade

Corruption perpetuates illicit trade across the entire social, economic and political sectors of the society. Cases of State and officials' complicity or collusion in illegal trading activities undermine the transparency and legitimacy of governments; it hinders efforts at reform and accountability.⁸⁶

Illicit trade weakens any authority the State may have through its institutions; the widespread availability of illicit trade products and the corruption with which it is associated both undermine confidence in the rule of law and the institutions delegated with enforcement of anti illicit trade strategies.⁸⁷ The criminal justice system in Kenya can be particularly singled out as having been affected in this manner. It is alleged that persons implicated in illicit trade activities have been able to skirt the system and its penalties due to corruption.

WHY IT IS IMPORTANT TO COMBAT ILLICIT TRADE IN KENYA

Tackling illicit trade in Kenya is important for several reasons; financial, socio-economic and political. Kenya needs some of its major sectors to prosper in order for the country to be productive and for her citizens to have good 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, most particularly the poor, women and children all of whom are vulnerable.⁸⁸

Agriculture is one of the most important sectors of Kenya's economy; 75 Percent of the Kenyan population is dependent on agriculture for food and income. Agriculture contributes 26 Percent to the Gross Domestic Product (GDP) and significantly to foreign exchange earnings.⁸⁹ Unfortunately, the use of counterfeit fertilizers, chemicals and seeds has resulted in decreased agricultural productivity⁹⁰ the impact of which is continued food security issues in the country and decreased revenues for farmers. Droughts and famines exacerbate the problem resulting in multiple deaths due to issues such as a lack of effective disaster preparedness/ responses but certainly also due to a drop in food production in the country. 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 Small and Medium Enterprises (SMEs) employ about 80 Percent of Kenya's workforce and contribute to 92 Percent of new job creation in the country.⁹¹ Many SMEs in both developed and developing countries rely heavily on intellectual property (IP) rights.⁹² 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,⁹³ while creating employment opportunities. Kenya faces deficiencies in IP protection that enable illicit trade of innovations while closing the door on one of the actions that would enable creation of innovation centred SMEs and see employment of a portion of the job seeking population in the country.

The World Economic Forum (WEF) Global Competitiveness Report describes a direct relationship between the protection of intellectual property rights and national competitiveness. In 2004, the 20 countries that were perceived as having the most stringent intellectual property protection were classed among the top 27 in the WEF's growth and competitiveness index. On the other hand,

⁸⁶ World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

⁸⁷ World Economic Forum, Global Agenda Council on Illicit Trade, Davos Annual Meeting, January 2012.

⁸⁸ General Assembly of the United Nations, Thematic Debate of the 66th session of the United Nations General Assembly on Drugs and Crime as a Threat to Development On the occasion of the UN International Day against Drug Abuse and Illicit Trafficking, 26 June 2012.

⁸⁹ Kenya Institute for Public Policy Research and Analysis, Kenya Economic Report, 2013

⁹⁰ International Chamber of Commerce, Promoting and protecting Intellectual Property in Kenya, 2012.

⁹¹ Capital Markets Authority, Capital Raising Opportunities for SMEs: The Development of Micro-Cap Securities Markets in Kenya, January 2010.

⁹² International Chamber of Commerce, Intellectual Property: Source of innovation, creativity, growth and progress, August 2005.

⁹³ International Chamber of Commerce, Intellectual Property: Source of innovation, creativity, growth and progress, August 2005.

the 20 countries perceived as having the weakest intellectual property regimes were ranked among the bottom 36 for growth and competitiveness.⁹⁴ Another report of 2014 shows similar results.⁹⁵ The same IP rights discussed above would enable Kenya to be more competitive in the global economy and therefore foster the country's economic growth.

For decades and more predominantly in the recent past, Kenya has faced serious security concerns that have seen numerous residents killed through terrorist attacks in the form of bombings, grenade launches and shootings. Firstly, the extent of illicit trade in the country may speak to the possibility of there being organised groups that perpetrate or support the commission of the crimes rather than individuals whose involvement would be signaled by much smaller levels of illicit trade.

More significantly, illicit trade has been proven to have a link to Kenya's on-going problems with terror attacks by factions such as the Al-Shabaab, specifically- the smuggling of charcoal, smuggling of consumer goods and poaching which results in the trade of ivory tusks and rhino horns. All these illicit trade activities have been classified as sources of income for terrorist and criminal groups.⁹⁶ Moreover, the state of security in the country also has a negative effect on tourism which contributes significantly to Kenya's foreign earnings. Tourists are reluctant to visit a country in which security problems persist and in which they are therefore in danger.

The poaching of wildlife such as elephants and rhinos in parks, apart from fuelling terrorism, also impacts negatively on tourism as it depletes the very attractions that the tourists seek to see. The relationship therefore has several dynamics in this regard. Nonetheless, it remains imperative to eliminate illicit trade from the equation and as a result address the other issues, at least to reasonable extents. Kenya is well on its way towards democracy and the entrenchment of good governance in the exercise of power. This has seen the Kenyan population's faith in certain institutions such as the judiciary increase as fundamental reforms are implemented. Other sectors are also undergoing reforms, all to ensure better service delivery. The same is also to ensure that transparency and accountability are enshrined in the functioning of institutions in these sectors, and that corruption, one of the biggest threats to good governance is eliminated.

Illicit trade and constituent organised crime are flourishing in Kenya. Consequently, successes in development are reversed, and opportunities for social and economic advancement are lost. Corruption which is also a facilitator of organised crime, drug trafficking and other forms of illicit trade, is a serious impediment to the rule of law, good governance and sustainable development.⁹⁷ Illicit trade stands to undermine the ability of the State to promote development by destroying the confidence that the people have in the State and by undermining democracy and confidence in the country's justice and security systems.⁹⁸

ROLE OF THE PUBLIC IN COMBATING ILLICIT TRADE

A multi-stakeholder approach to combat illicit trade will require public support and engagement in combating the vice. There are specific roles that members of the public can play in aiding combat the vice and these include;

Shunning Illicit Trade

Members of the public, aware of the trade, its impacts, illicit products and how to identify illicit products can contribute to combating illicit trade by refraining from taking any part in or facilitating the trade. This requires not purchasing illicit products or participating in illicit trade activities. Public awareness and education on illicit trade would enable this. General education of the consumer on the illegality of illicit trade and its negative impact (especially on personal health and safety) would help to build public shunning of illicit

trade. Demand comes from consumers the public. Therefore, engaging consumers, understanding their demand behaviour and

⁹⁴ World Economic Forum, Global Competitiveness Report 2004-5.

⁹⁵ World Economic Forum, Global Competitiveness Report 2013-2014.

⁹⁶ Elephant action league* and INTERPOL, Against Organised Crime, INTERPOL Trafficking and Counterfeiting Case Book, 2014 and Institute for Defence Analyses, Africa Watch, Volume 5, 10 July 2014.

⁹⁷ General Assembly of the United Nations, Thematic Debate of the 66th session of the United Nations General Assembly on Drugs and Crime as a Threat to Development On the occasion of the UN International Day against Drug Abuse and Illicit Trafficking, 26 June 2012.

⁹⁸ General Assembly of the United Nations, Thematic Debate of the 66th session of the United Nations General Assembly on Drugs and Crime as a Threat to Development On the occasion of the UN International Day against Drug Abuse and Illicit Trafficking, 26 June 2012.

thereby influencing public opinion through education are critical to tackling illicit trade.⁹⁹

Reporting Illicit Trade

The public can contribute to the fight against illicit trade by reporting instances of illicit trade to relevant authorities who can then investigate and prosecute such crime. This is dependent on the knowledge of the public not only illicit trade, but also on the agencies that have a responsibility to investigate the crimes such as the Police and KEBS. Members of the public should be willing to volunteer information on suspected illicit trade activity to the authorities.

Cooperating with investigators and prosecutors

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

COLLABORATIONS BETWEEN AGENCIES AND INSTITUTIONS WORKING TO COMBAT ILLICIT TRADE

Lack of systematic ways through which illicit trade can be addressed contribute to its flourishing in Kenya and the rest of the world. State agencies involved in enforcement of the legal regime on illicit trade must design and develop strategies of cooperation,

collaboration and coordination in tackling illicit trade. The general areas within which respective state agencies should seek cooperation and collaboration are;

- a) Investigations of illicit trade
- b) Conduct of swoops and crackdowns on illicit trade
- c) Prosecution of illicit trade witnesses in court
- d) Preservation of evidence
- e) Intelligence sharing
- f) Data collection, preservation and sharing
- g) Destruction of evidence in illicit trade
- h) Establishment of Interagency task forces and joint initiatives

Points of collaboration can be formed between investigative and prosecuting agencies, such as the Police, the Kenya Bureau of Standards, the Copyright Board, the Kenya Revenue Authority, the Ethics and Anti-Corruption Commission and the Director of Public Prosecutions in investigating and prosecuting illicit trade cases.

Enforcement institutions and agencies in Kenya can collaborate with each other for several purposes including;

a. Strengthening of supply chains and tracking and tracing of the origin and movement of goods

The main entry point to the legitimate supply chain for counterfeit/falsified medicines is the licensed distribution stage. The same needs to be established for different goods which are susceptible to illicit trade in Kenya. Strengthening of supply chains is informed by such information and then is supported by legislative improvements that address the ways that are devised by illicit traders to skirt laws and regulations.¹⁰⁰ In this regard, policy makers and other stakeholders such as manufacturers, investigators and civil society can

⁹⁹ World Economic Forum, Steven Borad, What if illicit trade goes unchecked?, <http://forumblog.org/2012/06/what-if-illicit-trade-goes-unchecked/>, July 2012.

¹⁰⁰ Grant Thornton, Illicit Trade in Ireland-Uncovering the cost to the Irish economy, 2013

ensure that laws that are passed have had their input and are therefore efficient enough to address the key issues.

Supply chains can also be strengthened through the use technology that can be supported by co-operation of different stakeholders based on their needs. As has been stressed for the tobacco industry in Kenya before, as a duty of the Kenya Revenue Authority, businesses and industries need to protect their supply chains from illicit trade and explore solutions for tracking and tracing, authentication or verification of products.¹⁰¹ “Supply chain security requires a tracking and tracing regime for all legitimate products. ‘Tracking’ is the ability to monitor the forward movement of finished goods through the supply chain; ‘tracing’ is the ability to determine where the product was diverted into illegal channels.”¹⁰² Track and trace serve to ensure transparent ways of relaying of information that can be used by humans to single out illicit goods across trade lines and jurisdictions, but are independent of human bureaucracy, which can encourage/create room for corruption. Convergence is emerging in supply chain security so that whatever the different rationales for security from different parties, several needs such as consumer confidence, corporate responsibility, and tax obligations towards the government, are met in the same instance.¹⁰³ This is therefore fertile ground for co-operation of manufacturers, their companies and the Kenyan government.

b. Development of proper tax systems

Tax verification systems that are digital allow officials, industry and ordinary consumers to access information about the tax history and other relevant information about a product. Such systems also provide the government with real time and secure information to enable increased transparency and more informed decision making in combating illicit trade, such as changes in the means and routes used for transporting illicit goods etc.¹⁰⁴ The introduction of such a system would require a high level of co-operation between various stakeholders including Kenyan policy makers, customs officials, legitimate manufacturers and the developers of requisite technology.

c. Investigation, arrests and prosecution

In addition to the obvious co-operation that would have to exist between investigating and prosecuting agencies, i.e. handing over of investigation files-with details on suspects- by police and other investigators such as the Ethics and Anti-Corruption Commission to the office of the Director of Public Prosecutions to determine whether the case should be prosecuted in the courts; and the institution of cases in the courts, there is need to have more open and fluid communication between these agencies and the Judiciary. The relationships should enable subsequent communication after the official passing of files to enable; filling in of blanks that may appear in the case files through further investigation or re-calling of witnesses, location and monitoring of suspects on bail and requesting for direction or assistance on possible ways to proceed in order to be able to secure the most thorough investigation and most effective prosecution of cases.

d. Whistle-blower and witness protection

Due to the potential sensitive nature of illicit trade or in some cases the dangerous nature of parties who are involved in the trade, whistle-blowers and potential witnesses in illicit trade cases may be hesitant to risk theirs and the lives of their families by exposing illicit trade. First and foremost Kenya’s Witness Protection Agency needs to be strengthened in order to be able to provide appropriate protection for persons who may want to provide information about or testify in illicit trade cases. This can be done with the involvement of government which funds the agency. Moreover, the police and other investigation parties such as the EACC, the ODPP, and the courts must co-operate in ensuring that the names and locations of whistle-blowers and witnesses are not revealed to the parties implicated in illicit trade cases and that these whistle-blowers and witnesses are protected even after the conclusion of the cases in the courts.

e. Seizure, Storage and destruction of confiscated illicit goods and exhibits used in courts

The police, custom officials and judiciary officials can co-operate. After illicit goods are seized by custom officials or the police who

¹⁰¹ World Health Organisation, Joint Capacity Assessment on the Implementation of Effective Tobacco Control Policies in Kenya, 2012

¹⁰² World Customs Journal, Elizabeth Allen, The illicit trade in tobacco products and how to tackle it, Volume6 Number 2, 128

¹⁰³ JCIC, Illicit Trade Policy and Supply Chain Security, <http://www.jcicinternational.com/illicit-trade-policy-supply-chain-security/> accessed on 12/08/2014

¹⁰⁴ Grant Thornton, Illicit Trade in Ireland-Uncovering the cost to the Irish economy, 2013

may undertake seizure jointly or share information that gives way to seizures, customs officials or any other agency with the required capacity may be able to provide safe storage of the goods. The transportation of exhibits can be carried out with co-operations between the parties storing the goods and the judiciary together with the prosecution. The destruction of goods to ensure that they do not return to the markets in the country can be undertaken with co-operation from the judiciary, the prosecution, custom officials and the police.

f. Carrying out studies on illicit trade

Constant studies/updates as to the nature and size of the illicit trade problem and its facilitators need to be carried out regularly. Illicit trade can only be tackled if its real extent is known in a manner that is accurate.¹⁰⁵ Such useful information will inform the appropriate review of strategies and resources put in place to fight illicit trade. Some sort of national illicit trade report that can be updated should be initiated and updated periodically to help policy makers know how to deal with these issues in an accurate manner.¹⁰⁶ It would include statistics on the problem the areas and parties concerned and how these can be solved and the role of each party that should be involved in solving the problem, Analysis of trends and their development over time, special indicators such as seizures of products, information emanating from surveys, looking into revenue from sale of legitimate products and any changes in the same.¹⁰⁷ Stakeholders including government, civil society, customs and related technology officials, and investigation agencies can co-operate to develop such information on illicit trade and its progression over time, scenarios surrounding it, novel technologies and scientific developments for illicit trade as the same is critical to adequately prioritising what is needed to combat illicit trade in future.¹⁰⁸ Questions answered could include how developments could lead to new ways of conducting and combating illicit trade and the create on new illegal products and services, what threats and opportunities are essential to pre-empt novel future challenges etc. Co-operation for the purpose of shedding light on the possible illicit trade scenarios is a prerequisite for both national governments and the international community to be able to mobilise ahead of the problem.¹⁰⁹

g. Sharing of information on and educating the public on illicit trade

Just as important as collaboration for the purposes of carrying out studies on illicit trade, would be collaboration for the purpose of sharing information on illicit trade, and/or and using the same information to educate the public on illicit trade.

The collaborations that are put in place between the police, the EACC and the DPP, between the Judiciary and civil society, between customs officials, policy makers and civil society, between civil society, the government agencies and the public can be strengthened by the regular sharing of information and updates on illicit trade research and activity between these agencies and institutions with an anti-illicit trade. Education of the public can be facilitated by access to such information by the parties who have civic education mandates and have presence at grassroots community levels.

h. Training of law enforcement officials on illicit trade

Training law enforcement personnel on what to look for when identifying counterfeit product, as well as sharing intelligence from the field should be a part of any strategy that Kenya puts in place to tackle illicit trade.¹¹⁰ Inspectors need to be trained on how to check that duty has been paid on excisable goods and how to identify illicit goods. The same awareness and responsibility needs to be provided to customs officials.¹¹¹ Judges in courts of law and prosecutors need to be trained on laws applying to the prosecution of illicit trade and investigators dealing with illicit trade on evidentiary requirements on their part, etc. As can be seen, there are several points of synergy that can be drawn from the training needs of the different parties. This creates an opportunity for the parties to be

¹⁰⁵ World Customs Journal, Elizabeth Allen, The illicit trade in tobacco products and how to tackle it, Volume6 Number 2, 128

¹⁰⁶ Karl Lallerstedt & Mikael Wigell, Illicit trade flows; how to deal with the neglected economic and security threat, Finnish Institute of International Affairs , Briefing Paper 151, March 2014.

¹⁰⁷ SADC Review – Study into the illicit trade in excisable products with particular reference to alcohol and tobacco products, November 2012

¹⁰⁸ Karl Lallerstedt & Mikael Wigell, Illicit trade flows; how to deal with the neglected economic and security threat, Finnish Institute of International Affairs , Briefing Paper 151, March 2014

¹⁰⁹ Karl Lallerstedt & Mikael Wigell, Illicit trade flows; how to deal with the neglected economic and security threat, Finnish Institute of International Affairs , Briefing Paper 151, March 2014.

¹¹⁰ SADC Review – Study into the illicit trade in excisable products with particular reference to alcohol and tobacco products, November 2012.

¹¹¹ SADC Review – Study into the illicit trade in excisable products with particular reference to alcohol and tobacco products, November 2012.

trained together, therefore saving on resources that would be used to train them separately. It would also ensure that the parties also understand the duties of their companion anti-illicit trade agencies and how these relate to their functions. This will facilitate better co-operation in the discharge of mandates.

Interventions can also be accompanied by relevant staff exchanges and secondment between agencies as a way of further training or as a way of including missing expertise in specific agencies and department involved.

Joint working committees that can facilitate the undertaking of studies, the sharing of information and the training of enforcement personnel can be established on a needs basis with the involvement of all the agencies that would be involved.

i. Facilitation of licit trade and creation of legitimate markets

Legitimate manufacturers can co-operate with and form strategic partnerships with customs officials to ensure that their goods do not get into the hands of smugglers but rather make it to legitimate markets established through their collaboration with government as well. Strategic partnerships, in this case, can be initiated by the manufacturers or by the customs officials and can be based on engagements with government to ensure creation of legitimate markets. Cooperation would involve sharing of data about where products are manufactured and to whom they are shipped so that law enforcement officials can identify the conditions surrounding the original sale of products and where they are sold.¹¹²

j. Combatting of illicit trade at regional and international level

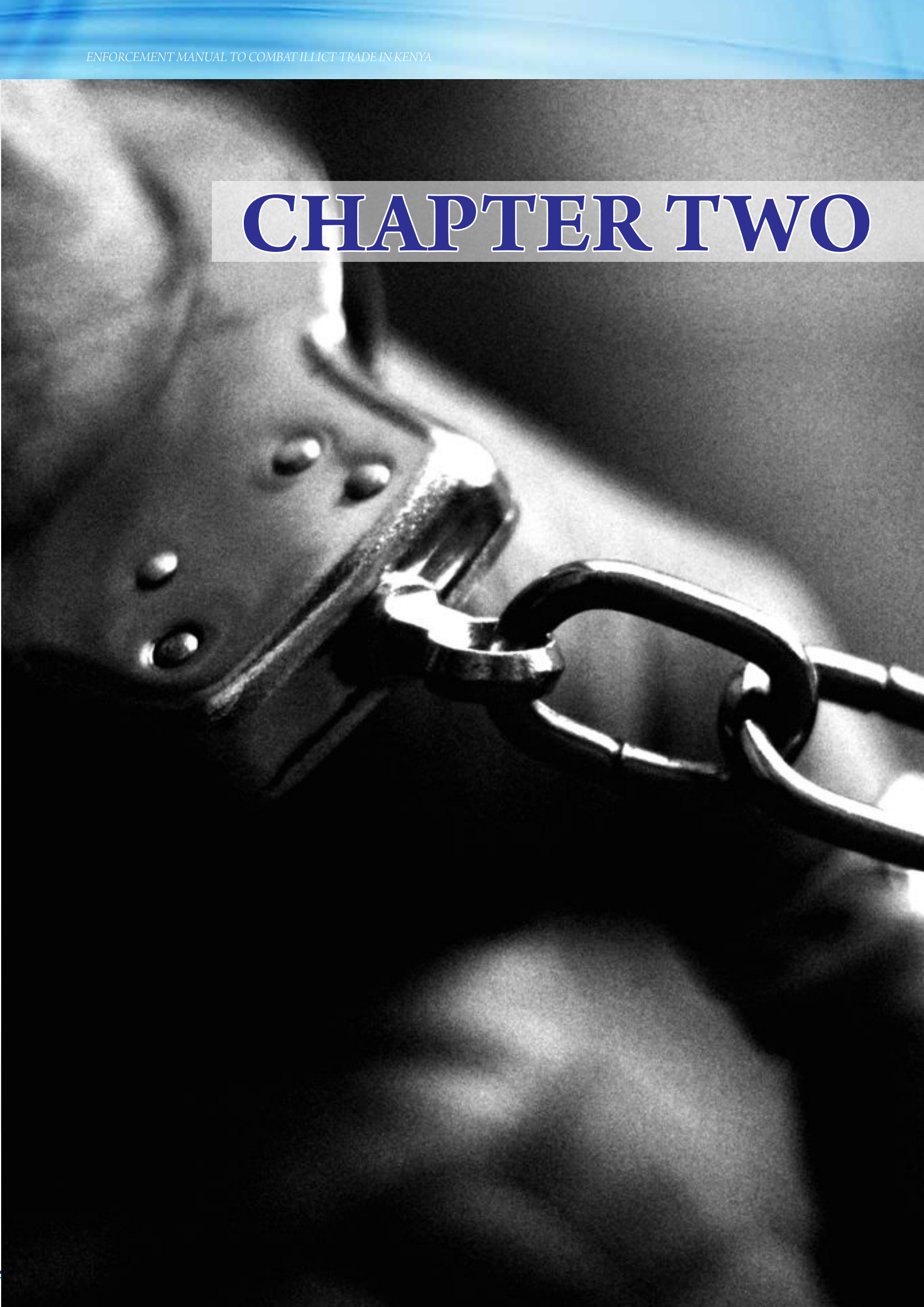
Cooperation with other governments to combat illicit trade on an international level is essential. This is because illicit trade is a cross-border issue yet governments do not work as effectively together across borders as the criminals do.¹¹³ International co-operation between governments, industry and NGOs at all policy levels in harmonization of relevant laws would help to strengthen responses to illicit trade activity, but keeping in mind that different policy solutions may be necessary for source, transit and consumption markets.¹¹⁴ For Kenya, such cooperation can go as far as strategic planning that would result in the setting of joint targets with milestones and periodic review to check progress towards the set targets. This would be done alongside neighbouring the countries, Uganda, Tanzania, Ethiopia, Rwanda and Burundi. It would also facilitate the sharing of national level best practices in combatting illicit trade.

¹¹² Reynolds American Incorporated, Fighting Illicit Trade, <http://www.reynoldsamerican.com/illicit-trade.cfm?plank=illicitTrade1>

¹¹³ JCIC, Illicit Trade Policy and Supply Chain Security, <http://www.jcicinternational.com/illicit-trade-policy-supply-chain-security/> accessed on 12/08/2014.

¹¹⁴ JCIC, Illicit Trade Policy and Supply Chain Security, <http://www.jcicinternational.com/illicit-trade-policy-supply-chain-security/> accessed on 12/08/2014.

CHAPTER TWO



CRIMINAL PROCEEDINGS

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

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

Offences

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

Elements of a Crime: Mens Rea and Actus Reus¹¹⁵

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

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

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

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

Causation is the element of a crime that requires the existence of a causal relationship between the offender’s conduct and the particular harmful consequences. It connects conduct with a resulting effect, typically an injury. It answers the question, did the accused person’s conduct or omission cause the harm or damage? “But for” the conduct or omission of the accused, would the injury or damage have arisen?

There are however, some offences which can be committed even without the existence of *mens rea*. These are called strict liability offences, e.g. possession of illicit drugs, traffic offences.

¹¹⁵ In full- *actus non facit reum nisi mens sit rea*, which when translated means that an act does not make a person guilty unless that person’s mind is also guilty

The prosecution must strive to prove the existence of these two in an offence for the case to succeed, unless the statute establishes a strict liability offence e.g. offences in relation to possession of drugs.

Guide to Investigating Illicit Trade Offences

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

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

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

Disposal of unclaimed/ abandoned property

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

Arrests

This involves the physical apprehension of a suspect, confining him or her in custody or restraining the person's movement. The process of arrest is governed by the Constitution (Article 49), Criminal Procedure Code (Section 21-42) and Police Act (Section 14). Some of the agencies have powers of arrest. The public can also conduct an arrest. These are discussed below. The mode of arrest:

- Arresting officer will touch/confine the body of person, unless there is submission by word or action. If there is resistance or attempts to evade arrest all means necessary may be used to effect, provided only reasonable force is used (Section 21 CPC).
- The person arrested shall not be subjected to more restraint than is necessary to prevent his escape (Section 24 CPC).
- When the person arrested cannot legally be admitted to bail or cannot furnish bail, the officer may search the suspect and place all recovered articles in safe custody. (Section 25 CPC)
- Women suspects are searched by women officers.

Exhibits

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

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

Receiving, Handling, and Transfer of Exhibits in Criminal Cases

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

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

Courts should also develop their own local processes that address the custodial responsibilities for managing exhibits that are dangerous or contain biohazard materials. The court can in this regard seek assistance from specialized agencies of the state e.g. the National Environmental Management Authority in the handling of hazardous exhibits.

Courts may make arrangements with prosecuting agencies or local law enforcement agencies to secure such exhibits in their own secure strong rooms, as an alternative to having court staff handle these dangerous items.

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

Destruction of Exhibits

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

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

Arraignment in Court

Once a suspect is arrested, he/she has to be arraigned in court within twenty four (24) hours of arrest unless the arrest was done on a weekend. If the offence committed involved a capital offence, the suspect must be arraigned in court within fourteen (14) days of the date of arrest.

If the suspect is not brought to court within the prescribed period, the prosecution must account for the delay to the satisfaction of the Court. The Prosecutor must liaise with the police or arresting agency to determine the reasons for the delay in presenting the suspect in court.

Instituting Criminal Prosecutions

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

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

In making the decision to prosecute, the Public Prosecutor must first be satisfied that there is sufficient evidence (the evidential test). If there is sufficient evidence, the Public Prosecutor must next determine whether a prosecution would be in the public interest (the public interest test).

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

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

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

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

A Public Prosecutor has a duty not to ignore evidence merely because he or she is not sure that it is usable or that it is reliable. The prosecutor's job is to see that all the relevant facts, including those favourable to an accused, are placed before the court and to present those facts in an ethical, fair, dispassionate, firm and clear manner. Prosecutors must refrain from all actions which could lead to the conviction of innocent persons. The Prosecution should be able to avail all witnesses necessary to establish the truth even if

their evidence is inconsistent and under certain circumstances the court, on its volition, has a duty to call witnesses whose evidence appears essential to the just decision of the case. This test gets its constitutional backing from Article 50(2) (j) where every accused person has the right to a fair trial which includes the right to be informed in advance of the evidence the prosecution intends to rely on and to have reasonable access to that evidence. A proper guide for a prosecutor would be to follow the below stated steps in conducting prosecutions;

1. Ensure that the correct charge is filed against the accused person. Section 214 of the Criminal Procedure Code¹¹⁶ empowers a court to amend or substitute a charge if the original charge is shown to be defective.
2. Read the file carefully.
3. Know and find out relevant laws.
4. Plan the case presentation with care and common sense.

The prosecutor does not go into court only to lead in evidence of the facts contained in his file. His job is more exacting than that. He has to lead the evidence, judge its veracity and effect on the court, form an opinion concerning what facts seem to be common cause and what facts are in dispute and be prepared to argue the merits of his case, either on a point of law or on the facts. He must take a sustained and intelligent interest in all the evidence given.

We recommend that any parties who conduct prosecution of illicit trade cases be regularly trained on the provisions of the laws applicable to the prosecution of illicit trade and their constituent responsibilities. This is especially useful in cases where amendments of laws are undertaken from time to time.

PROOF OF A CASE BEYOND ANY REASONABLE DOUBT

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

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

PUBLIC INTEREST

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

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

Accordingly, even if a Public Prosecutor considers that there is sufficient evidence to justify a prosecution, there should only be a prosecution whenever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution

¹¹⁶ Chapter 75 of the Laws of Kenya

in respect thereof is required in the public interest. Further, the Public Prosecutor must consider whether, as required by Article 157 of the Constitution, a prosecution would be in the interests of the administration of justice, and would not constitute an abuse of the legal process.

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

CHARGES AND INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

BAIL AND BOND

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

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

Bail/ Bond as a Constitutional Right

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

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

- i. Nature of Offence/ seriousness of the offence. The court may take into account the seriousness of the offence charged in determining whether to grant bail or bond. It is important that courts take into account the impact of trade in illicit goods on the country in determining whether to grant bail or bond.
- ii. Severity or otherwise of sentence in case of conviction e.g. where it is likely to attract a fine rather than imprisonment, the more reason to grant bail. Trade in illicit goods offences largely attracts severe penalties and as such courts may take into account those penalties when determining bail or bond.
- iii. The court may consider what sort of person the accused is – his social standing, ties with the community, ownership of property in the areas, is the accused person a citizen or non citizen, immigrant etc. The court may also consider the special circumstances of the accused e.g. illness which may be aggravated by incarceration.

Persons involved in trade in illicit goods may in some instances be non-citizens with a high likelihood of absconding trial.

- iv. The court may consider the length of the remand period, the longer it will take before the trial, the more reason to grant bail. Delays may be caused by the prosecution or the defence.
- v. Unnecessary delay by the prosecution may result in the grant of bail in cases where the court would otherwise not grant bail.
- vi. Delaying tactics by the defence may also lead to the cancellation of bail. If the court for any reason believes that adjournments sought by defence are not genuine, they can cancel bail and have the case proceed with expediency.
- vii. Where the accused person is to be released on surety, the court has to determine whether the accused may fail to turn up for trial. Some courts may consider that the surely having given their personal information is sufficient amount of surety based on their earnings, the court can ask for payslips and if the court allows surety to be surely based on their earnings they have to be certain that if the accused does not turn up in court they would know how to find the accused.
- viii. The court may also assess whether the proposed sureties are capable of paying up in case the accused person jumps bail. They should also consider the relationship between the proposed surety and the accused person to determine if they can guarantee the attendance of accused person to trial.
- ix. The court may also take into account the likelihood of the accused person not turning up for trial – whether or not there is likelihood of accused absconding.
- x. Whether or not the accused is likely to interfere with witnesses – this is a difficult matter for courts to evaluate because the courts do not know the relationship of the accused and the witnesses – there may well be cases where it is possible to make an intelligent guess that the accused because of the nature of the offence may actually intimidate prosecution witnesses. It is difficult for courts especially where there is no evidence of such an occurrence happening. It should however be noted that in highly syndicated offences involving trade in illicit goods and organised criminal gangs, the likelihood of witness interference would be high. Usually it is the prosecution that makes the objection that there is likelihood of interfering with witnesses. Where they do so then grounds supported by facts should be adduced to show reasonable cause for the alleged fears. It is not sufficient for the prosecution to allege, they must show high potential for witness interference.
- xi. Character and antecedents of the accused. The prosecution should be able to bring forth this information to the court to enable the court assess the suitability of admitting the accused to bail or bond e.g. where the accused had previously absconded or abused bail terms.
- xii. Views of the prosecution – the prosecution must be given opportunity to object to bail if they so wish. However, the grant of bail is entirely the discretion of the magistrate – where the prosecution advances cogent reasons then it is advisable for bail to be denied.

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

Insufficient Bail Terms

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

Sureties

It is the responsibility of the accused and of his next of kin to find suitable sureties. 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.

The prosecution is also allowed to cross-examine sureties and to cross check any details that they supply to the court, such as place of residence and employment, authenticity of any documents produced.

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

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

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

Under Section 128 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 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.

Forfeiture

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

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

If penalty is not paid then an order can issue for attachment against property. Where it is not possible to attach property, the court can make an order for imprisonment for a term not exceeding 6 months. The court may also enforce only part payment of the surety. If a surety fails to take reasonable precautions in the discharge of his/her duty he/she is liable to be ordered to pay the penalty of the bond.

Challenges

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

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

Renewal and Appeal of Bail Terms

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

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

The Trial Process

The criminal trial process commence when the prosecution present criminal information in the form of a charge before the relevant court. The charge is read out to the accused person and he answers by either pleading guilty or not guilty. If the accused person pleads guilty the court proceeds to hear his/her mitigation and pass a sentence. In such a case, the accused is convicted on his/her own plea of guilty. Where an accused person pleads not guilty, the case proceeds to full trial in which case the prosecution will lead evidence to prove the guilt of the accused person.

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

In Camera Trial

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

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 persons.

Calling Witnesses

The prosecution case starts by the prosecution calling the complainant and other primary witnesses first. All witnesses who are yet

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

Language of the Court

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

Examination In Chief

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

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

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

Cross Examination

Once the prosecution has examined a witness in chief, the accused person is given an opportunity to ask the witness questions in what is referred to as cross examination. Section 208 (3) CPC obliges the court to ask an accused person who is not represented whether he wishes to ask the witness any question. The court is required to record the answer given by the accused person. The accused person may ask leading questions to witnesses during cross 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. In *Bhatt v Republic* 957 EA 332, the court defined a prima facie case as one where a reasonable court directing its mind to the law and evidence would convict if no explanation were offered by the defence.

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

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

Defence Case

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

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

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

The accused 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 convicts mitigation if a guilty verdict is returned and pass the sentence.

Sentencing

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

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

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

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

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

Victim Impact Statements

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

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

The court shall not accept a victim impact statement unless it has been filed by or on behalf of the victim to whom it relates (where the victim is incapable of preparing the statement it may be prepared on their behalf). The court shall only consider a statement by a family victim if it considers it appropriate to do so.

Impact of Illicit trade on the Country

The prosecutor in his address to court should point out the harmful consequences and impact of trade in illicit goods and the impact it has on the country.

The negative effect of illicit goods may lead to the loss of lives or impairment of persons who consume them. It may therefore be necessary for a prosecutor to get victim statements under this provision and bring them to the attention of the court. Such statements will assist the court to understand the impact of the offence on victims of illicit goods in the market.

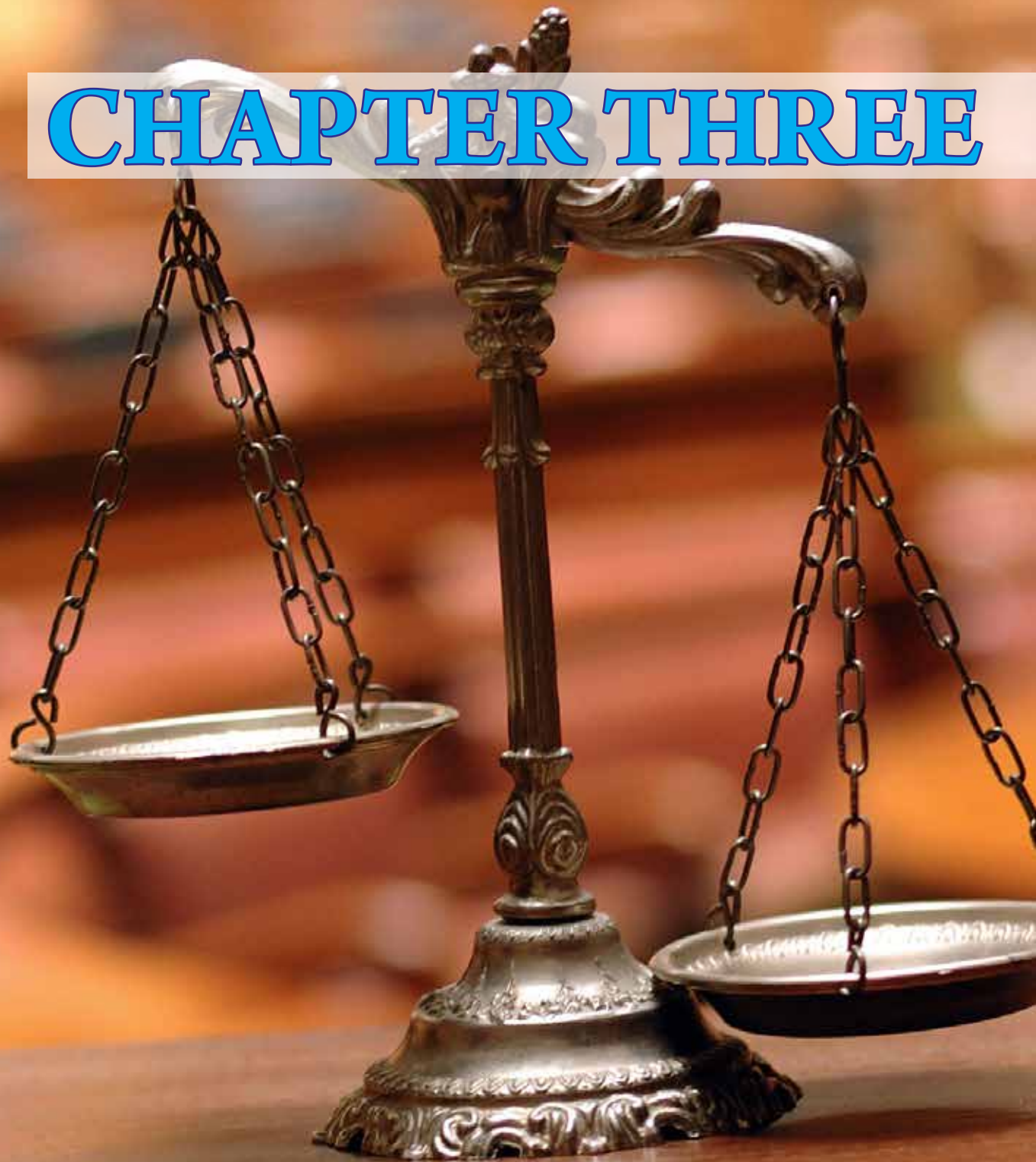
Post-trial handling of exhibits

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

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

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

CHAPTER THREE



LEGAL REGIME ON ILLICIT TRADE

The legal regime regulating illicit trade is found in both international conventions and national statutes. The Constitution of Kenya in Article 2 provides that international conventions ratified by Kenya and general principles of international law to be part of the laws of Kenya.

INTERNATIONAL INSTRUMENTS REGULATING TRADE IN ILLICIT GOODS

The international community has made steps towards regulating trade in illicit goods through different conventions and treaties tackling particular subjects. Some of the prominent international instruments are as set out below;

United Nations Convention against Transnational Organised Crime

Purpose and Scope

This convention was adopted in 2000 and ratified by Kenya in 2004. The purpose of this convention is to promote cooperation to prevent and combat transnational organised crime more effectively.¹¹⁷ The Convention applies to the prevention, investigation, and prosecution of the transnational offences involving organised groups, including participation in organised criminal groups, laundering of proceeds of crime, corruption, obstruction of justice in relation to the offences covered by the Convention, and serious crimes.¹¹⁸ The Convention's definition of 'transnational crime' is *an offence committed in more than one State; or committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; or committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; or committed in one State but has substantial effects in another State. 'Serious crimes' on the other hand, is conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.*¹¹⁹

Offences

The offences relating to illicit trade which the Convention requires States Parties to adopt legislative and other measures as may be necessary to establish as criminal offences include laundering of the proceeds of crime.¹²⁰ The specific offences under this head are:

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

Combating Crime

In order to combat the crime of money-laundering through deterrence, detection and co-operation, the Convention obligates states parties to take the following measures:¹²¹

117 Convention against Transnational Organised Crime, art 1.
 118 Convention against Transnational Organised Crime, art 3(1).
 119 Convention against Transnational Organised Crime, art 2.
 120 Convention against Transnational Organised Crime, art 6.
 121 Convention against Transnational Organised Crime, art 7.

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

Mutual legal assistance and joint investigation: The Convention obligates States Parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences.¹²² On investigations, state parties are encouraged to consider concluding bilateral or multilateral agreements/arrangements whereby the competent authorities concerned may establish joint investigative bodies.¹²³

Confiscation and seizure: States Parties are called upon to adopt domestic measures to enable the identification, tracing, freezing, seizure, or confiscation of proceeds of crime derived from offences covered by the Convention or property, the value of which corresponds to that of such proceeds; and property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention.¹²⁴ Towards this end, the Convention calls for co-operation between competent authorities of the various States Parties.¹²⁵ When confiscated, the Convention gives the domestic laws of the state party supremacy in the disposal of the proceeds, but the State Party is obligated to give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.¹²⁶

Extradition: To ensure that criminals do not escape justice by taking advantage of the non-existence of extradition treaties between States Parties, the Convention encourages States Parties to consider the Convention the legal basis for extradition whenever it receives a request for extradition from another State Party with which it has no extradition treaty.¹²⁷

Criminal Record: The Convention encourages States Parties to adopt measures as may be necessary to take into consideration any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention. This is intended as some sort of deterrence mechanism, and also for the notification to States Parties of habitual transnational offenders.¹²⁸

Training and Technical Assistance: The Convention obligates States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, investigating magistrates and customs personnel and other personnel charged with the prevention, detection and control of offences under the Convention dealing with, among others:¹²⁹

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

¹²² Convention against Transnational Organised Crime, art 18.

¹²³ Convention against Transnational Organised Crime, art 19.

¹²⁴ Convention against Transnational Organised Crime, art 12.

¹²⁵ Convention against Transnational Organised Crime, art 13.

¹²⁶ Convention against Transnational Organised Crime, art 14(2).

¹²⁷ Convention against Transnational Organised Crime, art 16.

¹²⁸ Convention against Transnational Organised Crime, art 22.

¹²⁹ Convention against Transnational Organised Crime, art 29.

Agreement on Trade-Related Aspects of Intellectual Property Rights (Trips)

TRIPS is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for almost all forms of intellectual property regulation.

The Agreement requires WTO members to provide copyright rights, covering content producers including performers, producers of sound recordings and broadcasting organizations; geographical indications including appellations of origin; industrial designs; integrated circuit layout designs; patents; new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations

Anti-Counterfeiting Trade Agreement

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

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

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

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

The Agreement, at Article 23, provides for criminal enforcement. Parties are required to provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale, including penalties to be applied in cases of wilful importation and domestic use, in the course of trade and on a commercial scale, of labels or packaging. Parties are also at liberty to provide criminal procedures and penalties in appropriate cases for the unauthorised copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public. With regard to criminal penalties, Articles 24 and 2 require parties to provide for imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of corresponding gravity. Further, parties should provide for seizure, forfeiture, and destruction of the infringing goods and/or materials and implements used in the commission of the alleged offence by their competent authorities; seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the allegedly infringing activity; and the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through, the infringing activity.

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

Patent Cooperation Treaty (19 June 1970): Aims to facilitate co-operation among nations for the perfection and simplification of the legal protection of inventions in economically viable ways, facilitating and accelerating access by the public to the technical information contained in documents describing new inventions, providing easily accessible information on the availability of technological solutions, and facilitating access to the ever expanding volume of modern technology.

WIPO Copyright Treaty (20 December 1996): Seeks to effectively and uniformly develop and maintain the protection of the rights of authors in their literary and artistic works; providing rules for providing solutions to the questions raised by new economic, social, cultural and technological developments; and providing a balance between the rights of authors and the larger public interest, particularly education, research and access to information.

Patent Law Treaty (01 June 2000): Provides a unified procedure for formalities in patent applications to protect inventions in each contracting state by streamlining and harmonising formal requirements set by national or regional Patent Offices with respect to the filing of national or regional patent applications and the maintenance of patents and additional requirements related to patents or patent applications.

Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (14 April 1891): Provides specific rules for the repression of false or deceptive indications of source on goods.

Berne Convention for the Protection of Literary and Artistic Works (24 July 1971): aims to effectively and uniformly protect the rights of authors in their literary and artistic works.

INTERNATIONAL INSTRUMENTS AGAINST TRAFFICKING IN PERSONS

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

The main international instrument dealing with trafficking is the Palermo Protocol of 2003. Kenya acceded to the protocol on 5 January 2005. Each country that accedes to the protocol is required to provide measures to protect victims, train law enforcement and border officials and inform and educate victims and the general public on the menace.¹³⁰ Article 2 sets out the statement of purpose of the protocol to be to prevent and combat trafficking in persons, paying particular attention to women and children. The Palermo Protocol establishes an acceptable definition of trafficking and makes consent of a victim irrelevant in trafficking. It seeks global response to global trafficking.

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography This Protocol, adopted in 2000, was signed by Kenya in the same year and entered into force in January 2002. Article 1 of the Protocol prohibits the sale of children, child prostitution and child pornography. There is also:

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

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

The African Charter on Human and People’s Rights (1981) and its Protocol on Women’s Rights (2002) under Article 4(2) obligates states to prevent and condemn trafficking in women, prosecute the perpetrators and protect those women most at risk. There is also *The African Charter on the Rights and Welfare of the Child (1990)* which obligates states to take appropriate measures to prevent the sale of or the trafficking of children for any purpose.¹³¹

¹³⁰ *Palermo protocol*, Article 6.

¹³¹ Article 29(a).

NATIONAL STATUTES AGAINST ILLICIT TRADE



Statutory Provisions Criminalising Illicit Trade

Anti-Counterfeit Act, No. 13 of 2008		
Offence	Elements of offence	Penalty
Failing to give assistance or giving false Information Section 24(1): <ul style="list-style-type: none"> c) Failing to give assistance or provide information to an inspector reasonably required for the performance of his functions d) Providing false information to an inspector 	<p>Show that person was in a position to assist Demonstrate that person was requested to assist</p> <p>Show that the person knew the information was false or ought to have known that information was false</p>	<p><u>Provided under s 35(2).</u></p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both.</p>
Breaking seal or moving counterfeit goods Section 24(2): <ul style="list-style-type: none"> a) Breaking/damaging/tampering with seal applied by inspector b) Removing goods, documents, articles, items, objects or things sealed or sealed-off by an inspector or detained or stored at a counterfeit goods depot. 	<p>Show the broken seal Demonstrate that seal was applied by inspector Show the act of moving goods, articles or documents</p>	

<p>Disclosure of trade secret or manufacturing process</p> <p>Section 31:</p> <ol style="list-style-type: none"> 1) Disclosure of any information on manufacturing process or trade secret obtained in premises entered by virtue of powers of entry conferred under the Act or any information obtained in the performance of functions under the Act. 2) Impersonating an inspector 	<p>Offence by an officer under the Act Show entry into premises in fulfilment of the law Demonstrate the sharing of information to a third party</p> <p>Show how person passed off as an inspector under the Act</p>	<p><u>Provided under s 35(2).</u></p> <p>Imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both.</p>
<p>Counterfeit offences</p> <p>Section 32:</p> <ol style="list-style-type: none"> a) Being in possession or control in the course of trade, any counterfeit goods; b) Manufacturing, producing or making in the course of trade, any counterfeit goods; c) Selling, hiring out, barter or exchange, or offering or exposing for sale, hiring out, barter or exchange any counterfeit goods; d) Exposing or exhibiting for the purposes of trade any counterfeit goods; e) Distributing counterfeit goods for purposes of trade or any other purpose; 	<p>Identify the original products counterfeited</p> <p>Produce the counterfeit products Show that the person was in the course of trading</p> <p>Offence by manufacturers Demonstrate that the goods are counterfeit</p> <p>Show that the person was in the course of trading. Identify persons to whom goods sold or offered for sale</p> <p>Show that the goods were in public display</p> <p>Identify persons to whom goods were distributed</p>	<p><u>Provided under s 35(1).</u></p> <p>(a) First conviction: Imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both.</p> <p>(b) <u>Second/subsequent conviction:</u> Imprisonment for a term not exceeding fifteen years, or to a fine, not less than five times the value of the prevailing retail price of the goods, or both.</p>

<p>f) Importing into, transiting through, transshipping within or exporting from Kenya, except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods;</p> <p>g) Disposing of any counterfeit goods in any other manner in the course of trade.</p>	<p>Offence by a trader Identify the country where goods are originating or being exported to. Demonstrate that goods are not originals</p> <p>Show that the person took an act of dealing with, through trade, counterfeit products</p> <p>NOTE: The counterfeit offences discussed above do not require proof of the mental element necessary in proving offences. These are strict liability offence, prosecutor merely need to prove the act</p>	
Anti-Counterfeit Regulations, 2010		
<p>Giving false information</p> <p>Regulation 17:</p> <p>a) Giving any false information in relation to any application made to the Agency or Commissioner with intent to deceive or mislead</p> <p>b) Removing, adding to, altering, defacing, or renders illegible any information on any Form prescribed under these Regulations in relation to any goods or tools</p>	<p>Identify the falsity of the information Show that the person knew or ought to have known that the information was false</p> <p>Demonstrate act of interference with information given in a Form Produce the Form interfered with</p>	<p>Imprisonment for a term not exceeding six months, or a fine not exceeding six thousand shillings, or both.</p>
<p>Regulation 20:</p> <p>Owner of suspected counterfeit goods continuing to deal or trade in goods of similar description.</p>	<p>Show that the owner had previously been trading in counterfeit products (previous conviction) Demonstrate that the owner is still trading in counterfeit products</p>	<p>Imprisonment for a term not exceeding six months, or to a fine not exceeding six thousand shillings, or both.</p>

NOTE: Section 34(5).

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate commits an offence.

East African Community Customs Management Act, 2004

Offence	Elements of offence	Penalty
Offences by Officers not to perform their duty Section 9(1): <ul style="list-style-type: none"> a) An officer asking for, or taking, in connection with any of his or her duties any payment or other reward whatsoever, or any promise or security for any such payment or reward, not being a payment or reward which he or she is lawfully entitled to claim or receive. b) An officer entering into or acquiescing in any agreement to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the Customs revenue is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of his duty. 	<p>Offence by an officer Demonstrate the reward or benefit that will accrue to the officer</p> <p>Offence by an officer Set out the agreement to abstain from doing an act, conceal, permit, connive Demonstrate the intention to defraud the Customs revenue</p>	<p>Imprisonment for a term not exceeding three years.</p>
Disclosure of Confidential Information Section 9(2): A person disclosing, except for the purposes of this Act or when required to do so as a witness in any court or with the approval of the Commissioner, any information acquired by him/her in the performance of his or her duties relating to any person, firm, or business of any kind.	<p>Point out the confidential nature of the information Identify persons to whom information was disclosed</p>	<p>Fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding three years or both.</p>

<p>Bribery of an officer</p> <p>Section 9(3): Any person who</p> <ol style="list-style-type: none"> directly or indirectly offers or gives to any officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or proposes or enters into any agreement with any officer, in order to induce him or her to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the Customs revenue is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of such officer. 	<p>Prove the offer of a reward or payment to an officer</p> <p>Intention to induce officer not to perform his/her duty under the Act</p>	<p>Imprisonment of a term not exceeding three years.</p>
<p>Failure to get a licence for an internal container depot</p> <p>Section 14(5):</p> <p>Owner of an internal container depot contravening any of the provisions of Section 14 on licensing internal container depots or of any direction given by the Commission thereunder.</p>	<p>Show that the person owns an internal container depot</p> <p>Demonstrate that the person has not obtained a license for the depot</p>	<p>Fine not exceeding one thousand dollars.</p>
<p>Use of unappointed entrance or exit</p> <p>Section 15:</p> <ol style="list-style-type: none"> A person or vehicle entering or leaving any Customs area or Customs airport, and bringing goods into or out of any such area or airport, not being an appointed entrance or exit. A person entering any part of a Customs area or Customs airport when forbidden to do so by any officer or remaining in such area or airport, or any part thereof when requested to leave such area or airport, or part thereof, by any officer. 	<p>Demonstrate that the person or vehicle entered or exited from a customs area through an unappointed point</p> <p>Identify the unappointed point of entry or exit</p> <p>Show that the person is not authorised to be in the area</p>	<p>Fine not exceeding one thousand dollars, and forfeiture of any goods in respect of which such offence has been committed.</p>

<p>Interfering with goods subject to Customs</p> <p>Section 16(4):</p> <p>Interfering in any way with any goods subject to Customs control without the authority of the Commissioner or in accordance with the Act.</p>	<p>Give the nature of interference with custom goods</p>	<p>Fine not exceeding one thousand dollars or imprisonment for a term not exceeding three years, or both, and forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Master of Vessel not following procedure</p> <p>Section 21(2):</p> <p>Master of aircraft or vessel, not being lost, wrecked or abandoned, failing to follow procedure on for arrival and reporting in a Partner State.</p>	<p>Offence by a Master of vessel Show the procedure the Master failed to follow on arrival and reporting Indicate what the Master did at arrival</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>
<p>Boarding a Vessel without authority</p> <p>Section 23:</p> <p>Boarding a vessel without proper authority or permission before the proper officer.</p>	<p>Show that the person was in a vessel Show that person did not have authority to be in vessel</p>	<p>Fine not exceeding two hundred and fifty dollars.</p>
<p>Offences by crew and agents of vessel</p> <p>Section 24(6): A master or agent of a vessel or aircraft</p> <ul style="list-style-type: none"> a) Failing to make a report of aircraft; vessel; cargo; stores; and packages without a bill of lading, to a proper officer, b) Making a false report, c) Causing or permitting bulk to be broken without knowledge and permission of proper officer, d) Causing or permitting any goods to be staved, destroyed, or thrown overboard, or any packages to be opened, after arrival without the knowledge and permission of the proper officer. 	<p>Demonstrate failure to disclose goods without a Bill of Lading</p> <p>Show the false entries in the document/ produce the document</p> <p>Show that bulk was broken without knowledge by proper officer</p> <p>Identify the goods destroyed Set out the manner the goods were destroyed Show that proper officer was not aware of destruction of goods or gave permission</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>

Master/ Agent failing to answer questions or producing documents

Section 25: A master or agent of vessel or aircraft

- a) failing to answer fully and immediately all such questions relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, put to him or her by the proper officer;
- b) failing to produce all such books and documents in his or her custody or control relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, as the proper officer may require;

Show that questions were asked by a proper officer
Demonstrate that questions not answered

Show that proper officer required the production of documents
Show that the documents were not produced

Provided under Section 209.

Fine not exceeding five thousand dollars.

Failing to account for transit goods

Section 26(4): Owner or agent of an aircraft or vessel or a transit shed owner,

- 4) failing to account for any of the goods for which he is responsible to the satisfaction of the proper officer, within such prescribed period or such further period as the proper officer may allow.
- 6) failing to meet the cost of reshipment or destruction of any condemned goods.

Demonstrate failure by owner/agent not being able to account for all goods

Show the failure to pay the cost of reshipment or destruction

Provided under Section 209.

Fine not exceeding five thousand dollars.

Failure by Master/ Agent to report accident or distress

Section 28:

Master or agent of an aircraft or vessel that is lost or wrecked or compelled to land or bring to, within the Partner States owing to accident, stress of weather or other unavoidable cause, failing to make, with reasonable speed, a report of such aircraft or vessel and of its cargo and stores to the nearest officer or administrative officer.

Show that vessel with cargo involved in an accident

Show failure by Master/Agent to report

Provided under Section 209.

Fine not exceeding five thousand dollars.

Failure to Report arrival with goods

Section 29(1): A person in charge of any vehicle arriving overland at any frontier of a Partner State from a place outside the Partner States failing, before unloading or disposing of the vehicle or any goods therein, to:

- a) report his or her arrival to the officer stationed at the frontier port at which he or she entered the Partner State;
- b) furnish on the prescribed form such information as may be required concerning the vehicle or any such goods;
- c) make and subscribe a declaration as to the truth of all particulars contained in such form;
- d) fully and immediately answer all relevant questions put to him or her by the proper officer;
- e) produce all consignment notes or other relevant documents demanded of him or her by the proper officer;
- f) save as otherwise provided in the Customs laws, make due entry of the vehicle and of any such goods.

Offence by a person in charge of a vehicle

Show that the person arrived with goods and failed to report his/her arrival

Show that the person failed to furnish information in the Form/ produce form as filled

Show that the person failed to subscribe a declaration

Demonstrate that the person failed to answer all questions. Show questions not answered

Demonstrate the failure to produce documents

Show that the person failed to make entry of vehicles or goods brought in the country

Forfeiture of any goods in respect of which such offence has been committed.

Removal of uncustomed goods

Section 30:

2) A station master or other person in charge of a railway station at any port removing or permitting to be removed before delivery or removal has been authorised by the proper officer goods subject to customs control required to be entered at a port of entry and conveyed to that station in any train from the transit shed or customs area appointed for such station, or be forwarded to any other railway station.

3) A station master or other person in charge of a railway station at any port delivering to the consignee or any person at the station any goods which are required to be entered at any other station without the written permission of the proper officer;

4) An owner or user of a private railway siding or any other person receiving railway wagons containing goods subject to customs control into a private railway siding without written permission of the Commissioner.

Offence by a station officer or any person in charge

Show that goods were removed before authorisation

Demonstrate that there was lack of written permission from proper officer for goods to be entered

Identify goods removed

Demonstrate that the person received the goods

Identify the goods received

Demonstrate that goods were subject to customs control

Forfeiture of any goods in respect of which such offence has been committed.

Failure to declare goods in possession

Section 31: A person arriving overland in a Partner State from a foreign place failing, before disposing of goods in his/her possession, to:

- a) report his or her arrival to the officer stationed at the Customs house nearest to the point at which s/he crossed the frontier;
- b) furnish on the prescribed form such information as may be required concerning the goods;
- c) make and subscribe a declaration as to the truth of all particulars contained in such form;
- d) fully and immediately answer all relevant questions put to him or her by the proper officer;
- e) produce all consignment notes or other relevant documents demanded of him or her by the proper officer;
- f) save as otherwise provided in the Customs laws, make due entry of any such goods.

Show that the person arrived at the frontier. Show that the person failed to report his/her arrival
Identify place person is arriving from
Identify goods in possession of person

Show failure to provide information in forms. If Forms are filled produce the incomplete Form(s)

Show that the person failed to subscribe a declaration

Show that the person failed to answer all questions

Show that the person failed to produce consignment notes demanded
List the consignment notes demanded of the person

Show the failure to make entry of goods

Forfeiture of any goods in respect of which such offence has been committed.

Illegal unloading of goods

Section 33:

- 1) Without the written permission of the proper officer and subject to such conditions as he or she may impose,
 - a) unloading goods from any aircraft or vessel arriving from a foreign port unless such goods have been duly entered;
 - b) unloading or removing such goods at an unprescribed time;
 - c) unloading such goods at an unapproved unloading place
- 3) failing to convey unloaded or landed goods to a Customs area; or to deposit in a transit shed or a Customs warehouse if so required by proper officer;
- 4) removing goods from any part of a Customs area or a transit shed or a Customs warehouse without authority of proper officer;

Show lack of written permission from proper officer

Demonstrate that goods were unloaded
 Identify the goods unloaded
 Identify the vessel goods are unloaded from

Indicate the time when goods were unloaded
 Indicate the time when goods are supposed to be loaded

Indicate the place approved for loading of goods
 Indicate the place where goods were unloaded
 Identify the goods

Identify the goods
 Demonstrate that goods were not delivered to a customs area

Identify the goods removed
 Show that goods removed without authorisation
 Identify the customs area where goods removed

Forfeiture of any goods in respect of which such offence has been committed.

Failing to furnish entry within 48 hours of obtaining permission

Section 36:

Contravention by owner of any bullion, currency notes, coin, or perishable goods, of an undertaking given to the proper officer to furnish the necessary entry within forty-eight hours of the time of delivery in order to obtain permission to unload without entry.

Indicate when information was to be given
 Demonstrate failure to furnish information within given time

Fine not exceeding five hundred dollars.

<p>Breach of conditions for security imposed by proper officer permitting removal of goods</p> <p>Section 39:</p> <p>Contravention of any conditions as to security imposed by the proper officer for the due return of any goods or the payment of the duties thereon, as condition for permitting the goods to be removed from any transit shed or Customs area without payment of the duty.</p>	<p>Identify conditions set by proper officer Show which condition was breached Show the manner condition was breached</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Leaving a room with uncustomed goods without permission of proper officer</p> <p>Sections 44 and 45:</p> <p>Any person disembarking from any aircraft or vessel who has any uncustomed goods in his possession, leaving the baggage room or other place set aside for the examination of baggage, or removing baggage or goods therefrom, without the permission of the proper officer to leave that room.</p>	<p>Identify the vessel person disembarking from Identify the uncustomed goods Show that the person had uncustomed goods in his possession Demonstrate that person left baggage room without permission</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>
<p>Failure to remove goods within fourteen days of release</p> <p>Section 48(4):</p> <p>Failing to remove to and deposit to the warehouse into which they are entered, the entered goods, and in the package in which they were imported, within fourteen days of their release.</p>	<p>Identify the goods Demonstrate that goods were not removed Show that fourteen days has lapsed since release</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Contravention of Conditions placed by Commissioner</p> <p>Section 51:</p> <p>Contravention of any condition imposed by the Commissioner in respect to operations in a warehouse.</p>	<p>Identify condition contravened Give particulars of how condition contravened</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>

<p>Contravention of Conditions as to security for the return of goods</p> <p>Section 53: east</p> <p>Contravention of any conditions as to security imposed by the proper officer for the due return of any goods or the payment of the duties thereon, as condition for permitting the goods to be removed from any warehouse without payment of the duty.</p>	<p>Identify condition imposed by proper officer</p> <p>Demonstrate how condition was breached</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Owner of warehouse dealing with goods</p> <p>Section 55:</p> <p>Owner of warehoused goods entered as stores for any aircraft or vessel dealing with the goods in a contrary manner.</p>	<p>Offence by owner of a warehouse</p> <p>Identify goods dealt with</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Unauthorised access to a warehouse or gaining access to goods</p> <p>Section 59:</p> <p>2) Unauthorised person opening any warehouse or gaining access to any goods without the approval of the proper officer;</p> <p>3) A person entering any warehouse, or part thereof, contrary to the orders of the proper officer, or refusing to leave any warehouse, or part thereof, when directed to do so by the proper officer.</p>	<p>Show that person accessed warehouse or goods without permission</p> <p>Show that the person refused to leave a warehouse</p> <p>Identify warehouse</p>	<p>Fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years.</p> <p>Fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding one year</p>
<p>Improper taking, destruction of warehouse goods</p> <p>Section 61: A person,</p> <p>a) taking, or causing or permitting to be taken, any goods from any warehouse otherwise than in accordance with this Act; or</p> <p>b) failing to carry into and deposit in the warehouse, any goods entered for warehousing; or</p> <p>c) wilfully destroying or damaging any warehoused goods otherwise than in circumstances specifically provided for in this Act,</p>	<p>Demonstrate that goods were taken from warehouse</p> <p>Identify goods taken</p> <p>Show that goods taken were warehouse goods</p> <p>Identify the goods</p> <p>Show the failure to carry into and deposit the goods</p> <p>Identify the goods destroyed</p>	<p>Imprisonment for a term not exceeding two years or a fine equal to twenty-five percent of the dutiable value of the goods.</p>

<p>Abuse of warehouse licence</p> <p>Section 62(8):</p> <p>A warehouse keeper using, or permitting to be used, his or her warehouse in contravention of any of the terms of his or her licence.</p>	<p>Offence by a warehouse keeper Demonstrate the manner in which the warehouse was used Set out the manner use contravened the Act</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>
<p>Failure to keep a record of warehouse goods</p> <p>Section 64:</p> <p>A warehouse keeper failing to provide necessary facilities, or keep record and accounts of warehoused goods, or stack and arrange goods to permit reasonable access, or provide necessary labour materials.</p>	<p>Offence by a warehouse keeper Demonstrate how warehouse keeper failed to provide records of goods</p>	<p>Fine not exceeding one thousand dollars.</p>
<p>Interference with marks or numbers of packages of any goods in a warehouse</p> <p>Section 65:</p> <p>A warehouse keeper who contravening, or causing or permitting the moving, or interference in any way, or alteration in the marks or numbers of any package of any goods warehoused in a bonded warehouse except with the approval of the proper officer,</p>	<p>Offence by a warehouse keeper</p> <p>Demonstrate how marks or numbers on goods are interfered with Identify the goods</p>	<p>Fine not exceeding one thousand dollars, and forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Failure to produce warehoused goods to proper officer</p> <p>Section 67(1) and (2): A warehouse keeper failing to produce to a proper officer on request, without satisfactory explanation, all goods deposited in his her bonded warehouse.</p> <p>Section 67(3): A warehouse keeper taking, substituting, causing or permitting any goods in a bonded warehouse to be taken or substituted.</p>	<p>Offence by a warehouse keeper Show request for production of goods by officer Show failure to produce goods as requested Demonstrate lack of satisfactory explanation</p> <p>Offence by warehouse keeper Identify the goods substituted Demonstrate act of substituting of goods</p>	<p>Fine of ten per cent of the dutiable value in respect of each package not so produced and, in addition, the warehouse keeper shall forthwith pay the duties in respect of each such package.</p> <p>Fine of twenty-five per cent of the dutiable value of the goods substituted or taken.</p>

<p>Failure to load goods for transit within time specified</p> <p>Section 73:</p> <p>A person failing to,</p> <ol style="list-style-type: none"> 1) enter cargo to be loaded for export on any aircraft or vessel 2) to furnish the proper officer with full particulars, supported by documentary evidence, of the goods referred to in the entry, 3) to export the above goods within thirty days from the date of entry or such further period as the Commissioner may allow. 	<p>Identify the goods</p> <p>Show failure to load goods in vessel</p> <p>Show failure to furnish particulars of goods</p> <p>Show failure to export goods within specified time Indicate time when goods were to be exported</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Loading goods without filling entries</p> <p>Section 74: A master or agent of aircraft or vessel in which any goods are to be exported,</p> <ol style="list-style-type: none"> 1) failing to make entry outwards to proper officer. 2) making entry before the whole of the cargo reported in such aircraft or vessel for discharge has been discharged; 3) loading on such aircraft or vessel before entry outwards is made 	<p>Show failure to make an entry</p> <p>Demonstrate that entry was made before all goods were discharged</p> <p>Show that loading goods was done before entry outward form is filled</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>
<p>Breach of conditions on loading</p> <p>Section 75:</p> <p>Contravening conditions on loading goods on board of an aircraft or vessel departing to a foreign port.</p>	<p>Identify the goods loaded Demonstrate the loading of goods Identify the condition breached</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Failing to pay export duty for personal baggage</p> <p>Section 76:</p> <p>An owner of goods which are bona fide personal baggage contravening an undertaking given to a proper officer for the later payment of any export duties as condition for entry being given.</p>	<p>Offence by owner of goods Identify undertaking given Show failure to pay and condition breached</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>

<p>Dumping of personal baggage for export in the Community</p> <p>Section 77:</p> <p>Discharging at any place within the Partner States of goods which have been put on board any aircraft or vessel for export, or for use as stores, or as passengers' baggage, without written permission of the proper officer.</p>	<p>Identify where goods are declared to be heading</p> <p>Identify use of the goods within the region</p>	<p>Forfeiture of any goods in respect of which such offence has been committed</p>
<p>False declarations of bonded goods</p> <p>Section 78(5):</p> <p>Bonded goods for export subsequently found by proper officer on examination not to agree with particulars of entry, or not entitled to duty drawback when brought to any Customs airport, Customs area, or other place, to be put on board any aircraft or vessel.</p> <p>Section 75(6)</p> <p>Owner contravening conditions imposed on bonded goods for export</p> <p>Section 78(7):</p> <p>Using bonded goods for which security is required, after they have been loaded, otherwise than for export and discharge at the place for which they were entered or as stores.</p>	<p>Identify the falsity in the declaration</p> <p>Identify condition breached by owner</p> <p>Identify the goods</p> <p>Identify place of discharge</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p> <p>Forfeiture of any goods in respect of which such offence has been committed.</p> <p>Fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years, and forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Loading goods as stores without approval of proper officer</p> <p>Section 79:</p> <p>Putting, or causing or permitting to be put, any goods on board any aircraft or vessel for use as stores without approval by proper officer, or contravention of any conditions imposed by the proper officer when granting such permission.</p>	<p>Identify goods loaded</p> <p>Show lack of approval by officer</p> <p>Identify condition breached</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>

<p>Failure to notify officer of delay in shipping export goods</p> <p>Section 80</p> <p>Failing to notify proper officer within 48 hours where goods are not exported in the aircraft or vessel for which they were entered, or where the goods are transhipped.</p>	<p>Identify the export goods</p> <p>Demonstrate the failure to notify officer</p>	<p>Fine not exceeding five hundred dollars.</p>
<p>Disparity between goods and declarations made</p> <p>Section 82(3)</p> <p>Where any goods liable on export to any duty are brought to any Customs airport, Customs area, or other place, to be put on board any aircraft or vessel and, on examination by the proper officer, are found not to agree with the particulars of the entry, or application for shipment relating thereto. (owner of such goods commits an offence)</p>	<p>Identify the disparity in the declaration made and the goods delivered to a Customs area</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Vehicles departing from an unappointed area</p> <p>Section 83:</p> <p>Vehicles departing overland at a place other than an appointed port.</p>	<p>Identify the vehicle used</p> <p>Identify the unappointed port of departure</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Departing with goods without making entry</p> <p>Section 84:</p> <p>Person departing overland with goods without making entry of the goods</p>	<p>Identify the goods and the failure to make an entry of the goods</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Departing a Port without a Clearance Certificate</p> <p>Section 88.</p> <p>Master or agent of a ship whose ship departs from a port to any foreign place without clearance certificate.</p>	<p>Offence by Master or agent of ship</p> <p>Demonstrate the lack of clearance certificate</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>

Breach of undertaking Section 89: Contravening undertaking given in relation to grant of clearance certificate.	Proof of undertaking Breach of that undertaking	<u>Provided under Section 209.</u> Fine not exceeding five thousand dollars.
Failure to produce certificate Section 90: Failing to produce certificate of clearance on demand by proper officer.	Demand for certificate by officer Failure by the party to produce the certificate	<u>Provided under Section 209.</u> Fine not exceeding five thousand dollars.
Deficiency in Cargo Section 91: Deficiency in cargo or stores.	Proof of the deficiency in cargo	<u>Provided under Section 209.</u> Fine not exceeding five thousand dollars.
Breach of loading provisions Section 99. Contravening provisions on loading of coastwise and transfer cargo.	Proof of breach of provisions on loading and transfer of cargo	Fine not exceeding two hundred and fifty dollars. Forfeiture of any goods in respect of which such offence has been committed. Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid.
Departing without transire Section 100 Vessel or aircraft carrying goods coastwise departing without transire.	Proof of act of departure Lack of transire at the point of departure	Fine not exceeding five hundred dollars. Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid.

<p>Failing to deliver Transpire on arrival</p> <p>Section 100</p> <p>Failing to deliver transpire to proper officer on arrival</p>	<p>Proof of arrival at port</p> <p>Failure to deliver transpire to proper officer on arrival</p>	<p>Fine not exceeding five hundred dollars.</p> <p>Forfeiture of any goods in respect of which such offence has been committed.</p> <p>Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid.</p>
<p>Master refusing to answer questions or giving incorrect reply</p> <p>Section 105:</p> <p>Master of vessel refusing to answer or giving incorrect reply on examination of coasting vessel and goods</p>	<p>Offence by a Master of a vessel</p> <p>Prove failure to respond or the incorrectness of response</p>	<p>Fine not exceeding two hundred and fifty dollars.</p> <p>Seizure and detention of any coasting aircraft or coasting vessel in relation to which such offence has been committed until fine is paid.</p>
<p>Failure to export temporarily imported goods/ import dumping</p> <p>Section 117</p> <p>Importer failing to export temporarily imported goods at the end of specified period specified or any person who sells, alters or re-places or otherwise modifies the goods or part thereof</p>	<p>Prove goods were imported for purposes of re export</p> <p>Failure by the importer to export the goods within specified time</p> <p>Act of selling, altering, replacing or modifying the imported goods</p>	<p>Fine equal to twenty percent of the dutiable value and any goods which are the subject of the offence.</p> <p>Forfeiture of any goods in respect of which such offence has been committed.</p>
<p>Dealing with duty free goods</p> <p>Section 119</p> <p>Knowingly disposing or acquiring goods imported duty free which are subject to certain duties on disposal.</p>	<p>Proof that goods are duty free imports</p> <p>Act of dealing with the goods</p> <p>Knowledge that the goods were duty free and should paid for at disposal</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p> <p>Forfeiture of any goods in respect of which such offence has been committed.</p>

<p>Failing to land a vessel or aircraft</p> <p>Section 149:</p> <p>Failing to comply with an order to bring vessel to or land aircraft.</p>	<p>Prove order to land a vessel or aircraft</p> <p>Failure by the in charge to land the vessel</p>	<p>In the case of the master of a vessel of less than two hundred and fifty tons exceeding two thousand register, to a fine not dollars and the vessel in respect of which such offence has been committed shall be liable to forfeiture;</p> <p>In the case of the master of an aircraft or of a vessel of two hundred and fifty tons register or more, to a fine not exceeding five thousand dollars and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security therefor given.</p>
<p>Section 152(4):</p> <p>A master of an aircraft or vessel</p> <ul style="list-style-type: none"> a) who refuses to unload or remove any goods when required to do so in accordance with the provisions of this Section; or b) in which any goods which have been locked up, sealed marked, or otherwise secured, in accordance with this Section are in any way interfered with except in accordance with the permission of the proper officer; or c) in which any lock, seal, or mark, placed on any place or goods in accordance with this Section is in any way opened, broken, or altered, commits an offence. 	<p>Failure to remove goods</p> <p>Order to remove the goods</p> <p>Prove interference with the goods</p> <p>Prove the breakage of lock, entry into the place where goods were sealed or alteration of locks</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>

[illegible]

<p>Contravening conditions of importation of equipment, machinery or raw materials</p> <p>Section 164</p> <p>Manufacturer contravening conditions on importation of equipment, machinery, raw materials, etc.</p>	<p>Prove act of importation</p> <p>Identify condition contravened</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>
<p>Disposal of raw materials or manufactured goods from a bonded factory</p> <p>Section 166:</p> <p>A licensee who, without the permission of the Commissioner, disposes of, or allows to be disposed of, raw materials or manufactured goods from a bonded factory, within the Partner States, whether on payment or not, or any person who acquires, keeps, conceals or has in his or her possession such raw materials or manufactured goods from a bonded factory</p>	<p>Prove that goods or raw materials were from a bonded factory</p> <p>Show disposal of goods or raw materials</p> <p>Demonstrate lack of permission from Commissioner</p>	<p>Fine of five thousand dollars or fifty per cent of the ex-factory value of the raw materials or manufactured goods, whichever is the higher, or to imprisonment for a term not exceeding three years or both; and the goods in respect of which the offence has been committed shall be liable to forfeiture.</p>
<p>Removal of EPZ goods for home consumption Section 168:</p> <p>Contravention of conditions imposed as condition for removal of goods from an EPZ to home for consumption.</p>	<p>Prove that goods were from EPX factory</p> <p>Show that goods were taken for home consumption</p> <p>Prove condition contravened</p>	<p>Fine of five thousand dollars or fifty per cent of the value of the goods, whichever is the higher, or to imprisonment for a term not exceeding three years or both; and the goods in respect of which the offence has been committed shall be liable to forfeiture.</p>
<p>Contravening condition for entry of goods for home consumption</p> <p>Section 175:</p> <p>Contravention of conditions imposed as condition for permitting goods in unaltered state or compensation products to be entered home for consumption.</p>	<p>Identify the condition contravened</p> <p>Prove breach of the condition</p>	<p>Forfeiture of any goods in respect of which such offence has been committed.</p>

<p>Conspiracies</p> <p>Section 193:</p> <p>Conspiring to contravene provisions of the Act.</p>	<p>Identify the conspirators</p> <p>Identify the provision of the Act conspired to be breached</p> <p>Prove a positive step taken by the conspirators to contravene a provision of the Act</p>	<p>Imprisonment for a term not exceeding five years.</p>
<p>Destruction of goods to avoid seizure</p> <p>Section 194:</p> <p>a) Breaking, destroying or <u>throwing overboard from any aircraft</u>, vessel or vehicle any goods for the purpose of preventing the seizure of the goods; or</p> <p>b) Rescuing, staving, breaking, destroying, or throwing overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the securing of such goods after they have been seized;</p>	<p>Prove the act of destruction, or throwing overboard of goods</p>	<p><u>Provided under Section 209.</u></p> <p>Fine not exceeding five thousand dollars.</p>
<p>Removal of a custom seal</p> <p>Section 195:</p> <p>A person who wilfully removes any customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer or in circumstances contrary to the regulations or who wilfully alters, defaces, obliterates or imitates, any mark placed by an officer on any package</p>	<p>Prove removal or interference with the custom seal</p> <p>Demonstrate the lack of authorisation from a proper officer</p> <p>Identify the regulations contravened</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding two thousand five hundred dollars or to both.</p>

<p>Vessels used for smuggling purposes</p> <p>Section 199:</p> <p>Aircraft, vessel, vehicle used for smuggling.</p>	<p>Identify the vessel</p> <p>Demonstrate the act of use in smuggling</p>	<p>In the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding seven thousand dollars and any vessel and goods in respect of which such offence has been committed shall be liable to forfeiture;</p> <p>In the case of the master of an aircraft or vessel of two hundred and fifty tons register or more, to a fine not exceeding ten thousand dollars ; and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security given, and any goods in respect of which such offence has been committed shall be liable to forfeiture;</p> <p>In the case of the person in charge of a vehicle, to a fine not exceeding five thousand dollars and the vehicle and goods in respect of which such offence has been committed shall be liable to forfeiture.</p>
<p>Importation of uncustomed goods</p> <p>Section 200:</p> <p>Importing or carrying coastwise; unloading after importation or carriage coastwise; exportation carrying coastwise or putting on board for exportation; acquiring, possessing, keeping, concealing, or procuring to be kept or concealed prohibited, restricted and uncustomed goods.</p>	<p>Identify the uncustomed goods</p> <p>Prove the act of importing, acquiring, possessing, concealing, keeping or procuring the uncustomed goods</p>	<p>Imprisonment for a term not exceeding five years or to a fine equal to fifty per cent of the dutiable value of the goods involved, or both.</p>
<p>Concealed weapons</p> <p>Section 202</p> <p>Import or export of concealed weapons.</p>	<p>Identify the weapons</p>	<p>Imprisonment for a term not exceeding five years or to a fine equal to fifty per cent of the value of the goods involved.</p>

<p>Making false customs documents</p> <p>Section 203:</p> <p>Making or using false documents in relation to Customs.</p>	<p>Show the document</p> <p>Demonstrate falsity of the document</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars.</p>
<p>Failing to report uncustomed goods</p> <p>Section 206:</p> <p>A person who, on finding any uncustomed goods on land or floating upon, or sunk in, the sea, fails to report such discovery to the nearest officer commits an offence.</p>	<p>Demonstrate knowledge of goods</p> <p>Show failure by the person to report to an officer</p>	<p>Fine not exceeding two thousand five hundred dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture</p>

The Standards Act Cap. 496		
Offence	Elements of offence	Penalty
<p>Manufacture and sale of commodity not complying with specification code</p> <p>Section 9(4):</p> <p>Manufacturing or selling, without an exemption order, any commodity, method or procedure which does not comply with the relevant specification or code of practice.</p>	<p>Prove act of manufacture or sale</p> <p>Demonstrate failure to comply with the specification or code of practise</p> <p>Show lack of an exemption order</p>	<p><u>Provided under Section 15:</u></p> <p>First offence: Imprisonment for a term not exceeding twelve months or to a fine not exceeding one million shillings or to both.</p> <p>Second/subsequent offence: Imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine.</p> <p>(Where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof during which the offence continues).</p>
<p>Non Use of Standardization Mark</p> <p>Section 10(3), (6), and (8):</p> <p>Manufacturing any commodity in respect of which a Kenya Standard has been declared without a permit to use the standardization mark, or any person applying a standardisation mark without a permit.</p>	<p>Offence by a manufacturer of commodities</p> <p>Show the goods manufactured</p> <p>Show the requirement of standardization mark</p> <p>Demonstrate that the goods did not have a standardization mark</p>	<p><u>Provided under Section 15:</u></p> <p>First offence: Imprisonment for a term not exceeding twelve months or to a fine not exceeding one million shillings or to both.</p> <p>Second/subsequent offence: Imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine.</p> <p>(Where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof during which the offence continues).</p>

<p>Failure to Comply with a Standardization levy order</p> <p>Section 10B(4):</p> <p>Failure to comply with any provisions of a standards levy order.</p>	<p>Indicate the provision of a standards levy order not complied with</p> <p>Demonstrate failure to comply with the order</p>	<p><u>Provided under Section 15:</u></p> <p>First offence: Imprisonment for a term not exceeding twelve months or to a fine not exceeding one million shillings or to both.</p> <p>Second/subsequent offence: Imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine.</p> <p>(Where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof during which the offence continues).</p>
<p>Failure to furnish samples of commodity or any information on a commodity</p> <p>Section 12:</p> <p>A holder of a permit failing to comply with a written request from the Council to furnish within such period as may be specified such samples of any commodity to which the permit relates and all such information in regard to that commodity or its manufacture, production, processing or treatment as may be specified in the request.</p>	<p>Demonstrate that a request was made</p> <p>Show that the holder of permit to whom request was made failed to furnish samples or information required</p>	<p>Fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.</p>
<p>Obstruction of an Inspector/ Failure to comply with lawful requirements by Inspector</p> <p>Section 14(4):</p> <p>Resisting, hindering or obstructs an inspector acting in the course of his duty, or wilfully failing to comply with any requirements lawfully made by an inspector.</p>	<p>Offence against an inspector</p> <p>Prove the act of obstruction, resistance or hindering of inspector</p> <p>Show the requirements made by inspector</p> <p>Demonstrate failure to comply with the requirements</p>	<p><u>Provided under Section 15:</u></p> <p>First offence: Imprisonment for a term not exceeding twelve months or to a fine not exceeding one million shillings or to both.</p> <p>Second/subsequent offence: Imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine.</p> <p>(Where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof during which the offence continues).</p>
<p>Offences by an Inspector</p> <p>Section 14A:</p> <p>11) An inspector,</p> <p>a) directly or indirectly soliciting for, or receiving in connection with any of his duties, a payment or other reward whatsoever, whether pecuniary or otherwise, or a promise or security for any such payment or reward which he is lawfully entitled to claim; or</p>	<p>Offence by an Inspector</p> <p>Show act of solicitation of a reward or payment</p> <p>Identify the person from whom solicitation is sought or reward received</p> <p>If sought or received through proxy identify the proxy used</p>	<p>Imprisonment for a term not exceeding five years or to a fine not exceeding one million shillings or both, and forfeiture to the Government of any money, property or reward obtained fraudulently.</p>

<p>entering into any agreement to do, abstain from doing, permit, conceal or connive at any act whereby the Bureau is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of that officer; or</p> <p>b) disclosing, except for the purposes of this Act or when required to do so as a witness in a court of law or with the approval of the Director, information acquired by him in the performance of his duties relating to a person, firm or business of any kind; or</p> <p>c) using his position to improperly enrich himself or others.</p>	<p>Identify the parties to the agreement Demonstrate the act of defrauding the Bureau or any provision of the Act sought to be breached</p>	
<p>12) A person, with the intention of defrauding the Bureau,</p> <p>a) directly or indirectly offering to give an inspector a payment or reward, whether pecuniary or otherwise, or makes a promise or security for any such payment or reward; or</p> <p>b) promising or entering into an agreement with an inspector in order to induce him to do, abstain from doing, permit, conceal or connive at, any act whereby the Bureau may be defrauded, or which is contrary to the provisions of this Act for the proper execution of the duty of that inspector.</p>	<p>Identify information disclosed</p> <p>Offence by an officer. Demonstrate the act of enriching oneself</p>	<p>Imprisonment for a term not exceeding five years.</p>

<p>Dealing with goods subject to testing and premature release of results</p> <p>Section 14B(6):</p> <p>Any person removing, selling, using, disposing of, re-exporting, damaging, wasting, destroying or in any manner dealing with goods which he has been ordered by an inspector to retain possession of pending the testing of samples and release of the test results before the release of the results</p>	<p>Show the order given by inspector for retention of goods</p> <p>Identify the goods</p> <p>Demonstrate the act of dealing with the goods</p> <p>Show premature results released</p>	<p><u>Provided under Section 15:</u></p> <p>First offence: Imprisonment for a term not exceeding twelve months or to a fine not exceeding one million shillings or to both.</p> <p>Second/subsequent offence: Imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine.</p> <p>(Where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof during which the offence continues).</p>
<p>Contravention of a court order prohibiting manufacture, sale unless comply with Standards</p> <p>Section 15(4):</p> <p>Any person who contravenes an order of the Court prohibiting the manufacture or sale of a commodity unless it complies with the relevant Kenya Standard, or an interim order prohibiting, either absolutely or subject to conditions, the manufacture or sale of that commodity, method or procedure until the earliest opportunity for hearing and determining a complaint by an inspector.</p>	<p>Produce the court order</p> <p>Set out the manner the order is breached</p>	<p>First offence: Imprisonment for a term not exceeding twelve months or to a fine not exceeding one million shillings or to both.</p> <p>Second/subsequent offence: Imprisonment for a term not exceeding three years or to a fine or to both imprisonment and fine.</p> <p>(Where an offence is of a continuing nature, he shall in addition be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof during which the offence continues).</p>

Trade Description Act, Cap 505

Offence	Elements of offence	Penalty
<p>Section 3:</p> <p>Any person in the course of any trade,</p> <ol style="list-style-type: none"> applying a false trade description to any goods; or supplying or offering to supply or having in his possession for supply, any goods to which a false trade description is applied. 	<p>Prove the trade the person was engaged in</p> <p>Show the falsity in the trade description applied to a product</p> <p>Demonstrate that the person supplied the goods.</p> <p>Identify persons supplied with the products</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>
<p>Price variations</p> <p>Section 4:</p> <ol style="list-style-type: none"> Any person offering to supply goods of any description giving, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than a recommended price or the price at which the goods or goods of the same description were previously offered by him, or is less than such a price by a specified amount. Any person, offering to supply any goods, giving, by whatever means, any indication likely to be taken as an indication that the goods are being offered at a price less than that at which they are in fact offered. 	<p>Identify the goods offered to be supplied</p> <p>Identify the recommended price</p> <p>Demonstrate the falsity in price indication</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>
<p>Misleading supply information</p> <p>Section 5:</p> <p>Any person, in the course of any trade, giving, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him are of a kind supplied to any person</p>	<p>Identify the goods sought to be supplied</p> <p>Prove the falsity in the information</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>

<p>Making false statements in the course of trade</p> <p>Section 6(1): Any person, in the course of any trade,</p> <ul style="list-style-type: none"> a) Making a statement which he knows to be false; or b) Recklessly making a statement which is false, as to any of the following matters: <ul style="list-style-type: none"> i. the provision in the course of any trade of any services, accommodation or facilities; ii. the nature of any services, accommodation or facilities provided in the course of any trade; iii. the time at which, manner in which, or persons by whom, any services, accommodation, or facilities are so provided; iv. the examination, approval or evaluation, by any person of any services, accommodation or facilities so provided; v. the location or amenities of any accommodation so provided. 	<p>Set out the false statement</p> <p>Demonstrate that the person knew or ought to have known the statement was false</p> <p>Identify the trade or service concerned</p> <p>Show the nature of service involved</p> <p>Identify the time, the manner and the persons affected</p> <p>Falsity in evaluation, approval or examination</p> <p>Identify the incorrectness of location provided</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>
<p>Dealing with goods bearing false indication of origin</p> <p>Section 7:</p> <p>Importation of, handling, or dealing in goods bearing false indication of origin.</p>	<p>Identify the goods</p> <p>Set out the act of dealing with the goods whether handling, or importation</p> <p>Show the correct country of origin or the incorrectness of indicated country of origin</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>

<p>Advertisement of goods not complying with requirements</p> <p>Section 11(5):</p> <p>Publishing an advertisement of any goods to be supplied in the course of trade which does not comply with any gazetted advertising requirements.</p>	<p>Produce the published advertisement</p> <p>Demonstrate the requirement not complied with</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>
<p>Contravention of an order</p> <p>Section 13(2):</p> <p>Any person, in the course of any trade, supplying or offering to supply goods with respect to which an order under Section 13 is in force, in contravention of the order.</p>	<p>Set out the order</p> <p>Identify the breach of the order</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>
<p>Aiding the commission of a crime outside Kenya/ extra territorial jurisdiction</p> <p>Section 17:</p> <p>Any person in Kenya assisting in or inducing the commission in any other country of an act which, if the act were committed in Kenya, would amount to false trade description, but only if</p> <ul style="list-style-type: none"> a) the false trade description concerned is an indication (or anything likely to be taken as an indication) that the goods or any part thereof were manufactured, produced, processed or reconditioned in Kenya; or b) the false description concerned, <ul style="list-style-type: none"> i. consists of or comprises an expression (or anything likely to be taken as an expression) to which a meaning is assigned by an order made under paragraph (b) of Section 12; and ii. where that meaning is so assigned only in circumstances specified in the order, the trade description is used in those circumstances. 	<p>Identify the country where offence is to be committed</p> <p>Set out the provision of the Act which would be contravened if act was done in Kenya</p> <p>Identify the goods</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>

<p>Disclosure of information by an inspector</p> <p>Section 21:</p> <p>5) An inspector disclosing to any other person, not being in or for the purposes of the performance by him or any other person of functions under this Act,</p> <p style="padding-left: 40px;">a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of this Section; or</p> <p style="padding-left: 40px;">b) any information obtained by him in pursuance of this Act,</p> <p>6) Impersonating an inspector.</p>	<p>Offence by an inspector</p> <p>Identify person to whom information is disclosed</p> <p>Set out the information disclosed</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>
<p>Obstructing and giving false information to inspector</p> <p>Section 22:</p> <p>1) Obstructing an inspector.</p> <p>2) Knowingly giving false information to an inspector.</p>	<p>Set out the particulars of obstruction</p> <p>Set out the false information given</p> <p>Show that the person knew or ought to have known that the information was false</p>	<p><u>Provided under Section 15:</u></p> <p>Fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.</p>

NOTE:

Section 16

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 18:

Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this Section whether or not proceedings are taken against the first-mentioned person.

Trademarks Act, Cap 506

Offence	Elements of offence	Penalty
Making false entry into a register Section 56: Knowingly making or causing to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or producing or tendering or causing to be produced or tendered in evidence any such writing.	Produce a copy of the register bearing the false entry Demonstrate the falsity of the entry Show that the person knew the entry to be false or ought to have known the entry to be false	Imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand shillings, or to both
Falsely representing a trademark as registered Section 58: Falsely representing a trademark as registered.	Show the trademark represented Prove that the trademark is not registered in the register of trademarks	Fine not exceeding five thousand shillings.
Forgery of trademark Section 58D(1): Forgery of a registered trademark.	Demonstrate that the trademark is a forgery of an original	Fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.
Sale/importation of goods with forged registered trademark Section 58E: Sale or importation of goods or performance of services with forged registered trade mark.	Demonstrate the act of forgery Produce the goods sold/imported with the forged trademark Disclose the original mark	Fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.
Aiding and abetting offence outside Kenya Section 58F: Any person within Kenya procuring, counselling, aiding, abetting or being accessory to the commission outside Kenya of an offence which, if committed within Kenya would be an offence under this Part.	Show that offender was in Kenya Show the Section of the Kenyan law the act would have offended Demonstrate that act was to be undertaken outside Kenya (identify the country)	Fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

NOTE:*Section 58H*

On conviction of any person for an offence under this Part, the court may, in addition to any sentence passed, declare any goods in respect of or by means of which the offence was committed to be forfeited to the Government, unless the owner of the goods or any person acting in his behalf or any other person interested in the goods shows cause to the contrary.

Pharmacy and Poisons Act, Cap 244

Offence	Elements of offence	Penalty
Carrying on pharmacies business by a non registered pharmacist Section 19: Any person other than a registered pharmacist or authorised person <ul style="list-style-type: none"> a) carrying on, either on his own behalf, or on behalf of another, the business of a pharmacist; b) in the course of any trade or business, preparing, mixing, compounding or dispensing any drug except under the immediate supervision of a registered pharmacist; c) assuming, taking, exhibiting or in any way making use of any title, emblem or description reasonably calculated to suggest that he is registered as a pharmacist. 	Show that offender is not a registered pharmacist Demonstrate that the offender was carrying on a pharmacist business Show that offender dispensed, prepared, mixed, compounded drugs without the supervision of a registered pharmacist Demonstrate that the offender passed off as a pharmacist while not a registered pharmacist	Fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding three years or to both.
Carrying on pharmacist business in unregistered premises Section 23: Carrying on the business of a pharmacist in unregistered premises.	Identify the premises where business was being carried out Show that premises is not registered	Fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

<p>Possession of Part I poison</p> <p>Section 26:</p> <p>Being in possession of a Part I poison otherwise than in accordance with the provisions of the Act.</p>	<p>Prove the act of possession of Part I poison</p> <p>Demonstrate possession not in accordance with Part I</p>	<p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>
<p>Selling Poisons contrary to conditions of a licence</p> <p>Section 28:</p> <p>Selling poisons for mining agricultural or horticultural purposes contrary to conditions of licence.</p>	<p>Show that offender sold poison</p> <p>Produce the poison sold</p> <p>Identify the conditions of licence breached in the sale</p> <p>Identify the person to whom poison was sold/offered for sale</p>	<p>Fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.</p>
<p>Sale of Part I poison in violation of the Act</p> <p>Section 29(5):</p> <p>Selling a Part I poison otherwise than in accordance with the provisions of the Act.</p>	<p>Prove the act of selling of Part I poison</p> <p>Demonstrate sale of poison not in accordance with Part I</p> <p>Identify person to whom poison was sold/offered for sale</p>	<p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding ten years or to both.</p>
<p>Failing to comply with Poison Book when selling Part I poison</p> <p>Section 30:</p> <p>Failing to comply with provisions as to Poison Book when selling Part I poisons.</p>	<p>Identify provision of Poison Book not complied with</p> <p>Identify the Part I poison sold</p> <p>Identify the person to whom poison was sold/offered to sale</p>	<p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>
<p>Supply of Part I poison by health officials</p> <p>Section 31:</p> <p>Duly authorised qualified medical practitioner, dentist or veterinary surgeon, or a member of the staff of a hospital, dispensary or similar institution contravening conditions as to supply and dispensing of Part I poisons</p>	<p>Offence by health officials</p> <p>Demonstrate that officials supplied Part I poison</p> <p>Identify the person to whom Part I poison was supplied</p> <p>Identify the Part I poison supplied</p> <p>Point out the condition breached in the supply of Part I poison</p>	<p>Fine not exceeding five thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.</p>

Selling Part II poison Section 33: Selling Part II poisons contrary to the provisions of the Act.	Identify the Part II poison sold Identify the person to whom Part II poison was sold Point out the provision of the Act breached	Fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.
Supply of Poisons in unlabelled containers Section 34: Supplying any poison in unlabelled containers.	Identify the poison supplied Identify the person to whom poison is supplied Produce the unlabelled container	Fine not exceeding twenty thousand shillings, or to imprisonment for a period not exceeding one year or to both.
Exposing poison for sale by means of an automatic machine Section 35: Exposing or causing to be exposed for sale any poison in or by means of an automatic machine.	Identify the poison exposed for sale Produce the automatic machine used to expose the poison for sale	Fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding one year or to both.
Advertising of drugs or poison Section 40: Contravening provisions on advertising of any drugs or poison.	Show the advertisement made Point out the provision on advertising contravened	First conviction: Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year, or both; Subsequent conviction: Fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding two years or to both.
Breach of patents or proprietary interest Section 43: Contravening an order, prohibiting or controlling the manufacture, sale, advertisement or possession of any secret, patent, proprietary or homoeopathic medicine, preparation or appliance.	Identify the order prohibiting/controlling the manufacture, sale or advertisement Identify the patent holder or person with proprietary interest over the substance Produce the items manufactured, offered for sale or advertised	<u>Provided under Section 51:</u> Fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine or imprisonment, and in addition to any penalty imposed under this Act the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited.

<p>Obstruction of officer</p> <p>Section 48:</p> <p>Obstruction of authorised officer.</p>	<p>Identify the officer obstructed</p> <p>Point out the acts constituting obstruction</p>	<p><u>Provided under Section 51:</u></p> <p>Fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine or imprisonment, and in addition to any penalty imposed under this Act the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited.</p>
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WILDLIFE MANAGEMENT AND CONSERVATION ACT, No. 47 of 2013.

<p>Bio-prospecting of wildlife</p> <p>Section 22:</p> <p>Engaging in bio-prospecting involving any wildlife resources; or export from Kenya any wildlife resources for the purpose of bio-prospecting or any other kind of research without a permit.</p>	<p>Demonstrate that person engaged in bio-prospecting</p> <p>Show that person did not have a permit</p>	<p>(No penalty provided)</p> <p>Use general penalty for offences in the Penal Code</p>
<p>Failing to grant Director access to documents and records</p> <p>Section 61:</p> <p>Failing or refusing to grant the Director access to the public records or documents of a lead agency in custody of a person or an establishment where, the information sought is for the purposes of obtaining the required wildlife data or completion or correction of the information already obtained.</p>	<p>Show that Director desired to access public records or documents</p> <p>Identify lead agency affected</p> <p>Demonstrate refusal to grant Director access</p>	<p>(No penalty provided for)</p> <p>Use general penalty for offences in the Penal Code</p>
<p>Contravening management plan</p> <p>Section 88:</p> <p>Contravening approved management plan, or fraudulently altering management plan.</p>	<p>Identify management plan</p> <p>Demonstrate how management plan contravened</p>	<p>Fine of not less than five hundred thousand shillings or imprisonment for a term of not less than two years or both such fine and imprisonment, where the offence is committed with respect to a national park, national reserve or national sanctuary;</p> <p>Fine of not less than one hundred thousand shillings in any other case.</p>

<p>Discharging hazardous substance in a wildlife area</p> <p>Section 89:</p> <p>Discharging any hazardous substances or waste or oil into a designated wildlife area contrary to any written law; polluting wildlife habitats and ecosystems; discharging any pollutant detrimental to wildlife into a designated wildlife conservation area contrary to any written law.</p>	<p>Identify hazardous substance</p> <p>Identify the wildlife area affected</p> <p>Demonstrate discharge of harmful substance in wildlife area</p>	<p>Fine of not less than two million shillings or to imprisonment of not less than five years or to both such fine and imprisonment.</p>
<p>Non-compliance with a wildlife order</p> <p>Section 90:</p> <p>Failing, neglecting or refusing to comply with a wildlife conservation order.</p>	<p>Identify wildlife order</p> <p>Set out provisions of order not complied with</p> <p>Demonstrate failure to comply with order</p>	<p>Fine of not less than five hundred thousand shillings or to imprisonment of not less than three years or to both such fine and imprisonment.</p>
<p>Making false statement</p> <p>Section 91:</p> <p>Knowingly or recklessly making a statement or representation which is false in a material particular; or knowingly or recklessly furnishing a document or information which is false in a material particular; or knowingly or recklessly using or furnishing a false, falsified or invalid license or permit or one is altered without authorisation; or knowingly contravening any condition or requirement of a licence or permit.</p>	<p>Demonstrate falsity of statement made</p> <p>Show that the person knew or ought to have known that statement is false</p>	<p>Fine of not less than two hundred thousand shillings or to imprisonment of not less than one year or to both such fine and imprisonment.</p>
<p>Offences against endangered species</p> <p>Section 92:</p> <p>Committing an offence in respect of an endangered or threatened species or in respect of any trophy of that endangered or threatened species.</p>	<p>Identify the endangered species</p> <p>Demonstrate commission of an offence against the endangered species</p>	<p>Fine of not less than twenty million shillings or imprisonment for life or to both such fine and imprisonment.</p>
<p>Introducing an invasive species</p> <p>Section 93:</p> <p>Knowingly introducing an invasive species into a wildlife conservation area an invasive species.</p>	<p>Identify the species</p> <p>Identify wildlife conservation area</p> <p>Demonstrate person introduced species in area</p>	<p>Fine of not less than three hundred thousand shillings or to imprisonment of not less than one year or to both such fine and imprisonment.</p>

<p>Unlawfully landing in a wildlife protected area</p> <p>Section 94:</p> <p>Unlawfully landing in wildlife protected area other than at a designated landing area and in accordance with the Park rules; flying at a prohibited height over a wildlife protected area.</p>	<p>Identify the wildlife area and craft</p> <p>Demonstrate person did not have permit</p>	
<p>Being in possession of wildlife trophy</p> <p>Section 95:</p> <p>Keeping or being in possession of a wildlife trophy or dealing in a wildlife trophy, or manufacturing any item from a trophy without a permit or exemption.</p>	<p>Identify wildlife trophy</p> <p>Demonstrate person had possession of wildlife trophy</p>	<p>Fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.</p>
<p>Engaging in sport hunting or recreational hunting</p> <p>Section 96:</p> <p>Engaging in sport-hunting or any recreational hunting.</p>	<p>Produce the hunting equipment/ gear</p> <p>Demonstrate person was engaged in hunting for sport</p>	<p>Depending on the category of wildlife:</p> <p>Fine of not less than twenty million shillings or imprisonment for life;</p> <p>Fine of five million shillings or imprisonment of five years or to both such fine and imprisonment;</p> <p>Fine of one million shillings or imprisonment of two years or to both such fine and imprisonment.</p>
<p>Engaging in hunting for bush meat</p> <p>Section 98:</p> <p>Engaging in hunting for bush-meat trade, or being in possession of or dealing in any meat of any wildlife species.</p>	<p>Produce hunting gear</p> <p>Demonstrate person was involved in hunting</p>	<p>Fine of not less than two hundred thousand shillings or to imprisonment for a term not less than one year or to both such fine and imprisonment.</p>
<p>Importing/ exporting specimen of wildlife species without a permit</p> <p>Section 99:</p> <p>Importing, exporting, re-exporting or introducing any specimen of a wildlife species without a permit.</p>	<p>Identify wildlife specie</p> <p>Demonstrate person imported specie into the country without a permit</p>	<p>Category A wildlife: Fine of not less than ten million shillings or to imprisonment for not less than five years.</p> <p>Other wildlife categories: Fine of not less than one million shillings or to imprisonment of not less than two years or to both such imprisonment and fine.</p>

<p>Failing to comply with lawful requirement or obstruction</p> <p>Section 101:</p> <p>Failing to comply with a lawful requirement or demand made or given by an authorised officer; or obstructing a person in the execution of his powers or duties under the Act.</p>	<p>Identify lawful requirement not complied with</p> <p>Demonstrate that person failed to comply with requirement</p> <p>Demonstrate that person obstructed officer in execution of duties under the Act</p>	<p>Fine of not less than one hundred thousand shillings or imprisonment of not less than six months or to both such fine and imprisonment.</p>
<p>Entering park without a licence or permit Section 102:</p> <p>Person, not being an authorised officer or person employed in a park or reserve, entering or residing in a national park or reserve without licence or permit.</p> <p>Carrying out logging in a national park or reserve;</p> <p>Clearing and cultivating any land in the national park or reserve;</p> <p>Knowingly removing or attempting to remove any object of geological, prehistoric, archaeological, historic, marine or other scientific interest within a wildlife protected area.</p> <p>Conveying into a protected area being within a protected area in possession of any firearm, ammunition, arrow, spear, snare, trap or similar device without authorisation;</p> <p>Undertaking any extractive activity in marine protected areas.</p>	<p>Show that person was in park without licence or permit</p> <p>Identify the park</p> <p>Produce the logs and equipment used</p> <p>Demonstrate that person cleared land for cultivation. Identify crops planted</p> <p>Produce object removed or attempted to be removed</p> <p>Produce the firearm, ammunition, arrow, spear, snare, trap or similar device. Identify protected area</p> <p>Identify extractive activity undertaken</p> <p>Identify the marine protected area</p>	<p>Fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment.</p>
<p>Failing to stop or allow search of vehicle Section 111:</p> <p>Failing to stop or allow a search of person or vehicle when so required at a temporary barrier erected by an authorised officer.</p>	<p>Identify vehicle</p> <p>Demonstrate that person was required to stop but failed to stop at a barrier</p> <p>Identify officer who required stop</p>	<p>Fine of not less than fifty thousand shillings or to imprisonment for a period of not less than six months or to both such fine and imprisonment.</p>

<p>Conveying a weapon in a wildlife area</p> <p>Section 112(7):</p> <p>Conveying without authorisation into a wildlife conservation area, or while within the area thereof, being in possession of, any weapon, ammunition, explosive, trap or poison.</p>	<p>Identify wildlife area</p> <p>Identify weapon possessed or conveyed</p> <p>Produce the weapon, ammunition, explosive trap or poison possessed or conveyed</p>	
Penal Code, Cap 63		
Offence	Elements of offence	Penalty
<p>Conspiring to unship, conceal or carry customs goods</p> <p>Section 97:</p> <p>Assembling together, to the number of two or more, for the purpose of unshipping, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs.</p>	<p>Identify the parties involved (Must be more than one person)</p> <p>Identify the customs goods sought to be dealt with</p> <p>Demonstrate overt act by the persons to conceal, unship or carry the customs goods</p>	<p>Each of them is liable to a fine not exceeding six thousand shillings or to imprisonment for six months.</p>
<p>Counterfeiting Trademarks</p> <p>Section 381:</p> <p>Counterfeiting trademarks.</p>	<p>Identify the original owner of the trademark</p> <p>Produce the goods counterfeited</p>	<p>Imprisonment for a term not exceeding two years or with a fine, or with both.</p> <p>Forfeiture of,</p> <ul style="list-style-type: none"> a) all chattels and articles to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied; b) every instrument for applying such trade mark or counterfeit trade mark in his possession or power; c) the chattels and articles and the things mentioned in paragraphs (d), (e) and (g) of subSection (1), and all similar things made to be used in like manner in his possession or power.

Copyright Act, No. 12 of 2001		
Offence	Elements of offence	Penalty
Pirating Audio material Section 28(6): Making available, for commercial purposes, any audio recording equipment for the purposes of enabling any other person to make single copies of any sound recording for his personal or private use, without payment of the royalty levied.	Produce the audio recording Demonstrate failure to pay royalties	Fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding four years or to both.
Selling copyright work without authentication device Section 36(6): Sells or offering for sale any copyright work that require an authentication device without an authentication device affixed thereto.	Produce the device sold or offered for sale Identify the original copyright holder Demonstrate lack of authentication device	Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.
Possessing a reproduced security device without permission Section 36(8)(a) Being in possession of reproduced security device without the permission of the Board.	Demonstrate that the device is not genuine and that it has been reproduced e.g. scanned, copied etc.	Fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both.
Possessing machine intended to be used to produce a security device Section 36 (8)(b) Being in possession of any machine, instrument or contrivance intended to be used to produce or reproduce a security device.	Produce the machine, instrument or contrivance Avail the reproduced security device(s) Demonstrate the relationship between the machine, instrument or contrivance and the reproduced security device	Fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both

Copyright offences

Section 38:

1) At a time when copyright or the right of a performer subsists in a work, and not acting in good faith-

- a) making for sale or hire any infringing copy; or
- b) selling or letting for hire or by way of trade exposing or offering for sale any infringing copy; or
- c) distributing infringing copies; or
- d) possessing otherwise than for private and domestic use, any infringing copy;
- e) or importing into Kenya otherwise than for private and domestic use any infringing copy; or
- f) making or being in possession of any contrivance used or intended to be used for the purpose of making infringing copies.

2) Not acting in good faith, causing a literary or musical work, an audio-visual work or a sound recording to be performed in public at a time when copyright subsists in such work or sound recording and where such performance is an infringement of that copyright.

Demonstrate that the work is copyrighted

Produce the infringing copies

Demonstrate act of selling or offering for hire infringing copies

Identify persons distributed to

Demonstrate commercial use or intended commercial use

Identify country of origin

Demonstrate commercial use

Produce the contrivance

Demonstrate its use to infringe copyright

Identify the work and copyright holder

Identify public place work was performed

Offence under sub-Section (1) paragraphs (a), (c), (e) or (f): Fine not exceeding four hundred thousand shillings or to imprisonment for a term not exceeding ten years or to both.

Offence under sub-Section (1) paragraphs (b) or (d): Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.

<p>Offences against an inspector</p> <p>Section 41:</p> <p>4) Any person-</p> <p>a) wilfully obstructing an inspector in the discharge of the inspector's duties; or</p> <p>b) wilfully failing to comply with any requirement properly made to him by an inspector; or</p> <p>c) without reasonable cause failing to give to the inspector any assistance or information which the inspector may reasonably require of that person for the purpose of the performance of his duties under this Act; or</p> <p>d) in giving any such information as is mentioned in subparagraph (c), makes any statement which he knows to be false or does not believe to be true.</p>	<p>Show mental intent to commit the offence</p> <p>Demonstrate particulars of obstruction</p> <p>Identify requirement made by inspector/ demonstrate failure to comply</p> <p>Demonstrate failure to give assistance</p> <p>Identify assistance that ought to have been given</p> <p>Show lack of reason or excuse for not giving assistance</p> <p>Demonstrate the falsehood in the statement</p>	<p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.</p>
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Copyright Regulations, 2004

Offence	Elements of offence	Penalty
Folklore offences		
Regulation 20:		
3) Using folklore for commercial purposes in Kenya without the permission of the Board.	Identify the folklore used/ demonstrate use for commercial purposes/ show lack of permission by Board	Fine not exceeding six thousand shillings or for a term of imprisonment not exceeding six months or to both.
	Show mental intent to commit the offence	
4) Any person-		
a) Wilfully misrepresenting the source of an expression of folklore; or	Give particulars of the misrepresentation	
b) willfully distorting any expression of folklore in a manner prejudicial to the honour, dignity or cultural interests of the community in which it originates.	Identify particulars of distortion of folklore Demonstrate the manner the distortion is prejudicial to honour dignity or cultural interest of community	

Industrial Property Act, 2001

Offence	Elements of offence	Penalty
Failing to comply with directions of Managing Director or Minister		
Section 27(9):		
Failing to comply with directions given by the Managing Director or the Minister in relation to an application for patent which contains information prejudicial to defence of Kenya or public safety.	Offences by Officers/ Set out the directions given by the MD or Minister Demonstrate failure to comply Set out directions given and the patent application it relates to Demonstrate failure to comply	Imprisonment for a term not exceeding two years, or to a fine not exceeding twenty thousand shillings, or to both.

Filing applications for patent in contravention of restrictions Section 28(3) Filing or causing to be filed an application for the grant of a patent in contravention of restrictions on applications abroad by Kenya residents.	Offence by Kenyans living abroad Identify the application for patent Set out the restrictions contravened	Fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.
Infringement of patent or registered utility model or industrial design Section 109: Any intentional infringement of the patent or the registered utility model or industrial design	Demonstrate mental capacity/ intention to commit offence Produce the infringing patent Identify the original patent infringed	Fine of not less than ten thousand shillings, and not exceeding fifty thousand shillings, or with imprisonment for a term of not less than three years, and not more than five years, or with both.
Tobacco Control Act, Chapter 245a		
Offence	Elements of offence	Penalty
Manufacturing or importing tobacco not complying with Act Section 14: Manufacturing, importing or distributing a tobacco product that does not conform to the requirements of the Act.	Offence against manufacturers, importers or distributors Identify provisions of the Act infringed Produce the manufactured, distributed or imported tobacco	Fine not exceeding one million shillings, or imprisonment for a term not exceeding five years, or to both.
Selling tobacco to minors/ children Section 15: 2) Selling a tobacco product to a person under the age of eighteen years. 5) Manufacturing or selling objects including sweets, snacks and toys that resemble tobacco products or would reasonably appeal to persons under the age of eighteen years.	Prove the age of the minor offered to buy tobacco and the offer to buy made to the minor Produce the items Demonstrate appeal of item to minors	Fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding six months, or to both. Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

<p>Failing to display health risk of tobacco by a retailer</p> <p>Section 16:</p> <p>Retailer failing to post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of a tobacco product to a person under the age of eighteen years is prohibited by law, and that contain any of the prescribed health messages.</p>	<p>Offence by a retailer</p> <p>Demonstrate failure to post warning signs on product</p> <p>Produce products not bearing warning signs</p>	<p>Fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding six months, or to both.</p>
<p>Selling Tobacco via a vending machine</p> <p>Section 17:</p> <p>Permitting a tobacco product to be sold by way of an automatic vending machine.</p>	<p>Produce the vending machine</p> <p>Produce tobacco products sold</p>	<p>Fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding twelve months, or to both.</p>
<p>Packaging of tobacco products</p> <p>Section 18:</p> <ol style="list-style-type: none"> 1) Selling cigarettes except in a package containing at least ten cigarettes, or such other minimum number of cigarettes, not being less than ten, as may be prescribed. 2) Selling a tobacco product other than cigarettes, that is prescribed for the purposes of this subSection, except in a package that contains at least ten units of the product, or such other minimum number of units of the product, not being less than ten, as may be prescribed. 	<p>Produce the cigarette packaging not meeting the prescribed number</p> <p>Identify the prescribed number per pack</p> <p>Produce the tobacco product</p> <p>Demonstrate package exceeded prescribed number</p>	<p>Fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding six months, or to both.</p>
<p>Allowing persons to handle tobacco before paying</p> <p>Section 19:</p> <p>Selling a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.</p>	<p>Produce the display rack used to sell tobacco</p> <p>Demonstrate ability to access and handle tobacco by buyer</p>	<p>Fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding six months, or to both.</p>

<p>Delivering tobacco by mail or advertising delivery by mail</p> <p>Section 20:</p> <ol style="list-style-type: none"> 1) Causing a tobacco product to be delivered or sent by mail for consideration, not being delivery between manufacturers or retailers. 2) Advertising an offer to deliver or mail a tobacco product anywhere within the Republic of Kenya. 	<p>Produce the product delivered by mail</p> <p>Identify the mail used to deliver the tobacco</p> <p>Produce the advertisement to deliver tobacco by mail</p>	<p>Fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding twelve months, or both.</p>
<p>Failing to display health hazards of a tobacco product</p> <p>Section 21:</p> <p>Manufacturing, selling, distributing, or importing a tobacco product whose package does not display, in the prescribed form and manner, such information as may be prescribed with respect to the product and its emissions and the health hazards or effects arising from the use of the product or from its emissions.</p>	<p>Produce the tobacco product</p> <p>Demonstrate that package does not display the health hazards or effects arising from emissions</p>	<p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>
<p>Promoting a tobacco product</p> <p>Section 22:</p> <p>Promoting a tobacco product or a tobacco-related brand element except in accordance with the provisions of the Act.</p>	<p>Identify the product</p> <p>Set out the provisions of the Act on advertising not complied with</p> <p>Give particulars of non compliance</p>	<p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>
<p>Promoting a tobacco product by deceptive means</p> <p>Section 23:</p> <p>Promoting tobacco or a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the tobacco product or its emissions and as may be prescribed by the Minister.</p>	<p>Give particulars of the act of promoting the product</p> <p>Demonstrate how the advert is misleading or deceptive</p> <p>Produce the advert</p>	<p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years or to both.</p>

Promoting a tobacco product by means of a misleading testimonial

Section 24:

Promoting a tobacco product by means of a testimonial or an endorsement, however displayed or communicated, that is misleading or incapable of fully informing consumers of the hazards of tobacco, without evoking a conflicting message or impression.

Identify the misleading testimonial

Demonstrate how the testimonial or endorsement is misleading

Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

Advertisement of tobacco product

Section 25:

- 1) Promoting a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element or one that evokes a tobacco product or element.
- 2) Advertising any tobacco product on any medium of electronic, print or any other form of communication.
- 3) Promoting tobacco or a tobacco product by means of lifestyle advertising.

Produce the advertisement of tobacco

Identify the medium through which advertisement was relayed

Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

Advertising tobacco through sponsoring a sporting/ cultural/ educational/ trade fair/ exhibition/ show or any other event

Section 26:

- 1) Advertising tobacco or a tobacco product by means of organising, promoting or sponsoring a sporting, cultural, artistic, recreational, educational or entertainment programme, event or activity; or at any sporting, cultural, artistic, recreational, educational or entertainment event or activity; or by means of organising, promoting or sponsoring trade fairs, exhibitions, shows or any other events.

Identify the event sponsored

Identify the advertisement of tobacco made

Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

<p>Selling accessories branded with tobacco manufacturer</p> <p>Section 28:</p> <p>Manufacturer, distributor or retailer manufacturing, distributing or selling an accessory that displays a tobacco product-related brand name or the name of the manufacturer.</p>	<p>Identify the accessory and the tobacco product brander</p>	<p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>
<p>Displaying tobacco brands on non-tobacco products</p> <p>Section 29:</p> <ol style="list-style-type: none"> 1) Displaying a tobacco brand element on a non-tobacco product. 2) Furnishing or promoting non-tobacco products bearing tobacco related brand names. 	<p>Produce the non-tobacco product bearing the brand</p>	<p>Fine not exceeding one hundred and fifty thousand shillings, or imprisonment for a term not exceeding six months, or to both.</p>
<p>Section 30: Manufacturer, distributor or retailer-</p> <ol style="list-style-type: none"> a) offering or providing any consideration for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest; b) furnishing a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or c) furnishing an accessory that bears a tobacco product-related brand element without monetary consideration or in consideration of a product or service or the performance of a service. 	<p>Demonstrate offer or consideration to purchase a tobacco product</p> <p>Demonstrate furnishing a tobacco product without any consideration</p> <p>Demonstrate furnishing an accessory bearing tobacco product</p>	<p>Fine not exceeding one million shillings, or imprisonment for a term not exceeding six months, or to both.</p>

Publishing information on behalf of another

Section 31:

- 1) Publishing, broadcasting or otherwise disseminating any promotion that is prohibited, on behalf of another, with or without consideration;
- 2) Promoting any product the promotion of which is regulated or disseminating promotional material that contains a tobacco-related brand element in a manner that is contrary to the Act by means of a publication that is published outside Kenya, or a broadcast that originates outside Kenya, or any other communication that originates outside Kenya.

Identify the medium of publishing or broadcasting

Identify product promoted

Give particulars how promotion of product contravened the Act

Identify provisions of the Act contravened

Fine not exceeding three million Kenya shillings or to imprisonment for a term not exceeding three years, or to both.

Obstructing an Officer

Section 45:

Obstructing or hindering, or knowingly making a false or misleading statement to an authorised officer who is carrying out duties under the Act.

Identify officer obstructed

Give particulars of obstruction

Provided under Section 54

Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or both.

Removing tobacco, tobacco product without authorisation

Section 48:

Removing, altering or interfering in any manner with any tobacco, tobacco product or other thing seized, without authorisation of an officer.

Identify product removed

Demonstrate moving of tobacco products

Show lack of authorisation of an officer

Provided under Section 54

Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or both.

Section 52: Forfeiture

Where a person has been convicted of an offence under this Act in respect of which tobacco, a tobacco product or thing has been seized under the Act, the tobacco, tobacco product or thing is forfeited to the State and may be destroyed or disposed of as the Minister may direct.

Section 55: Offences under this Act are cognisable offences.

Narcotic Drugs and Psychotropic Substances Control Act, No. 4 of 1994

Offence	Elements of offence	Penalty
Possession of narcotic drugs Section 3: Being in possession of any narcotic drug or psychotropic substance, without license or authorisation.	Produce the narcotic drugs Demonstrate possession of drugs Show lack of licence or authorisation	a) in respect of cannabis, where the person satisfies the court that it was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years; and b) in respect of a narcotic drug or psychotropic substance, other than cannabis, where the person satisfies the court that the narcotic drug or psychotropic substance was intended solely for his own consumption, to imprisonment for twenty years and in every other case to a fine of not less than one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, or to imprisonment for life or to both such fine and imprisonment.

Trafficking in narcotics

Section 4:

Trafficking in any narcotic drug or psychotropic substance or any substance represented or held out by the person to be a narcotic drug or psychotropic substance

Produce the narcotics trafficked
Demonstrate mode of trafficking

- a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or
- b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.

<p>Production of narcotics</p> <p>Section 5:</p> <p>1) Any person-</p> <p>c) being the owner, occupier or concerned in the management of any premises, permitting the premises to be used for the purpose of preparation of opium for smoking or sale, or the smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or manufacture, production, sale or distribution of any narcotic drug or psychotropic substance in contravention of this Act; or</p> <p>d) being in possession of any pipe or other utensil for use in connection with the smoking, inhaling or sniffing or otherwise using of opium, cannabis, heroin or cocaine or any utensil used in connection with the preparation of opium or any other narcotic drug or psychotropic substance for smoking.</p> <p>2) Knowingly or having reason to believe that a parcel, package, container or other thing contains any narcotic drug or psychotropic substance, and without lawful authority, handling the parcel, package, container or other thing.</p> <p>3) Committing any offence referred to in subSection (2) in relation to</p>	<p>Offence by owner or occupier of premises</p> <p>Identify the premises</p> <p>Identify the narcotic drug</p> <p>Demonstrate use, manufacture, production, sale or distribution of the narcotic drug in the premises</p> <p>Produce the pipe or utensil for use in inhalation</p> <p>Demonstrate mental capacity/ knowledge or basis to know</p> <p>Produce the package or container</p> <p>Demonstrate act of handling the container, package or parcel</p> <p>Give particulars of assisting in the commission of the offence</p>	<p>Fine of two hundred and fifty thousand shillings or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.</p> <p>Fine of one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p> <p>a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or</p> <p>b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.</p>
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<p>Cultivating or permitting cultivation of prohibited plant</p> <p>Section 6:</p> <p>a) Cultivating any prohibited plant; or</p> <p>b) Being the owner, occupier or concerned in the management of any premises, permitting the premises to be used for the purpose of the cultivation, gathering or production of any prohibited plant.</p>	<p>Identify the prohibited plant cultivated</p> <p>Identify place of cultivation</p> <p>Demonstrate knowledge of owner of premises that cultivation was taking place</p>	<p>Fine of two hundred and fifty thousand shillings or three times the market value of the prohibited plant, whichever is the greater, or imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.</p> <p>The court may also order for forfeiture to the government of the land use to cultivate the prohibited drug (Section 7).</p>
<p>Medical practitioner dealing with narcotic drugs or signing prescription for narcotic drugs</p> <p>Section 13:</p> <p>A medical practitioner or dentist or veterinary surgeon prescribing for, administering, selling or supplying any narcotic drug or psychotropic substance; or sign any prescription or order for the supply of any narcotic drug or psychotropic substance unless the narcotic drug or psychotropic substance is required for the medical or dental treatment of the person, or in accordance with Regulations.</p>	<p>Offence by a medical practitioner</p> <p>Identify the drug supplied</p> <p>Demonstrate that drug not required for medical purposes</p>	<p>Fine of not less than two hundred and fifty thousand shillings or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.</p> <p>The practitioner or dentist, or veterinary surgeon will also be liable to have his name removed from the register of those licensed or registered to practise within Kenya as a medical practitioner, dentist or veterinary surgeon, as the case may be (s. 15)</p>
<p>Failure to disclose receipt of narcotic drugs by patient to another medical practitioner</p> <p>Section 14:</p> <p>Any person, in the course of treatment for any physical, dental or mental disorder supplied with any narcotic drug or psychotropic substance, or a prescription therefor, by a medical practitioner or dentist treating him fails to disclose that fact and receives additional narcotic drugs or psychotropic substances, or a prescription therefor, from any other medical practitioner or dentist.</p>	<p>Offence by patients</p> <p>Demonstrate receipt of narcotic drugs from initial medical practitioner</p> <p>Show failure to disclose this to another medical practitioner</p> <p>Demonstrate receipt of additional drugs from another medical practitioner</p> <p>Identify the drugs received</p>	<p>Fine of not less than fifty thousand shillings and, in addition, to imprisonment for a term not exceeding ten years.</p>

<p>Obstruction of an officer</p> <p>Section 17:</p> <p>Obstruction of police officer or other authorised person in the exercise of any of his functions under the Act.</p>	<p>Identify officer obstructed</p> <p>Give particulars of obstruction</p> <p>Demonstrate officer was in the course of duty</p>	<p>Fine of not less than one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p>
<p>Failure to furnish information</p> <p>Section 18:</p> <p>Failure to furnish information or to produce evidence lawfully required.</p>	<p>Demonstrate person had information or ought to have information</p> <p>Show that person failed to provide information</p>	<p>Fine of not less than one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p>
<p>Refusing to submit a statement in application for a restraint order</p> <p>Section 24:</p> <p>Refusing or failing to submit a statement of all assets and liabilities; or submitting a statement which is false or misleading in any material particular, in response to a direction of the court in an application for a restraint order.</p>	<p>Produce the restraint order</p> <p>Demonstrate failure to submit statement</p>	<p>Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p>
<p>Contravening a Restraint Order</p> <p>Section 30:</p> <p>Contravening or failing to comply with a restraint order.</p>	<p>Produce order</p> <p>Identify terms of restrain order contravened</p> <p>Give particulars of contravention of order</p>	<p>Imprisonment for a period not exceeding ten years.</p>
<p>Contravening a forfeiture order</p> <p>Section 44:</p> <p>Contravening or failing to comply with a forfeiture order.</p>	<p>Produce the forfeiture order</p> <p>Identify terms of order contravened</p> <p>Give particulars of contravention of order</p>	<p>Fine not be less than the value of the property, the possession of which the person refuses or fails to hand over in addition to imprisonment for one year.</p>

Section 66: Offences by body corporate

Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly and in addition the court convicting may, where such body corporate is registered under such written law, make an order directing that such body corporate be de-registered.

Note: the test and report that contains proof that a substance is a controlled one, are in accordance with Section 17 of the Evidence Act, undertaken and drawn by the government analyst. There are however few government analysts across Kenya and this occasions delays of cases. This calls for an increase in the facilities put up for analysis of controlled substances

Narcotic Drugs and Psychotropic Substances (Control) Restraint and Forfeiture) Regulations, 1997

Offence	Elements of offence	Penalty
Handling property subject to a restraint order Regulation 5: Handling any property which is subject to a restraint order in any manner contrary to the terms of such order.	Identify property subject to restraint order Produce the order Give particulars of handling property	Fine not exceeding two hundred and fifty thousand shillings, or imprisonment for a term not exceeding five years, or to both.

Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations, 2006

Offence	Elements of offence	Penalty
Failing to keep record of seized substances or Falsifying records of seized substances Regulation 11(3): A person having lawful possession or custody of, or who handles or transports, or analyses any seized substance failing to keep a record of the custody and movement of such seized substance or wilfully making a false or misleading entry in the record.	Identify the seized substances Produce the records kept and demonstrate falsity Demonstrate failure to keep records	Fine of one hundred thousand shillings or to imprisonment for three years and in the case of a continuing offence to a further penalty of twenty thousand shillings for each day during which the offence continues (Section 85 of the Act)

Regulation 17: Contravening these Regulations.	Identify regulation contravened Give particulars of contravention	Imprisonment for a term not exceeding five years, or to a fine not exceeding two hundred and fifty thousand shillings, or to both and in the case of a continuing offence, to a further penalty of twenty thousand shillings for each day or part thereof during which the offence continues.
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Customs and Excise Act, Cap 472

Offence	Elements of offence	Penalty
Transit goods Section 9(4): <ul style="list-style-type: none"> a) Depositing transit goods in a place other than one appointed by the Commissioner; b) Failing to comply with, or contravening, any of the conditions prescribed by the Commissioner with respect to the operation of transit sheds; c) Depositing or allowing any person to deposit prohibited goods in the transit shed; d) Involvement in fraudulent activity with respect to the goods deposited in a transit shed. 	Identify the transit goods and their intended destination Demonstrate transit goods deposited in country Identify condition imposed by commissioner/ give particulars of breach of condition Identify transit goods/ demonstrate depositing in the country Demonstrate fraudulent act	Fine not exceeding one million, five hundred thousand shillings, and the Commissioner may revoke the appointment of the transit shed to which the offence relates.

<p>Entering or leaving port through un appointed area</p> <p>Section 11:</p> <ol style="list-style-type: none"> 1) Person or vehicle entering or leaving a customs area, port or airport, or bringing goods, whether dutiable or not, into or out of any such area, port or airport through an area other than an appointed entrance or exit. 2) Person entering any part of a customs area, port or airport when forbidden to do so by an officer, or remaining in such an area or port, or any part thereof, when requested to leave the area or port, or part thereof, by an officer. 	<p>Identify point of entry/ exit</p> <p>Identify goods brought or removed</p> <p>Demonstrate entry into the port area/ forbidden area</p> <p>Demonstrate request to the person to leave by an officer</p> <p>Demonstrate failure to leave the area</p>	<p>Fine not exceeding twenty thousand shillings and any goods in respect of which the offence has been committed shall be liable to forfeiture.</p>
<p>Interfering with customs</p> <p>Section 12(4):</p> <p>Interfering with goods subject to customs control without lawful authority.</p>	<p>Identify the custom goods</p> <p>Give particulars of interference with custom goods</p>	<p>Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years, or to both, and forfeiture of any goods in respect of which the offence has been committed.</p>
<p>Master contravening provisions on entry</p> <p>Section 17:</p> <p>Master of aircraft of vessel contravening procedure as to entry and arrival in Kenya.</p>	<p>Identify vessel</p> <p>Identify procedure contravened</p> <p>Give particulars of contravention</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Boarding a vessel before a proper officer without permission</p> <p>Section 19:</p> <p>Person, not being the port pilot, the health officer or other public officer in the exercise of his duties, shall, and without the permission of the proper officer, boarding a vessel before the proper officer.</p>	<p>Identify vessel boarded</p> <p>Demonstrate lack of permission to board</p>	<p>Fine not exceeding twenty thousand shillings.</p>

<p>Dealing with goods on board</p> <p>Section 20(5)</p> <p>Master or agent of any aircraft or vessel failing to make report on arrival; or making a report of which any of the particulars contained therein is false; or without consent of proper officer, causing or permitting bulk to be broken; or without consent of proper officer at any time after arrival causing or permitting any goods to be staved, destroyed, or thrown over-board, or any packages to be opened.</p>	<p>Offence by Master or agent</p> <p>Identify vessel</p> <p>Demonstrate failure to report, throwing of goods, destruction of goods, breaking of bulk</p>	<p>Forfeiture of any goods in respect of which the offence has been committed.</p>
<p>Failing to answer questions, produce books, deliver names of persons embarking or deliver report.</p> <p>Section 21:</p> <p>Master or agent failing to answer questions fully and immediately, failing to produce books/documents, failing to deliver names of persons embarking, failing to deliver report of clearance if required.</p>	<p>Demonstrate failure to answer questions, produce books, deliver names of persons embarking or deliver report.</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Failing to unload</p> <p>Section 23:</p> <p>Master or agent failing to duly unloaded and deposit in a transit shed or a customs area goods reported for discharge at a port or place specially allowed by the proper officer.</p>	<p>Identify goods</p> <p>Demonstrate failure to unload at place allowed by proper officer</p>	<p>Master/agent liable to pay the duty due thereon.</p>
<p>Failing to report aircraft or vessel wrecked</p> <p>Section 24:</p> <p>Master or agent failing to report aircraft or vessel lost or wrecked or compelled to land or bring to within Kenya owing to accident, stress of weather or other unavoidable cause.</p>	<p>Identify vessel</p> <p>Demonstrate failure to report</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Contravention of procedure</p> <p>Section 25:</p> <p>Any person contravening procedure upon arrival overland.</p>	<p>Identify procedure contravened</p> <p>Give particulars of contravention</p>	<p>Forfeiture of any goods in respect of which the offence has been committed.</p>

Contravening procedure as to unloading Section 26: Contravening conditions as to unloading of goods upon arrival.	Identify procedure contravened Give particulars of contravention	Forfeiture of any goods in respect of which the offence has been committed.
Contravening provisions relating to mail Section 29: Contravening provisions relating to mail and postal articles, and personal baggage.	Identify procedure contravened Give particulars of contravention	<u>Provided under Section 195(1):</u> Fine not exceeding five million five hundred thousand shillings.
Contravening conditions imposed by proper officer Section 32: Contravening conditions imposed by proper officer as condition for permitting goods to be removed from a transit shed or customs area without payment of the duty for such purpose, for such period, and in such quantities, as he may think fit.	Identify condition contravened Give particulars of contravention	Forfeiture of any goods in respect of which the offence has been committed.
Failing to remove warehouse goods Section 37: Failing to remove goods entered to be warehoused to the warehouse for which they were entered and deposited within specified period.	Identify the goods Demonstrate the failure to remove	Forfeiture of any goods in respect of which the offence has been committed.
Contravening conditions in a warehouse Section 40: Contravening conditions imposed for operations in a warehouse.	Identify conditions contravened Give particulars of contravention	Forfeiture of any goods in respect of which the offence has been committed.
Contravening conditions imposed by Commissioner Section 42: Contravening conditions imposed by the Commissioner for the due return thereof or the payment of duties thereon, to permit goods to be removed from a warehouse without payment of duty for such purpose, for such period, and in such quantities, as he may think fit.	Identify conditions contravened Give particulars of contravention	Forfeiture of any goods in respect of which the offence has been committed.

<p>Opening or entering a warehouse</p> <p>Section 48:</p> <p>2) Opening a warehouse or gaining access to goods without lawful authority.</p> <p>3) Entering a warehouse or part thereof contrary to the orders of the proper officer, or refusing to leave a warehouse or part thereof when directed to do so by the proper officer.</p>	<p>Identify the warehouse</p> <p>Demonstrate lack of authority to open or enter</p> <p>Demonstrate opening</p> <p>Demonstrate entry into warehouse in contravention of orders of a proper officer</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Taking and destruction of warehouse goods</p> <p>Section 50:</p> <p>Unlawfully taking, causing or permitting to be taken, or wilfully destroying or damaging warehoused goods.</p>	<p>Identify goods</p> <p>Give particulars of destruction or damage to goods</p>	<p>Imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand shillings or both.</p>
<p>Use of enclosed area as a bonded warehouse without a license</p> <p>Section 51(8):</p> <p>Owner or occupier of a premises, room or enclosed area using or permitting to be used the premises, room or enclosed area as a bonded warehouse without being the holder of a valid licence in respect thereof.</p>	<p>Identify the premises</p> <p>Demonstrate use of premises as warehouse</p>	<p>Fine not exceeding one hundred thousand shillings and, in addition thereto, to a fine not exceeding five thousand shillings for any day or part of a day during which the premises, room or enclosed area was so used.</p>
<p>Warehouse not providing facilities</p> <p>Section 53(3):</p> <p>Warehouse keeper failing to provide facilities or comply with the Commissioner's directions as to facilities.</p>	<p>Demonstrate facilities required and not provided</p>	<p>Fine not exceeding forty thousand shillings.</p>
<p>Stowage of goods in bonded warehouse</p> <p>Section 54:</p> <p>Warehouse keeper contravening or causing or permitting a contravention of provisions on stowage and storage of goods in bonded warehouse.</p>	<p>Identify provisions contravened</p> <p>Give particulars of contravention of provisions</p>	<p>Fine not exceeding twenty thousand shillings and forfeiture of any goods in respect of which an offence has been committed.</p>

<p>Failing to produce all goods deposited in warehouse</p> <p>Section 56:</p> <p>Warehouse keeper failing on request, to produce to the proper officer all goods deposited in his bonded ware-house.</p>	<p>Demonstrate request made by proper officer</p> <p>Demonstrate failure to produce goods</p>	<p>Fine not exceeding ten thousand shillings in respect of each package not so produced and, in addition, the warehouse keeper shall forthwith pay the duties in respect of each such package.</p>
<p>Using premises for manufacturing/ Breach of terms of a licence</p> <p>Section 58A(6):</p> <p>Using or permitting premises to be used for manufacturing under bond without a licence, or a licensee using or permitting his bonded factory to be used in contravention of the terms of his licence.</p>	<p>Identify premises</p> <p>Demonstrate manufacturing at premises</p> <p>Identify terms of license contravened</p>	<p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both; forfeiture of goods in respect to which an offence has been committed.</p>
<p>Manufacturer failing to provide facilities</p> <p>Section 58E(3):</p> <p>Manufacturer failing to provide facilities or comply with the Commissioner's directions as to facilities.</p>	<p>Demonstrate failure to provide facilities</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Licensee contravening conditions on storage of raw materials and manufactured goods</p> <p>Section 58F:</p> <p>Licensee contravening conditions as to receipt and storage of raw materials and manufactured goods.</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention</p>	<p>Forfeiture of raw materials or manufactured goods in respect of which an offence has been committed.</p>
<p>Contravening condition relating to stock registers</p> <p>Section 58G:</p> <p>Licensee contravening conditions relating to stock registers.</p>	<p>Identify conditions contravened</p> <p>Give particulars of contravention</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>

<p>Failure to account for unexplained excesses or deficiencies of raw materials or manufactured goods</p> <p>Section 58H:</p> <ol style="list-style-type: none"> 1) Failure by licensee to account for unexplained excesses or deficiencies on proper officer taking stock of the raw materials or manufactured goods in a bonded factory. 2) Licensee, without the permission of the Commissioner, disposing of or allowing to be disposed of raw materials or manufactured goods from a bonded factory, within the Kenyan local market, whether on payment or not, or any person who acquires, keeps, conceals or has in his possession such raw materials or manufactured goods from a bonded factory 	<p>Demonstrate failure to account for raw materials or manufactured goods</p> <p>Demonstrate disposal of raw materials or manufactured goods without permission of Commissioner within Kenya</p>	<p>Fine not exceeding one hundred thousand shillings or twice the ex-factory value (or c.i.f. value in respect of imports) of the deficiency or excess, whichever is the higher, or to imprisonment for a term not exceeding three years or to both; and forfeiture of goods in respect of which an offence has been committed; and payment of the full duties on the excesses or deficiencies.</p> <p>Fine not exceeding two hundred thousand shillings or three times the ex-factory value of the raw materials or manufactured goods, whichever is the higher, or to imprisonment for a term not exceeding three years or to both; and the goods in respect of which the offence has been committed shall be deemed to be prohibited goods as from the date of such disposal or as acquisition.</p>
<p>Contravention of importation conditions</p> <p>Section 58I:</p> <p>Contravention of conditions as to importation items of plant, machinery, spares and imported raw materials for use in the manufacture of goods under bond and manufactured goods.</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention of condition</p>	<p>Fine not exceeding one hundred thousand shillings or twice the ex-factory value (or c.i.f. value in respect of imports); whichever is the higher, or to imprisonment for a term not exceeding three years or to both; and forfeiture of the goods thereof and, in addition, the Commissioner may revoke the licence.</p>
<p>Contravening condition imposed by Commissioner</p> <p>Section 58K:</p> <p>Contravening conditions imposed by the Commissioner to permit goods to be removed from a bonded factory without payment of duty for such purpose, for such period and in such quantities as he may think fit.</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention</p>	<p>Fine not exceeding five hundred thousand shillings or twice the ex-factory selling price (or c.i.f. value in respect of imports), whichever is the higher, or to imprisonment for a term not exceeding three years or to both and forfeiture of the goods thereof.</p>

<p>Master/ Agent Contravening provisions on entry</p> <p>Section 62:</p> <p>Master or agent of vessel or aircraft in which goods are to be exported contravening provisions on entry outwards.</p>	<p>Identify vessel</p> <p>Set out provision contravened and the manner of contravention</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Failing to furnish full particulars of goods</p> <p>Section 63:</p> <p>Owner of cargo for export on aircraft or vessel failing to furnish the proper officer with full particulars, supported by documentary evidence, of the goods referred to in the entry.</p>	<p>Identify the vessel</p> <p>Give particulars of goods missing from information furnished</p>	<p>Forfeiture of any goods in respect of which the offence has been committed.</p>
<p>Contravening conditions as to loading of goods for export</p> <p>Section 64:</p> <p>Contravening provisions and conditions as to loading of goods for export onto aircraft or vessel departing to foreign port.</p>	<p>Identify provisions contravened</p> <p>Give particulars of contravention of condition</p> <p>Identify goods loaded</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of any goods in respect of which the offence has been committed.</p>
<p>Contravening conditions on goods intended for sale or delivery to passengers</p> <p>Section 65:</p> <p>Contravening conditions on goods intended for sale or delivery to passengers, or members of the crew, and goods to be put on board an aircraft or vessel departing to a foreign port or place without entry subject to an application being made by the owner and to an undertaking being given by the owner of the goods to furnish the necessary specified time.</p>	<p>Identify goods</p> <p>Identify condition contravened</p> <p>Give particulars of breach of conditions</p>	<p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both; and forfeiture of the goods in respect of which the offence has been committed.</p>
<p>Unlawful discharge in Kenya of export goods</p> <p>Section 66:</p> <p>Unlawful discharge within Kenya of goods for export.</p>	<p>Identify goods</p> <p>Demonstrate that goods were export goods to a particular country</p> <p>Demonstrate discharge of goods in Kenya</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of the goods in respect of which the offences has been committed.</p>

<p>Contravention of provision on export of warehoused goods</p> <p>Section 67:</p> <p>Contravention of provisions on export of warehoused goods, goods on which drawback is claimed, dutiable goods intended for transshipment, or restricted goods.</p>	<p>Identify warehoused goods</p> <p>Identify provisions contravened</p> <p>Give particulars of contravention of provision</p>	<p>Forfeiture of the goods in respect of which the offence has been committed</p>
<p>Putting goods on board a vessel for use as stores</p> <p>Section 68(2):</p> <p>Putting, or causing or permitting to be put, goods on board an aircraft or vessel for use as stores in contravention of provisions on stores, or of any conditions imposed by the proper officer.</p>	<p>Identify provision contravened</p> <p>Give particulars of contravention of provision</p>	<p>Forfeiture of the goods in respect of which the offence has been committed</p>
<p>Failing to notify proper officer of departure of vessel</p> <p>Section 69:</p> <p>Failing to notify the proper officer within forty-eight hours, or such further period as the proper officer may allow, of the departure of the aircraft or vessel where goods (other than bonded goods) were entered for exportation and the goods are not exported in the aircraft or vessel for which they were so entered or are short shipped.</p>	<p>Identify vessel</p> <p>Demonstrate departure of vessel without notification of proper officer</p> <p>Demonstrate that goods not exported in intended vessel</p>	<p>Fine not exceeding fifty thousand shillings.</p>
<p>Goods not agreeing with particulars of entry</p> <p>Section 71(3):</p> <p>Goods liable on export to duty found on examination by the proper officer, not to agree with the particulars of the entry, or application for shipment relating when are brought to a customs airport, customs area or other place to be put on board an aircraft or vessel.</p>	<p>Identify goods and the entries made</p> <p>Demonstrate difference between goods and the entries made</p>	<p>Forfeiture of the goods in respect of which the offence has been committed</p>

Depositing goods in unlicensed transit godown Section 72B: Depositing goods in any premises; or using premises to deposit goods, or permitting any other person to deposit goods in an unlicensed transit godown	Identify goods and warehouse deposited Demonstrate warehouse not licensed	Fine not exceeding one hundred thousand shilling, and in the case of a continuing offence, to a fine not exceeding five thousand shillings for every day or part thereof during which the offence continues.
Aircraft or vessel departing Kenya without clearance Section 75: Aircraft or vessel departing from Kenya without clearance.	Identify vessel or aircraft Demonstrate that vessel departed without clearance	<u>Provided under Section 195(1):</u> Fine not exceeding five million five hundred thousand shillings.
Master failing to produce certificate of clearance on demand Section 77(2): Master of an aircraft or vessel failing to produce the certificate of clearance on demand.	Identify vessel Demonstrate that demand made to Master to produce certificate of clearance Demonstrate failure by Master to produce certificate	
Disposal of store goods Section 78(3): Where, on an aircraft or vessel being boarded by the proper officer after its return to Kenya from a voyage to a foreign port or place, goods which on the previous arrival of the aircraft or vessel were reported as stores or were then put on board as stores are not on board, due allowance being made for goods which might fairly have been consumed or used.	Identify the goods and the vessel Demonstrate that goods were put as stores are missing and not capable of having been consumed	Fine not exceeding twenty thousand shillings and in addition, the master shall be liable to pay the duty on the deficiency of the goods at the rate chargeable on the importation of similar goods.
Departing at unappointed time Section 80: Departing overland otherwise than at an appointed place.	Identify the vessel Disclose the appointed time for departure Demonstrate that vessel departed at non appointed time	Forfeiture of the goods in respect of which the offence has been committed
Contravening conditions on unloading and loading of goods Section 83: Contravening provisions on and conditions imposed on loading and unloading of goods for carriage coastwise.	Identify the goods Identify condition breached Demonstrate that goods loaded/unloaded in breach of condition	Fine not exceeding forty thousand shillings; and forfeiture of any goods in respect of which the offence has been committed, and the coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.

<p>Vessel departing without transpire</p> <p>Section 84:</p> <p>Aircraft or vessel carrying goods coastwise departing without transpire, or failing to deliver proper account to proper officer, or delivering an account of which any of the particulars contained therein is false</p>	<p>Identify the vessel</p> <p>Demonstrate that vessel failed to deliver transpire or demonstrate the falsity of particulars</p>	<p>Fine not exceeding forty thousand shillings and the coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.</p>
<p>Failing to deliver transpire/unloading goods without permission</p> <p>Section 85:</p> <p>Master or agent of an aircraft or vessel, arriving at a port or place within Kenya carrying goods coastwise failing to deliver transpire to proper officer upon arrival, or unloading without permission of proper officer.</p>	<p>Identify vessel</p> <p>Demonstrate failure to deliver transpire</p> <p>Give particulars of goods unloaded without permission</p>	<p>Fine not exceeding forty thousand shillings and forfeiture of any goods in respect of which the offence has been committed, and the coasting aircraft or coasting vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.</p>
<p>Coasting vessel contravening condition on loading or unloading</p> <p>Section 86:</p> <p>Master or agent of a coasting aircraft or coasting vessel contravening any conditions imposed by the Commissioner as to the loading and unloading of coasting aircraft or coasting vessel.</p>	<p>Offence by a Master or Agent</p> <p>Identify the vessel or aircraft</p> <p>Identify condition contravened</p> <p>Give particulars of contravening condition on loading and unloading</p>	<p>Fine not exceeding forty thousand shillings and forfeiture of any goods in respect of which the offence has been committed, and the aircraft or vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.</p>
<p>Deviating from Voyage</p> <p>Section 88:</p> <p>Coasting aircraft or vessel deviating from voyage.</p>	<p>Identify the vessel and assigned voyage</p> <p>Demonstrate departure from assigned voyage</p>	<p>Forfeiture of any goods in respect of which the offence has been committed and the aircraft or vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.</p>
<p>Master/ Agent refusing to answer question or produce books or documents or making incorrect reply</p> <p>Section 89(4):</p> <p>Master or agent of coasting aircraft or vessel refusing to answer a question or to produce books or documents; or making an incorrect reply to a question.</p>	<p>Offence by a Master/ agent</p> <p>Disclose questions asked</p> <p>Demonstrate failure to respond to questions, to produce books or documents and the incorrectness of a reply to a question</p>	<p>Fine not exceeding twenty thousand shillings and the aircraft or vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.</p>

<p>Licensee contravening condition of a license Section 91(9):</p> <p>Licensee contravening a condition of the licence, or allowing any other person to contravene a condition of the licence.</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention of a condition of a license</p>	<p>Fine not exceeding one million five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Selling an alcoholic beverage in container less than two hundred millimetres</p> <p>Section 91(A):</p> <p>Packing or selling an alcoholic beverage in a container the capacity of which is less than two hundred millilitres.</p>	<p>Produce the container</p> <p>Demonstrate the packaging of alcoholic drink in the container</p>	<p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>
<p>Licensee whose license is revoked/ suspended/ expired manufacturing excisable goods</p> <p>Section 94:</p> <p>A licensee whose licence has been revoked or suspended or has expired continuing to manufacture the excisable goods referred to in the licence; or failing to pay forthwith duty on the excisable goods manufactured under the licence; or failing to dispose of materials in the factory to which the licence relates.</p>	<p>Demonstrate that license is expired/ revoked/ suspended</p> <p>Produce the goods manufactured</p> <p>Demonstrate that licensee still manufactures goods</p> <p>Demonstrate failure to pay duty or dispose of materials in the factory</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of any plant or excisable goods, or any materials, in respect of which the offence has been committed.</p>
<p>Licensee failing to keep proper books</p> <p>Section 96(4):</p> <p>Licensee failing to keep proper books.</p>	<p>Give particulars of failure to keep proper books</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Failing to make entry of premises and plant</p> <p>Section 97:</p> <p>Licensee failing to make entry of premises and plant.</p>	<p>Demonstrate failure to make entry of premises or plant</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of any plant or excisable goods, or any materials, in respect of which the offence has been committed.</p>

<p>Manufacturer of spirits failing to comply with direction by Commissioner</p> <p>Section 99:</p> <p>Manufacturer of spirits in whose case a direction has been given by the Commissioner contravening, or failing to comply with, any conditions imposed by the direction.</p>	<p>Identify the direction given by Commissioner</p> <p>Demonstrate failure to comply with direction</p>	<p>Forfeiture of any plant, spirits or materials in respect of which the offence has been committed.</p>
<p>Delivering spirit from a distillery from a warehouse which have not been warehoused for a period of less than 3 years</p> <p>Section 101(3):</p> <p>Delivering or procuring or attempting to procure the delivery of spirits from a distillery or a distiller's warehouse which have not been warehoused for a period of at least three years, not being those exempted under Section 101(2).</p>	<p>Produce the spirits delivered, procured or attempted to be delivered or procured</p> <p>Demonstrate delivery, procurement of spirit or an overt act towards delivery or procurement of spirit</p> <p>Demonstrate that spirits have not been warehoused for a period of less than 3 years</p>	<p>Forfeiture of any spirits the delivery of which has been procured by the offence.</p>
<p>Non distiller or rectifier keeping or using a still</p> <p>Section 103(3):</p> <p>Person, not being a distiller or rectifier or permitted to do so by the Commissioner, keeping or using a still.</p>	<p>Demonstrate that person is not a distiller or rectifier</p> <p>Produce the still</p> <p>Demonstrate that person kept or used a still</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of the still.</p>
<p>Denaturing of spirits</p> <p>Section 106:</p> <p>Denaturing of spirits in a manner inconsistent with the formula provided.</p>	<p>Produce the spirits</p> <p>Identify the formula provided</p> <p>Demonstrate that spirits were denatured in a manner inconsistent with formula provided</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of any plant, spirit or materials in respect of which such offence has been committed.</p>
<p>Licensee contravening provisions on storage of excisable goods</p> <p>Section 108:</p> <p>Licensee contravening provisions on storage of excisable goods other than spirits after manufacture.</p>	<p>Identify the goods</p> <p>Identify the provision contravened</p> <p>Give particulars of contravention of provision</p>	<p>Forfeiture of any excisable goods in respect of which the offence has been committed.</p>

<p>Licensee contravening provision on stock book Section 109:</p> <p>Licensee, other than distiller, contravening provisions on stock book and returns of excisable goods other than spirits after manufacture.</p>	<p>Offence by a licensee</p> <p>Identify provision on stock book contravened and returns of excisable goods</p> <p>Demonstrate the manner of contravention of provision on stock book</p>	<p>Forfeiture of any excisable goods in respect of which the offence has been committed.</p>
<p>Licensee failing to account for excisable goods</p> <p>Section 110:</p> <p>Licensee, other than a distiller, denaturer or rectifier, failing to account to the proper officer for any excisable goods manufactured by him; or whose factory any excisable goods are found in excess of the quantity which, according to the books, should be therein.</p>	<p>Identify goods</p> <p>Demonstrate that goods are excisable and manufactured by licensee</p> <p>Demonstrate failure to account for goods</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Licensee contravening provision relating to manufacture of tobacco</p> <p>Section 111:</p> <p>Licensee contravening provisions relating to manufacture of tobacco.</p>	<p>Produce the goods manufactured</p> <p>Identify provision contravened</p> <p>Demonstrate contravention of provision</p>	<p>Forfeiture of any excisable goods or materials in respect of which the offence has been committed</p>
<p>Brewer contravening provision relating to brewing book</p> <p>Section 112(4):</p> <p>Brewer contravening provisions relating to brewing book.</p>	<p>Identify provision of brewing book contravened</p> <p>Demonstrate contravention of brewing book</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand shillings or to both; and forfeiture of any excisable goods, or any materials, in respect of which the offence has been committed.</p>
<p>Brewer contravening provisions on brewing</p> <p>Section 114:</p> <p>Brewer contravening provisions relating to brewing.</p>	<p>Identify provision on brewing contravened</p> <p>Give particulars of contravention of the provision</p>	<p>Forfeiture of any excisable goods and materials in respect of which the offence has been committed.</p>
<p>Brewer making false declaration</p> <p>Section 115:</p> <p>Brewer making false declaration of original gravity of beer.</p>	<p>Identify the false declaration</p> <p>Demonstrate the falsity of the declaration made by brewer</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>

<p>Unregistered person importing excisable goods</p> <p>Section 116B(3): Any person</p> <ul style="list-style-type: none"> a) not being registered with the Commissioner, importing any goods specified by the commissioner as requiring the affixing of excise stamps; or b) offering such goods for sale or free distribution without affixing on the goods the prescribed excise stamps. 	<p>Demonstrate that person not registered</p> <p>Produce the goods imported/ demonstrate that person imported goods subject to excise stamps</p> <p>Demonstrate that person offered such goods for sale</p>	<p>Fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.</p> <p>The licensee or importer will also be liable to have his licence cancelled, or registration under this Section revoked, as the case may be.</p>
<p>Bank/ financial institution failing to comply with request in respect of exchange rates by Commissioner for import goods</p> <p>Section 127(7):</p> <p>Bank or financial institution failing to comply with a request of the Commissioner to submit details or any information in respect of the rates of exchange of foreign currency, for purposes of determining value of goods for import.</p>	<p>Offence by a Bank/ financial institution</p> <p>Show that a request was made by Commissioner in respect to exchange rate</p> <p>Demonstrate that request was not complied with</p> <p>Request was in regard to determining value of imported goods</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Bank/ financial institution failing to comply with request in respect of exchange rates by Commissioner for export goods</p> <p>Section 127A(6):</p> <p>Bank or financial institution failing to comply with a request of the Commissioner to submit details or any information in respect of the rates of exchange of foreign currency for purposes of determining value of goods for export.</p>	<p>Offence by a Bank/ financial institution</p> <p>Show that a request was made by Commissioner in respect to exchange rate</p> <p>Demonstrate that request was not complied with</p> <p>Request was in regard to determining value of exported goods</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Diverting home use goods for export without paying duty</p> <p>Section 141(4):</p> <p>Diverting any goods manufactured for export for home use without payment of the duty due thereon.</p>	<p>Identify goods diverted and demonstrate intended for home use</p> <p>Demonstrate that goods were exported</p> <p>Show that duty not paid for goods</p>	<p>Fine not exceeding the higher of one million five hundred thousand shillings or three times the value of the goods, or to imprisonment for a term not exceeding three years, or to both.</p>

<p>Making fraudulent claim for rebate of duty or giving false information to avoid paying duty</p> <p>Section 149(3):</p> <p>Making a fraudulent claim for rebate of duty; or, with intent to evade payment of duty, giving false information or making a false statement in relation to any claim for rebate.</p>	<p>Show mental intent/ intention to defraud</p> <p>Demonstrate that the claim is fraudulent</p>	<p>Fine not exceeding the higher of one million, five hundred thousand shillings or three times the amount of the claim, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Disposing of acquiring goods subject to duty whose duty has not been paid</p> <p>Section 155(5):</p> <p>Knowingly disposing of or knowingly acquiring goods imported duty free but which are liable to certain duties on disposal without the duty thereon having been paid.</p>	<p>Show mental intent/ knowledge of the person or ought to have known that duty not paid for goods</p> <p>Identify the goods</p> <p>Demonstrate that goods are subject to duty</p> <p>Show that duty has not been paid in respect to the goods</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Failing to pay duty on goods subject to payment of duty at disposal</p> <p>Section 156(4):</p> <p>knowingly disposing of, or knowingly acquiring, goods granted remission, rebate, or refund of duty but liable to duty on disposal without the duty thereon having been paid</p>	<p>Show mental intent/ knowledge that goods are subject to duty</p> <p>Identify the goods</p> <p>Show that goods are subject to duty on disposal</p> <p>Demonstrate disposal of goods and failure to pay duty</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>Interfering or attempting to interfere with a lock</p> <p>Section 175:</p> <p>A person, except by authority, opening, breaking, altering or in any way interfering with a lock, seal, mark or other fastening placed by an officer on any building, room, place, receptacle, item of plant, excisable goods, or materials.</p>	<p>Produce the lock</p> <p>Demonstrate interference or attempt to interfere with lock</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>

<p>Assembling to contravene Act</p> <p>Section 179:</p> <p>Assembling to contravene provisions of the Act.</p>	<p>Offence by more than one person</p> <p>Demonstrate intent to contravene provision of Act</p> <p>Identify provision of Act to be contravened</p>	<p>Imprisonment for a term not exceeding five years.</p>
<p>Possession of goods liable to forfeiture</p> <p>Section 180: A person</p> <p>2) while being armed is found with goods liable to forfeiture under the Act.</p> <p>3) while being disguised, is found with goods liable to forfeiture under the Act.</p> <p>4)</p> <p>a) staving, breaking, destroying or throwing overboard from an aircraft, vessel or vehicle any goods for the purpose of preventing the seizure thereof; or</p> <p>b) rescuing, staving, breaking, destroying or throwing overboard from an aircraft, vessel or vehicle any goods for the purpose of preventing the securing of those goods after they have been seized; or</p> <p>c) rescuing a person arrested for any offence under the Act; or</p> <p>d) in any way obstructing an officer in the execution of his duty.</p>	<p>Produce the weapon and goods</p> <p>Demonstrate goods liable to forfeiture</p> <p>Show the disguise</p> <p>Demonstrate act of staving, breaking, destruction or throwing of goods from a vessel</p> <p>Demonstrate the act of staving, breaking, destroying or throwing overboard of goods after rescue</p>	<p>Imprisonment for a term not exceeding ten years.</p> <p>Imprisonment for a term not exceeding three years.</p> <p>Imprisonment for a term not exceeding twenty years.</p>

<p>Warning an offender to obstruct an officer</p> <p>Section 182:</p> <p>Warning an offender with the intent of obstructing an officer.</p>	<p>Give particulars of warning</p>	<p>Imprisonment for a term not exceeding six years or to a fine not exceeding six hundred thousand shillings or to both.</p>
<p>Section 183:</p> <p>Impersonating an officer in order to obtain admission to an aircraft, vessel, vehicle, premises or place; or to do or procure to be done an act which he would not be entitled to do or procure to be done on his own authority; or to commit any unlawful act.</p>	<p>Give particulars of impersonation of an officer</p>	<p>Imprisonment for a term not exceeding three years in addition to any other punishment to which he may be liable for the commission of the unlawful act.</p>
<p>Section 184:</p> <p>Using vessel or aircraft for smuggling or evasion.</p>	<p>Identify the vessel</p> <p>Give particulars of act of smuggling or evasion</p> <p>Identify items smuggled or subject to evasion</p>	<p>In the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding three hundred thousand shillings; and any vessel and goods in respect of which the offence has been committed shall be liable to forfeiture;</p> <p>In the case of the master of an aircraft, or of a vessel of two hundred and fifty tons register or more, to a fine of such amount as the court deems just; and the aircraft or vessel in respect of which the offence has been committed may be seized and detained until the fine is paid or security therefor given, and any goods in respect of which the offence has been committed shall be liable to forfeiture;</p> <p>In the case of the person in charge of a vehicle, to a fine not exceeding one million five hundred thousand shillings; and the vehicle and goods in respect of which the offence has been committed shall be liable to forfeiture.</p>

<p>Importing prohibited or restricted goods</p> <p>Section 185: Any person</p> <ol style="list-style-type: none"> 1) importing or carrying coastwise prohibited or restricted goods; unloading after importation or carriage coastwise prohibited or restricted goods; exporting, carrying coastwise, or putting on board an aircraft, vessel or vehicle, or bringing to a customs airport, customs area or place to be so put on board, for exportation or use as stores or carriage coastwise prohibited or restricted goods; acquiring, possessing, keeping or concealing, or procuring to be kept or concealed, goods which he knows, or ought reasonably to have known to be prohibited or restricted goods. 2) being the owner of any premises, allowing any person to use such premises for the storage or sale of unaccustomed goods 	<p>Identify the goods</p> <p>Demonstrate that goods are restricted or prohibited</p> <p>Demonstrate that goods imported</p> <p>Identify the premises</p> <p>Demonstrate that goods were stored in the premises</p>	<p>Imprisonment for a term not exceeding five years or a fine equal to three times the amount of duty and any other taxes payable on the goods in respect of which the offence is committed subject to a maximum of one million five hundred thousand or to both such fine and imprisonment.</p> <p>Fine not exceeding one million shillings.</p>
<p>Importing or exporting goods concealed in a manner to deceive officer</p> <p>Section 186:</p> <p>Importing or exporting goods which are concealed in any way; or which are packed in a package (whether or not together with other goods) in a manner likely to deceive an officer; or which are contained in a package of which the entry or application for shipment does not correspond with the goods.</p>	<p>Identify the goods</p> <p>Demonstrate how goods are concealed to deceive an officer</p>	<p><u>Provided under Section 195(1):</u></p> <p>Fine not exceeding five million five hundred thousand shillings.</p>
<p>False documents</p> <p>Section 187:</p> <p>Making or using false documents.</p>	<p>Identify the document</p> <p>Demonstrate that document is false</p>	<p>Imprisonment for a term not exceeding three years or to a fine not exceeding one million five hundred thousand shillings or to both.</p>

Refusing to produce book or document Section 188: Refusing to produce book or document, or to make a return.	Demonstrate failure to produce book or document	<u>Provided under Section 195(1):</u> Fine not exceeding five million five hundred thousand shillings.
Using false measures Section 189: Using false measures.	Identify correct measures Demonstrate falseness of measures	Forfeiture of any such scales, instruments weights, measures, goods and materials in respect of which the offence was committed.
Being in possession of excusable goods Section 191: Concealing in or, without the consent of the proper officer, removing from a distillery any wort, wash, low wines, feints or spirits; knowingly buying or receiving any wort, wash, low wines, feints or spirits so concealed or removed; knowingly buying or, without proper authority, receiving or being in possession of, any excisable goods which have been manufactured contrary to the provisions of the Act, or which have been removed from the place where they ought to have been charged with duty before the duty payable thereon has been charged and either paid or secured; without proper authority, being in possession of any low wines or feints; without proper authority, being in possession of any wort or wash fit for distillation; or having obtained any excisable goods in respect of which duty has been remitted for a particular purpose, failing to comply with any conditions imposed by the Commissioner concerning the use of those goods or using those goods for a different purpose without the approval in writing of the proper officer,	Show mental element/ knowledge or intention of person Produce the goods Demonstrate that person knew or ought to have known that goods were subject to duty Demonstrate that person had goods in his/her custody	Imprisonment for a term not exceeding three years or to a fine not exceeding one million five hundred thousand shillings or to both.
Failing to report uncustomed goods Section 192: Failing to report uncustomed goods.	Demonstrate that person knew goods to be uncustomed or ought to have known goods to be uncustomed	Fine not exceeding twenty thousand shillings and forfeiture of any goods in respect of which the offence has been committed.

<p>Mixing petroleum products in a manner that does not meet standards</p> <p>Section 194A:</p> <p>Mixing, or causing to be mixed, any refined petroleum products; or possessing or offering for sale, any mixture of refined petroleum products, or any refined petroleum product which does not meet the Kenya Standard.</p>	<p>Identify the goods</p> <p>Demonstrate that goods do not meet the standards</p> <p>Show the correct standard</p>	<p>Fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and forfeiture of the products in respect of which the offence is committed.</p>
<p>Transporting custom goods in unlicensed aircraft Section 228:</p> <p>Using an unlicensed aircraft, vessel or vehicle for the conveyance of goods subject to subject to customs control without the written permission of the Commissioner.</p>	<p>Identify the aircraft</p> <p>Demonstrate that aircraft not licensed</p> <p>Demonstrate that goods were transported in aircraft</p>	<p>Fine not exceeding one hundred thousand shillings.</p>

Counter-Trafficking in Persons Act, No. 8 of 2010

Offence	Elements of offence	Penalty
Trafficking another person Section 3: 5) Trafficking another person, for the purpose of exploitation. 6) Financing, controlling, aiding or abetting trafficking in persons.	Identify person trafficked Demonstrate exploitation or intention to exploit	Imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.
Adopting a child for purposes of trafficking Section 4: 1) Adopting a child or offering a child for adoption, fostering a child or offering a child for fostering; or offering guardianship to a child or offering a child for guardianship for the purpose of trafficking in persons. 2) Initiating or attempting to initiate adoption, fostering or guardianship proceedings for the purpose of subSection (1) above.	Identify child Demonstrate adoption of child Demonstrate intention to traffic child Demonstrate an overt act or step towards realising this	Imprisonment for a term of not less than thirty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life.
Premises used for trafficking Section 5: a) knowingly leasing, or being the occupier thereof, permitting to be used any house, building, or other premises for the purpose of promoting trafficking in persons; b) publishing, exporting or importing, any material for purposes of promoting trafficking in persons; or c) managing, running or financing any job recruitment agency for the purposes of promoting trafficking in persons; d) by any other means, promoting trafficking in persons.	Demonstrate knowledge that premises are used for purposes of trafficking Demonstrate trafficking of persons Produce the publication Show how publication aims to promote trafficking Demonstrate promotion of trafficking by agency Identify acts promoting trafficking in persons	Imprisonment for a term of not less than twenty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life.

<p>Acquisition of travel documents to facilitate trafficking</p> <p>Section 6:</p> <p>Knowingly misrepresenting any fact for purposes of facilitating the acquisition of travel documents or fraudulently obtaining any document from Government agencies, in order to assist in the commission of an offence of trafficking in persons.</p>	<p>Establish mental element/ knowledge</p> <p>Demonstrate the misrepresentation made to obtain the travel document</p>	<p>Imprisonment for a term of not less than ten years or to a fine of not less than ten million shillings or both and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine.</p>
<p>Facilitating, aiding and abetting trafficking</p> <p>Section 7:</p> <p>Facilitating, aiding or abetting the exit or entry of persons from or to the country at international and local airports, territorial boundaries and seaports for the purpose of promoting trafficking in persons.</p>	<p>Demonstrate act taken to facilitate, aid or abet trafficking of person</p> <p>Identify persons trafficked</p>	<p>Imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than thirty years without the option of a fine.</p>
<p>Confiscating, concealing or destroying identification or travel document</p> <p>Section 8:</p> <p>a) confiscating, concealing, altering, destroying or in any other manner dealing with any identification or travel documents, of another person in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies; or</p> <p>b) confiscating, concealing, destroying or in any other manner dealing with personal effects of another person or threatening to do so in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies.</p>	<p>Identify the travel document or identification document confiscated, concealed, destroyed or altered</p> <p>give particulars of concealment, alteration, destruction or confiscation of document</p> <p>demonstrate that owners of document are trafficked persons</p> <p>Identify the personal effect or confiscated, concealed or destroyed</p> <p>give particulars of concealment, alteration, destruction or confiscation of personal effects</p> <p>demonstrate that owners of effects are trafficked persons</p>	<p>Imprisonment for a term of not less than ten years or to a fine of not less than ten million shillings or to both and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine.</p>

<p>Offence by employees of government to facilitate issuing of travel documents to aid in trafficking</p> <p>Section 26(2):</p> <p>Employee or official of a Government agency knowingly issuing or approving the issuance of travel documents or other documents to any person, or failing to observe the prescribed procedures and the requirement as provided for in any law, with the intention of assisting in the commission of an offence under the Act.</p>	<p>Show that offender is an officer of government</p> <p>Demonstrate particulars of act that facilitated the issuance of travel documents</p> <p>Demonstrate intention to assist trafficking in persons</p>	<p>Imprisonment for a term of not less than (this part of the Section is incomplete in the Act available on eKLR) shillings or to both.</p>
<p><i>Section 9: Where in the course of commission of an offence under the Act</i></p> <p>a) a victim of trafficking in persons suffers any permanent or life- threatening bodily harm; or</p> <p>b) by reason of the act of trafficking in persons, the victim of trafficking in persons dies, or is afflicted with any other life threatening or terminal health condition,</p> <p>a person convicted of the act of trafficking in persons shall be liable to imprisonment for life.</p> <p><i>Section 10: Trafficking in persons for organised crime</i></p> <p>Where in the course of the prosecution of a person under this Act it emerges that, the person being prosecuted engaged in trafficking in persons as part of the activities of an organised criminal group or that person organised or directed other persons to commit an offence as an activity of an organised group, that person is liable to imprisonment for life.</p> <p><i>Section 26:</i></p> <p>1) Where a person who is not a citizen has been convicted of an offence under this Act, the person shall be deported immediately after serving the sentence and shall stand barred permanently from re-entering Kenya.</p> <p>3) Where an offender had adopted, fostered or had a child in guardianship who is the subject of an offence under this Act, the court seized of the matter shall rescind the adoption, fostering or guardianship of the child and the child shall be dealt with in accordance with the provisions of the Children Act, 2001.</p>		

Weights and Measures Act, Cap 513		
Offence	Elements of offence	Penalty
Using unit of measurement Section 11: Using for trade any unit of measurement which is not authorized by the Act.	Produce the unit of measurement used Demonstrate that unit used for trade purposes	<u>Provided under Section 63:</u> Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.
Use of weight or measure Section 19: 1) Using <ul style="list-style-type: none"> a) for trade any weight or measure not authorized by the Act; or b) for trade, or being in possession of or control for use for trade any weight or measure of a denomination other than those specified in Part I of the 3rd Schedule to the Act. 2) Using the carat (metric) for trade except for the purposes of transactions in precious stones, pearls, precious metals or articles made therefrom. 3) Using capacity measures specified in Part I of the 3 rd Schedule to the Act for trade by means of any division or sub-division marked thereon as a capacity measure of any lesser quantity contrary to rules made under the Act.	Produce the weight or measure Demonstrate that weight/measure not authorized by Act Demonstrate that weight or measure not specified in Part I of 3 rd Schedule Identify the provision of Part I breached Produce the carat used Demonstrate use of carat for trade purposes Demonstrate use of capacity measure by means of division or sub division Identify provision of rule breached	<u>Provided under Section 63:</u> Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit. Forfeiture of any weight or measure used or in the possession of any person or control for use for trade in contravention of any of those provisions.
Possession of weighing or measuring instrument Section 20: Using or being in possession or control for use for trade a weighing or measuring instrument not constructed to indicate in terms of some weight or measure authorized by this Act.	Produce the weighing or measuring instrument Demonstrate instrument constructed not to indicate terms of some weight or measure under Act	<u>Provided under Section 63:</u> Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit. Forfeiture of weighing or measuring instrument.

<p>Possession of false weight or measure instrument</p> <p>Section 21:</p> <p>Using or being in possession or control for use for trade any weight, measure, weighing or measuring instrument which is false or unjust.</p>	<p>Produce weight or measure instrument</p> <p>Demonstrate instrument weighting or measuring is false</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p> <p>Forfeiture of the weight, measure, weighing or measuring instrument.</p>
<p>Using measure not stricken with round stick/ unbalanced measures</p> <p>Section 22:</p> <p>Using a measure of capacity for trade which is heaped; or not stricken with a round stick or roller straight and of the same diameter from end to end; or, the article sold being one that cannot from its size or shape be conveniently stricken, not filled in all parts as nearly to the level of the brim as the size and shape of the article permits.</p>	<p>Produce the measure instrument</p> <p>Demonstrate that instrument is not stricken</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>
<p>Fraudulent use of weigh or measure instrument</p> <p>Section 23:</p> <p>Fraud committed in the use of any weight, measure, weighing or measuring instrument.</p>	<p>Identify/ produce the instrument</p> <p>Demonstrate fraudulent use of instrument</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p> <p>Forfeiture of the weight, measure, weighing or measuring instrument shall be ; unless where the weight, measure or weighing or measuring instrument is the property of a person other than the person committing, or a person being a party to the commission of, the fraud, the Court may waive the forfeiture.</p>

<p>False or unjust weigh, measure, weighing or measuring instrument</p> <p>Section 25:</p> <p>1) Making for sale or causing to be made for sale or selling or causing to be sold, any false or unjust weight, measure, weighing or measuring instrument; or selling or exposing for sale any weight, measure, weighing or measuring instrument, intended for use for trade which does not bear a valid stamp of verification of a date not earlier than one year previous to such sale or exposure.</p>	<p>Produce the instrument made, offered for sale</p> <p>Demonstrate that instrument is false or unjust</p> <p>Demonstrate that instrument has no valid stamp</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p> <p>Forfeiture of the weight, measure, weighing or measuring instrument in respect of which the offence is committed.</p>
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Unlawful marking of a weight or measure instrument

Section 26:

- 1) In the case of any weight, measure or weighing or measuring instrument used or intended to be used for trade
 - a) neither being an inspector nor acting under the instructions of an inspector, marking in any manner any plug or seal used or designed for use for the reception of a stamp;
 - b) forging, counterfeiting or, except as permitted by or under the Act, in any way altering or defacing any stamp;
 - c) removing any stamp and inserting it into any other such weight, measure or weighing or measuring instrument;
 - d) making any alteration in the weight, measure or weighing or measuring instrument after it has been stamped such as to make it false or unjust; or
 - e) severing or otherwise tampering with any wire, cord or other thing by means of which a stamp is attached to the weight, measure or weighing or measuring instrument.
- 2) Knowingly using for trade, selling exposing or offering for sale or in any manner disposing of any weight, measure or weighing or measuring instrument which

Demonstrate that instrument is used for trading purposes

Demonstrate unlawful marking of instrument

Show act of forgery or counterfeiting

Demonstrate act of removing stamp and insertion of other weight or measure

Demonstrate alterations on instrument

Demonstrate severing or tampering with instrument

Demonstrate use of instrument for trade purposes

Demonstrate that stamp is a forgery or counterfeit

Demonstrate falsity of instrument and alteration

Provided under Section 63:

Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.

Forfeiture of any weight, measure or weighing or measuring instrument in respect of which an offence is committed and any stamp or stamping instrument used in the commission of the offence.

<p>Failing to comply with notice to produce instrument for examination, stamping, re-stamped or verified</p> <p>Section 27(8):</p> <p>Failing, without prior notice to the inspector, to comply with a notice published by an inspector in the Gazette and in a newspaper circulating within an area calling upon persons in that area having weights, measures, weighing or measuring instruments in use for trade to produce the same for the purpose of their being examined, verified, stamped or re-stamped at such appointed time and place within that area.</p>	<p>Identify the instrument</p> <p>Produce the notice to the public</p> <p>Demonstrate failure to comply with notice</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>
<p>Failing to produce instrument to inspector or obstructing inspector</p> <p>Section 28:</p> <p>A person refusing or failing to produce to an inspector any weight, measure, weighing or measuring instrument in his possession or custody or control for use for trade, whereof the inspector requires the production under the Act, or obstructing or hindering or assaulting an inspector in the performance of any duty or act imposed or authorised by the Act or failing to comply with any reasonable request made by an inspector in the course of his duty under the Act.</p>	<p>Identify the instrument</p> <p>Show inspector required production of instrument</p> <p>Demonstrate failure to produce instrument</p> <p>Give particulars of obstruction</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>
<p>Using an instrument whose certificate is revoked Section 30(4):</p> <p>Knowingly using for trade or being in possession or control for such use, or causing or permitting any other person so to use, any weighing or measuring instrument of the pattern or incorporating the modification in question, or disposing of any weighing or measuring instrument to any other person in a state in which it could be so used without informing that other person of the revocation of the certificate of approval of the pattern by the Director.</p>	<p>Show mental element/ knowledge that certificate of instrument has been revoked</p> <p>Demonstrate use of instrument for trade or possession</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p> <p>Forfeiture of the weighing or measuring instrument.</p>

<p>Using weigh or measure instrument not passed by inspector</p> <p>Section 31:</p> <p>Using any article for trade as a prescribed weighing or measuring instrument, or being in possession of any article for such use without having been passed by an inspector as fit for such use and, except as otherwise expressly provided by or under the Act, bearing a valid stamp of verification indicating that it has been so passed.</p>	<p>Produce the instrument</p> <p>Show that instrument has not been passed by inspector</p> <p>Demonstrate that instrument used for purposes of trade</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p> <p>Forfeiture of any article in respect of which the offence was committed.</p>
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Quantity of goods

Section 37:

<p>1) Where any goods are required, when not pre-packed, to be sold only by quantity expressed in a particular manner or only in a particular quantity-</p> <p>Any person, without making known at that time to any prospective buyer both the quantity and price of the goods, offering or exposing for sale, selling or agreeing to sell, on own behalf or on behalf of another person; or causing or suffering any other person to offer or expose for sale, selling or agree to selling on his behalf, those goods otherwise than by quantity expressed in that manner or, as the case may be, otherwise than in that quantity.</p> <p>2)</p> <p>a) being in possession for sale, selling or agreeing to sell; or</p> <p>b) except in the course of carriage of the goods for reward, being in possession for delivery after sale; or</p> <p>c) causing or suffering any other person to have in his possession for sale or for delivery after sale, sell or agree to sell on behalf of the first-mentioned person, any goods to which subSection (3) applies.</p> <p>4) Failing to make known to the buyer in any sale where the quantity of the goods sold expressed in a particular manner is required to be made known, to the buyer at or before a particular time.</p> <p>5) Selling, offering or exposing for sale without complying with requirements where any goods required to be sold by means of, or to be offered or exposed for sale in, a vending machine only if certain requirements are complied.</p>	<p>Produce the goods</p> <p>Demonstrate offering for sale or sale of goods and failure to make known to prospective buyer the quantity of goods</p> <p>Demonstrate possession</p> <p>Demonstrate causing another person to have possession for sale or delivery</p> <p>Demonstrate failure to disclose to buyer the quantity of goods</p> <p>Demonstrate sale or offering for</p> <p>sale goods without complying with requirements</p> <p>Identify requirements not complied with</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>
<p>Delivering, selling or purporting to sell goods of a lesser quantity</p> <p>Section 40:</p> <p>Delivering or causing to be delivered to the buyer, while selling or purporting to sell any goods by weight or other measurement or by number, a lesser quantity than that purported to be sold; or a lesser quantity than corresponds with the price charged.</p>	<p>Produce the goods</p> <p>Demonstrate sale, delivery, offer for sale of goods</p> <p>Demonstrate that goods are of a lesser quantity than purported</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>

<p>Misrepresentation of quantity of goods</p> <p>Section 41:</p> <p>Making any misrepresentation as to the quantity of goods, or doing any other act calculated to mislead a person buying or selling the goods as to the quantity of the goods, on or in connection with the sale or purchase of any goods; in exposing or offering any goods for sale; in purporting to make known to the buyer the quantity of any goods sold; or in offering to purchase any goods.</p>	<p>Identify the goods</p> <p>Demonstrate that goods are of lesser quantity than purported in the representation</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>
<p>Goods of less quantity than stated</p> <p>Section 42: Quantity less than that stated.</p>	<p>Identify stated quantity</p> <p>demonstrate actual quantity</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>
<p>Making false statement on document</p> <p>Section 43:</p> <p>Knowingly or with reasonable cause to suspect a statement to be materially incorrect, inserting or causing it to be inserted in the document, or using the document for the purposes of the Act while that statement was contained in the document, in the case of any goods required under this Act to have associated with them a document containing particular statements.</p>	<p>Show mental element/ knowledge of the incorrect statement</p> <p>Identify the false statement</p> <p>Demonstrate the falsity of statement</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>
<p>Warranty offense</p> <p>Section 46:</p> <p>5) Wilfully attributing to any goods a warranty given in relation to any other goods in a charge of an offence relating to the quantity or pre-packing of any goods.</p> <p>6) Giving to a buyer a false warranty in writing in respect of any goods sold in respect of which a warranty might be pleaded.</p>	<p>Show mental element/ wilful intent</p> <p>Identify the goods</p> <p>Demonstrate warranty given to other goods and offence charged relating to quantity or prepacking of goods</p> <p>Produce the false warranty</p> <p>Demonstrate falsity of warranty given</p> <p>Identify buyer to whom warranty given</p>	<p><u>Provided under Section 63:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.</p>

Weights and Measures (Sale of Bread) Rules, 1961

Offence	Elements of offence	Penalty
Weight of Bread		
Rule 3:		
1) Making for sale, selling, offering for sale, carrying for sale, keeping on any trade premises or in any bakery for the purpose of sale, any loaf of bread	Demonstrate manufacturing, sale or offering for sale or keeping in trade premises or bakery a loaf of bread	Provided under Rule 5 Fine not exceeding fifty thousand shillings or, in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand shillings.
a) of net weight not being 200 grams, 400 grams, 600 grams, 800 grams, 1 kilogram or 1.5 kilograms; and	Produce the loaf and its actual weight	
b) it is not clearly and conspicuously marked with its net weight; name and address of the baker; last date by which the bread may be sold.	Demonstrate net weight less than 400 grams, 600 grams, 800 grams, 1 kilogram or 1.5 kilograms	
	Demonstrate loaf of bread not marked with actual weight	
2) Making for sale, selling, offering for sale, carrying for sale, keeping on any trade premises or in any bakery for the purpose of sale, any loaf of bread with the height of any numerals or letters used in marking the net weight being less than the minimum seven (7) millimetres.	Produce the loaf of bread	
	Demonstrate that height of numerals or letters used in marking net weight is less than the minimum seven (7) millimeters	

Failure to keep an accurate weighing instrument at a point of sale of bread

Rule 4:

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|--|---|--|
| 1) | Identify point of sale of bread | Provided under Rule 5 |
| a) Selling bread, or keeping or conveying bread for sale, or keeping bread on trade premises or in a bakery without providing and keeping in some conspicuous place at the point of sale an accurate weighing instrument of a pattern suitable for weighing bread; | Show that no accurate weighing instrument was kept at the premise | Fine not exceeding fifty thousand shillings or, in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand shillings. |
| b) Failing to weigh the bread in the presence of a purchaser or inspector upon request. | Indicate request made by Inspector | |
| c) Refusing to permit any inspector to weigh any bread on any trade premises or in any bakery or vehicle. | Demonstrate failure to weigh bread in presence of inspector
Demonstrate failure to permit inspector to weigh bread | |

Weights and Measures Rules, 1991

Offence	Elements of offence	Penalty
Breaking seal or mutilating instrument Rule 19: Breaking any seal or sealing device on any instrument; obliterating or mutilating any stamp of verification; or sealing or re-sealing or attempting to seal or re-sealing any instrument.	Identify instrument tampered with Demonstrate breakage, mutilation, obliteration or any act towards breaking seal	Provided under Section 63: Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.

Selling spirits in quantity other than thirty millilitres or a whole multiple thereof

Rule 191:

Selling by retail any spirits in any quantity other than thirty millilitres or a whole multiple thereof; or in bottles that are neither securely sealed nor stoppered.

Produce the spirits packaged

Demonstrate that spirits sold in quantity other than prescribed quantity

Demonstrate that bottles not sealed

Provided under Section 63:

Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both, and such other order as the Court thinks fit.

Engaging in weights and measures business

Rule 253:

- a) Engaging in the business of manufacturing or selling weights, measuring instruments without first being registered.
- b) Repairing or assembling any weight, measure, weighing or measuring instrument without a valid repairer's licence.
- c) Being a repairer, manufacturer or seller of weights, measures, weighing or measuring instruments that contravene any of the requirements of these rules.

Demonstrate engagement in business of weights and measures

Show lack of registration

Demonstrate engagement in repairs, assembling of weights

Demonstrate lack of a valid repairer's licence

Demonstrates that instrument contravene requirements under the Rules

Identify Rule contravened

Fine not exceeding twenty thousand shillings.

Weights and Measures (Sale and Labelling of Goods) Rules, 1999

Offence	Elements of offence	Penalty
<p>Contravention of condition as to sale by quantity</p> <p>Rule 3(3):</p> <p>Contravening conditions as to sale by quantity.</p>	<p>Identify condition contravened</p> <p>Demonstrate manner of contravention of condition</p>	<p><u>Provided under Rule 15:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.</p>

<p>Selling otherwise by reference to net weight or measure</p> <p>Rule 4:</p> <p>Selling, or offering, or exposing for sale, or in any manner advertising for sale by weight or measure otherwise than by reference to net weight or measure.</p>	<p>Demonstrate sale or offer to sell</p> <p>Show failure to refer to net weight or measure</p>	<p><u>Provided under Rule 15:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.</p>
<p>Pre-packaged goods in unspecified quantity</p> <p>Rule 5:</p> <p>Importing, offering, exposing or being in possession for sale, or selling, any pre-packed goods of a description specified in the second column of the Sixth Schedule to these Rules without having pre-packed them in the quantity and form of container specified in the third or fourth column of the Schedule.</p>	<p>Identify goods</p> <p>Identify specified quantity and form of container for packaging</p> <p>Demonstrate contravention of specified package or container</p>	<p><u>Provided under Rule 15:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.</p>
<p>Failing to grade eggs/ selling soap in unspecified weight</p> <p>Rule 6:</p> <p>Selling, or offering for sale, or being in possession for sale, or transport for sale any quantity of eggs with reference to grade without each egg having been graded according to its weight in the manner specified in the Seventh Schedule to these Rules and such grade clearly marked thereon or on the container in which they are confined, and each such container containing eggs of one and the same grade; any soap in the form of a tablet or bar, such tablet or bar not being of a weight specified for pre-packed soap in the fourth column of the Sixth Schedule.</p>	<p>Identify the eggs/ soaps</p> <p>Demonstrate eggs offered for sale, sold or transporting for sale</p> <p>Show that eggs not graded</p> <p>Show that soap not meeting the specified weight</p>	<p><u>Provided under Rule 15:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.</p>
<p>Contravening provisions on declarations of packages</p> <p>Rule 7:</p> <p>Contravening provisions on having declarations on packages.</p>	<p>Identify provision on packages</p> <p>Demonstrate contravention of provision on packages</p>	<p><u>Provided under Rule 15:</u></p> <p>Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.</p>

Contravening provisions on declarations of quantity Rule 8: Contravening provisions on declarations of quantity.	Identify provision Demonstrate contravention of provision	<u>Provided under Rule 15:</u> Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.
Contravening provisions on units to be used in quantity declaration Rule 9: Contravening provisions on units to be used in quantity declaration.	Identify provision on units contravened Demonstrate manner of contravention of provision on quantity declaration	<u>Provided under Rule 15:</u> Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.
Interference with declarations Rule 11: With intent to deceive or mislead any prospective purchaser, removing, adding to, altering, defacing or rendering illegible any declaration required to be made on a package under these Rules, or being in possession, or offering or exposing for sale, or selling, any goods in respect of which any declaration has been removed, added to, altered, defaced or rendered illegible.	Show mental element/ intention to deceive or mislead purchaser Produce the declaration interfered with Demonstrate interference with declaration and the intention to deceive purchaser	<u>Provided under Rule 15:</u> Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.
Pre-packaged goods bearing incorrect quantity Rule 12: Transporting for sale, any pre-packed goods which bear or are accompanied by a declaration of quantity which is incorrect.	Identify the goods Demonstrate act of transporting, sale of pre-packaged goods Identify correct quantity Demonstrate incorrectness of indicated quantity	<u>Provided under Rule 15:</u> Fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.

Alcoholic Drinks Control Act, No. 4 of 2010

Offence	Elements of offence	Penalty
Failure to display license Section 2: 1) Failing or neglecting to prominently and conspicuously display licence on the premises to which it relates. 3) Person causing or permitting to be on his premises or on premises under his control any words, letters or sign falsely importing that he is a licensee.	Show failure to display licence on premises Demonstrate that premises used to sell alcohol Set out the words displayed Demonstrate that person is not a licensee	<u>Provided under Section 62:</u> Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

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

<p>Dealing in alcoholic drink in sachets</p> <p>Section 31:</p> <p>Selling, manufacturing, packing or distributing an alcoholic drink in sachets or such other form as may be prescribed.</p> <p>Manufacturing, packing, distributing or selling an alcoholic drink in a container of less than 250 mililitre.</p>	<p>Produce the sachets</p> <p>Produce the container that is less than 250 mililitre</p>	<p>Fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.</p>
<p>Package not bearing statement of constituents or health warning</p> <p>Section 32:</p> <p>Manufacturing, importing, selling or distributing an alcoholic drink whose package, or at least 30% of the total surface area of the package, does not bear a statement as to its constituents; and/or does not have at least two of the health warning messages prescribed in the Second Schedule, in English or Kiswahili.</p>	<p>Produce the package</p> <p>Demonstrate that person was selling, manufacturing, imported or distributing alcoholic drink not meeting specifications</p> <p>Show that package does not meet specifications</p>	<p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Selling alcohol to an intoxicated person</p> <p>Section 33(4):</p> <p>Licensee selling alcoholic drink to a person already in a state of intoxication or by any means encouraging or inciting him to consume an alcoholic drink.</p>	<p>Show that person to whom alcohol sold was intoxicated (identify person)</p>	<p><u>Provided under Section 62:</u></p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>

<p>Selling alcoholic drink in contravention of conditions in licence</p> <p>Section 34:</p> <p>Selling an alcoholic drink or offering or exposing it for sale or bottling an alcoholic drink in contravention of conditions specified in the licence issued under the Act.</p>	<p>Identify conditions in license that is contravened</p> <p>Demonstrate how condition is contravened</p>	<p>First offence: Fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding nine months, or to both;</p> <p>Second or subsequent offence: Fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.</p> <p>Forfeiture of all alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drink.</p>
<p>Offering alcoholic drink to officer in uniform</p> <p>Section 35:</p> <p>Knowingly selling, supplying or offering an alcoholic drink to an authorized officer or to a police officer in uniform or harbouring or suffering to remain on licensed premises any such police officer except for the purpose of keeping or restoring order or otherwise in the execution of his duty.</p>	<p>Show that person was aware of what he was doing</p> <p>Demonstrate that person sold, supplied or offered alcoholic drink to an officer or allowed an officer in premises</p> <p>Show that officer was not executing his/her duty at the time</p>	<p>Fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.</p>

Allowing purchase and consumption of alcohol in premises

Section 37:

- 1) Licensee allowing any person to purchase any alcoholic drink from the licensee whose licence does not cover the sale of that alcoholic drink for consumption on the premises, and drinks the alcoholic drink on the premises where it is sold, or in any premises adjoining or near to those premises, if belonging to the seller of the alcoholic drink or under his control or used by his permission, or on any highway adjoining or near any such premises.
- 2) Licensee whose licence does not cover the sale of alcoholic drink to be consumed on his premises himself taking or carrying, or employing or suffering any other person to take or carry, any alcoholic drinks out of or from his premises for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any place other than the licensed premises, with intent to evade the conditions of the licence.

Offence by licensee whose license does not allow consumption of alcohol in premises

Demonstrate that alcohol was sold and consumed in premises contrary to license conditions

Provided under Section 62:

Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

Demonstrate that licensee allowed another party to carry out alcohol from premises

Provided under Section 62:

Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.

Selling adulterated alcohol

Section 38:

Keeping for sale, offering for sale or selling any alcoholic drink which has been in any way adulterated, or diluted by any person; or any non-alcoholic drink which has been in any way adulterated with alcohol, or which contains any of the substances prohibited by Regulations.

Produce the adulterated alcohol

Demonstrate the right chemical composition of the alcoholic drink and the manner of adulteration

Fine not exceeding ten million Kenya shillings or imprisonment for a term not exceeding ten years, or to both.

<p>Promoting alcoholic drink or brand</p> <p>Section 43:</p> <p>Promoting an alcoholic drink or an alcohol-related brand element except in accordance with the provisions of the Act.</p>	<p>Produce the promotional item of the brand</p> <p>Demonstrate how promotion contravene provisions of the Act</p>	<p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>
<p>Promoting alcoholic drinks by false means</p> <p>Section 44:</p> <p>Promoting an alcoholic drink by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcoholic drink.</p>	<p>Produce promotional item</p> <p>Demonstrate falsity of promotional item</p>	<p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Exaggerated promotion of an alcoholic drink</p> <p>Section 45:</p> <p>Promoting an alcoholic drink so as to create a false impression that a link exists between consumption of that drink and social or sexual success; or consumption of that drink is acceptable before or while engaging in driving, operating machinery, sports or other activities that require concentration in order to be carried out safely; or that the alcoholic drink has a therapeutic value or that it has the ability to prevent, treat or cure any human disease; or it is wrong or foolish to refuse that drink.</p>	<p>Show the promotional item</p> <p>Demonstrate link with sexual or social success, promotion of drunk driving, operating machinery, or sports</p>	<p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Promoting alcohol at an event of minors</p> <p>Section 46:</p> <p>Promoting an alcoholic drink at any event or activity associated with persons under the age of eighteen years; or using such things or materials that are associated with persons under the age of eighteen years.</p>	<p>Show the promotion item</p> <p>Demonstrate that event was for minors</p>	<p>Fine not exceeding five hundred thousand shilling or imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>

<p>Promoting alcoholic drink to win a prize</p> <p>Section 47:</p> <p>Promoting any alcoholic drink in such a manner as to encourage more consumption of an alcoholic drink in order to win an award or prize.</p>	<p>Show the promotional item</p> <p>Demonstrate that promotional item encourages people to consume and win an award or prize</p>	<p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or to both.</p>
<p>Publishing or broadcasting contrary to Act</p> <p>Section 48:</p> <ol style="list-style-type: none"> 1) Publishing, broadcasting or otherwise disseminating any promotion that is prohibited on behalf of another person, with or without consideration. 2) Promoting any product the promotion of which is regulated by the Act, or disseminating promotional material that contains an alcohol-related brand element in a manner that is contrary to the requirements of the Act by means of a publication that is published outside Kenya, or a broadcast that originates outside Kenya, or any other communication that originates outside Kenya. 	<p>Show the promotional item</p> <p>Demonstrate that promotion is prohibited</p> <p>Identify the product</p> <p>Identify provision of the Act contravened</p> <p>Demonstrate how promotion contravened provision of the Act</p>	<p>Fine not exceeding three million Kenya shillings or imprisonment for a term not exceeding three years, or to both.</p> <p>Fine not exceeding three million Kenya shillings or imprisonment for a term not exceeding three years, or to both.</p>
<p>Failing to display that drinking of alcohol is prohibited for person under 18 years</p> <p>Section 49:</p> <p>Manager or owner of a place where an alcoholic drink is sold failing to display therein, clear and prominent notices in English or Kiswahili and in the prescribed form and size stating that drinking of alcoholic drinks is prohibited for persons under the age of eighteen years and the prescribed penalty thereof.</p>	<p>Demonstrate that person failed to display notice prominently</p>	<p>Fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding six months, or to both.</p>

Competition Act, Cap 504		
Offence	Elements of offence	Penalty
<p>Section 21:</p> <p>Undertakings, associations of undertakings entering into agreements, decisions or concerted practices, which directly or indirectly fix purchase or selling prices or any other trading conditions; divide markets by allocating customers, suppliers, areas or specific types of goods or services; involve collusive tendering; involve a practice of minimum resale price maintenance; limit or control production, market outlets or access, technical development or investment; apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; make the conclusion of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject of the contracts; amount to the use of an intellectual property right in a manner that goes beyond the limits of legal protection; or otherwise prevents, distorts or restricts competition.</p>	<p>Demonstrate existence of an agreement between the associations or undertakings (can be written or non written)</p> <p>Demonstrate how agreement/ practises affect process, divide markets or the particular aspect of competition control the Act sets out</p>	<p>Imprisonment for a term not exceeding five years or a fine not exceeding ten million shillings, or both.</p>
<p>Abuse of dominant position</p> <p>Section 24:</p> <p>Abuse of dominant position.</p>	<p>Identify the dominant party</p> <p>Demonstrate that party has abused dominant position in the market</p>	<p>Imprisonment for a term not exceeding five years or a fine not exceeding ten million shillings or to both.</p>
<p>Failing to comply with a condition of exemption</p> <p>Section 27:</p> <p>Failing to comply with a condition of exemption issued by the Competition Authority.</p>	<p>Identify condition of exemption</p> <p>Demonstrate failure to comply with that condition</p>	<p><u>Provided under Section 91:</u></p> <p>Fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years, or both.</p>

<p>Implementing proposed merger without approval by Authority</p> <p>Section 42:</p> <p>Implementing a proposed merger without approval by the Competition Authority, or in violation of any conditions attached by the Authority to its approval.</p>	<p>Demonstrate that parties have implemented a proposed merger</p> <p>Show lack of approval by Authority</p> <p>Identify condition attached by Authority</p> <p>Demonstrate violation of that condition</p>	<p>Imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both.</p> <p>Competition Authority may also impose financial penalty in an amount not exceeding ten percent of the preceding year's gross annual turnover in Kenya of the undertaking or undertakings in question.</p>
<p>Making false or misleading representations</p> <p>Section 55:</p> <p>Making false or misleading representations in trade in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services,</p>	<p>Identify the false or misleading representations</p> <p>Demonstrate falsity of representation</p>	<p><u>Provided under Section 70:</u></p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both.</p>
<p>Engaging in unconscionable conduct in trade</p> <p>Section 56:</p> <p>Engaging in conduct that is unconscionable, in trade in connection with the supply or possible supply of goods or services to another person.</p> <p>Imposing unilateral charges and fees, by whatever name called or described, if the charges and the fees in question had not been brought to the attention of the consumer prior to their imposition or prior to the provision of the service, in the provision of banking, micro-finance and insurance and other services.</p>	<p>Identify the unconscionable conduct</p> <p>Show that person engaged in that conduct</p> <p>Identify the fees or charges unilaterally imposed</p> <p>Demonstrate unilateral imposition of such fees or charges</p>	<p><u>Provided under Section 70:</u></p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both.</p>

<p>Engaging in unconscionable conduct in supply of goods</p> <p>Section 57:</p> <p>Engaging in conduct that is unconscionable in trade in connection with the supply or possible supply of goods or services to another person; or the acquisition or possible acquisition of goods or services from another person.</p>	<p>Identify the unconscionable conduct</p> <p>Demonstrate conduct and its connection to the supply of goods or services</p>	<p><u>Provided under Section 70:</u></p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both.</p>
<p>Supplying unsafe goods</p> <p>Section 59:</p> <p>Supplying goods in violating safety standards, or supplying unsafe goods.</p>	<p>Identify the goods</p> <p>Identify safety standards violated</p> <p>Demonstrate that goods are unsafe and how they violate standards</p>	<p><u>Provided under Section 70:</u></p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both.</p>
<p>Supplying goods that don't comply with consumer standards</p> <p>Section 60:</p> <p>Supplying goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, without complying with that standard in relation to those goods.</p>	<p>Identify the goods/ produce goods</p> <p>Demonstrate that goods don't comply with standards prescribed</p> <p>Show the prescribed standards</p>	<p><u>Provided under Section 70:</u></p> <p>Imprisonment for a term not exceeding five years, or a fine not exceeding ten million shillings, or both.</p>
<p>Obstructing a person performing duty under Act</p> <p>Section 87:</p> <p>Hindering, opposing, obstructing or unduly influencing any person who is exercising a power or performing a duty conferred or imposed on that person by the Act.</p>	<p>Identify person obstructed, influenced or hindered</p> <p>Demonstrate that person was performing duty under the Act</p> <p>Demonstrate how person was obstructed, influenced or hindered</p>	<p><u>Provided under Section 91:</u></p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both.</p>
<p>Failing to comply with a lawful order</p> <p>Section 89:</p> <p>Failing to comply with a lawful order of the Competition Authority given in terms of the Act.</p>	<p>Identify the lawful order by the Authority</p> <p>Demonstrate failure to comply with the order</p>	<p><u>Provided under Section 91:</u></p> <p>Fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both.</p>

Consumer Protection Act, No. 46 of 2012

Offence	Elements of offence	Penalty
<p>Charging consumer for assisting consumer obtain a benefit</p> <p>Section 8:</p> <p>Charging a consumer for assisting the consumer to obtain any benefit, right or protection to which the consumer is entitled under the Act, without disclosing to the consumer, before the consumer agrees to pay the charge, the entitlement's existence and direct availability to the consumer and the cost, if any, the consumer would be required to pay for the entitlement if the consumer obtained the entitlement directly.</p>	<p>Identify the consumer</p> <p>Demonstrate that consumer was charged for assistance offered in obtaining a benefit, right or protection under Act</p> <p>Demonstrate failure to disclose to consumer in advance of paying the existence of the entitlement and cost if any</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Supplier demanding payment from consumer for unsolicited goods</p> <p>Section 9:</p> <p>Supplier demanding payment or making any representation that suggests that a consumer is required to make payment in respect of any unsolicited goods or services despite their use, receipt, misuse, loss, damage or theft where at the time of consumption the consumer did not reasonably believe that the goods or services were meant for his consumption.</p>	<p>Identify the goods</p> <p>Demonstrate that goods or services were unsolicited</p> <p>Show that supplier has demanded payment or made representations to suggest that consumer is to make payment in respect of goods</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Advertising an internet gaming site</p> <p>Section 11:</p> <p>Advertising an internet gaming site that is operated contrary to any written law; or, not being an internet service provider, arranging for or otherwise facilitating prohibited advertising on behalf of another person.</p>	<p>Identify the site</p> <p>Demonstrate that site is operated contrary to the law</p> <p>Demonstrate that person arranged or facilitated advertising on behalf of another</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>

<p>Making false representations and pressuring consumer to renegotiate terms</p> <p>Section 15:</p> <p>Making false, misleading or deceptive representation; making unconscionable representation; or using custody or control of a consumer's goods to pressure the consumer into renegotiating the terms of a consumer transaction.</p>	<p>Identify the false or misleading representation</p> <p>Demonstrate falsity in the representation</p> <p>Demonstrate use of custody or control of consumers goods to pressure consumer into renegotiating terms of a transaction</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Accepting personal payment for personal development services without a written agreement</p> <p>Section 24:</p> <p>Requiring or accepting payment for personal development services from a consumer with whom the supplier does not have an agreement that is in writing, is delivered to the consumer, and is made in accordance with the prescribed requirements.</p>	<p>Demonstrate that supplier accepted personal development services from consumer</p> <p>Demonstrate lack of a written agreement</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Entering into personal development agreement with more than one consumer</p> <p>Section 26:</p> <p>Supplier entering into more than one personal development agreement for provision of the same services with the same consumer.</p>	<p>Identify all the consumers supplier entered into personal development agreements with</p> <p>Demonstrate that agreements were for the supply of the same services</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Supplier of personal development agreement charging more than one initiation fee</p> <p>Section 27:</p> <p>Supplier of personal development services charging a consumer more than one initiation fee; or charging an initiation fee that is greater than twice the annual membership fee.</p>	<p>Demonstrate that supplier charged more than one initiation fee or an initiation fee that is greater than twice the annual membership fee</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>

<p>Supplier of personal development services providing instalment plan</p> <p>Section 28:</p> <p>Supplier of personal development services providing an instalment payment plan through which the total amount paid by instalments exceeds the membership or initiation fee, if applicable, by more than twenty-five per cent.</p>	<p>Identify instalment plan provided</p> <p>Demonstrate that instalment plan total amounts exceeds membership or initiation fee by more than twenty-five per cent</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Receiving payment for personal development services not available at the time</p> <p>Section 30:</p> <p>Supplier of personal development services receiving payment from a consumer for personal development services that are not available at the time the payment is made.</p>	<p>Demonstrate that supplier received payment from a consumer for personal development services</p> <p>Identify consumer</p> <p>Demonstrate that the services were not available at the time payment was made</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Receiving payment before loan or credit becomes available</p> <p>Section 40:</p> <p>Operator requiring or accepting any payment or any security for a payment, from or on behalf of a consumer before the consumer receives the credit or loan of money that the loan broker has assisted the consumer to obtain in respect of loan brokering, or before the credit repairer causes a material improvement to the consumer report, credit information, file, personal information, credit record, credit history in respect of credit repair, or credit rating of the consumer.</p>	<p>Identify the consumer</p> <p>Demonstrate that payment was received or required before the loan or credit became available</p> <p>Demonstrate that payment required or received before a material improvement to consumer report, credit information, personal information etc</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Prohibited communication</p> <p>Section 43:</p> <p>Operator communicating or causing to be communicated any representation that is prescribed as a prohibited representation.</p>	<p>Demonstrate that operator communicated</p> <p>Show that representation communicated was prohibited</p> <p>Identify the provisions prohibiting the communication</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>

<p>Repairer charging before giving an estimate</p> <p>Section 44:</p> <p>Repairer charging a consumer for any work or repairs without first giving the consumer an estimate that meets the prescribed requirements.</p>	<p>Demonstrate that repairer charged consumer without giving an estimate that meets prescribed requirements</p> <p>Identify the consumer</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Repairer charging for works or repairs not authorised by consumer</p> <p>Section 46:</p> <p>Repairer charging for any work or repairs not authorised by the consumer.</p> <p>Repairer charging an amount that exceeds the estimate by more than ten per cent for work or repairs for which an estimate was given.</p>	<p>Identify the works</p> <p>Demonstrate that works not authorised by consumer</p> <p>Show the estimates that were given</p> <p>Demonstrate that works exceed estimates by more than ten percent</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Repairer charging more because cost to be paid by insurance company</p> <p>Section 52:</p> <p>Repairer giving an estimate or charging an amount for work or repairs that is greater than that usually given or charged by that repairer for the same work or repairs merely because the cost is to be paid, directly or indirectly, by an insurance company.</p>	<p>Demonstrate that costs are to be paid by insurance company</p> <p>Show that costs are greater than the usual costs</p> <p>Demonstrate the usual costs for such work</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>
<p>Lender making representations which do not comply with requirements</p> <p>Section 63:</p> <p>Lender making representations which do not comply with the prescribed requirements or causing such representations to be made with respect to a credit agreement.</p>	<p>Identify the prescribed requirements</p> <p>Identify the representations</p> <p>Demonstrate that representations do not comply with requirements</p>	<p><u>Provided under Section 92:</u></p> <p>Fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.</p>

Fertilizers and Animal Foodstuffs Act, Cap 345

Offence	Elements of offence	Penalty
Dealing with unapproved fertiliser Section 3: 1) Importing, manufacturing, compounding, mixing or selling any fertilizer or animal foodstuff other than a substance declared by rules made under the Act to be an approved fertilizer or an approved animal foodstuff, as the case may be. 2) Importing, manufacturing, compounding, mixing or sell any fertilizer or animal foodstuff in respect of which rules have been made under the Act unless the fertilizer or animal foodstuff conforms to the standard or specification prescribed by such rules.	Identify the fertiliser Demonstrate importation, manufacture, compounding, mixing or selling of the fertiliser or animal foodstuff Demonstrate that substance does not conform to the standards prescribed Identify the prescribed standards	<u>Provided under Section 16:</u> First offence: Fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month. Second or subsequent offence: Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Importing fertiliser containing bone or substance obtained from carcass

Section 4:

- 1) Importing any fertilizer or animal foodstuff which contains bone or any other substance derived from an animal carcass; or bones or any other substance derived from an animal carcass for the purpose of manufacturing any fertilizer or animal foodstuff, without first submitting to the Director a certificate signed in the country of origin by a person designated by the Cabinet Secretary, certifying that such bone or substance has been effectively and completely sterilized in such manner as may be prescribed and is free from such pathogenic organisms as may be prescribed.
- 2) Manufacturing or selling any fertilizer or animal foodstuff containing bone or any other substance derived from an animal carcass unless such bone or substance has been sterilized in the prescribed manner.

Produce the fertiliser imported

Demonstrate that fertiliser was imported

Show that fertiliser contained bone or any substance derived from an animal carcass

Show failure to submit to Director a certificate signed in country of origin showing sterilization of substance

Demonstrate that substance is not sterilised

Show that person was manufacturing or selling fertiliser

Demonstrate that fertiliser has bone or other animal substance

Provided under Section 16:

First offence: Fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month.

Second or subsequent offence: Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Using sterilizing plant for sterilizing bones except in accordance with licence

Section 5:

Using any sterilizing plant for the sterilizing of bones or other substances derived from an animal carcass for the purpose of the manufacture or sale of any fertilizer or animal foodstuff, except under and in accordance with the provisions of a licence issued to him in respect of that plant.

Identify the fertiliser manufactured

Demonstrate use of sterilizing plant

Show lack of licence

Provided under Section 16:

First offence: Fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month.

Second or subsequent offence: Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

<p>Using bone or any substance without certification to manufacture fertiliser</p> <p>Section 7:</p> <p>Using any bone or other substance derived from an animal carcass which has not been either imported or a certificate signed in the country of origin by a person designated by the Cabinet Secretary or sterilized for the purpose of the manufacture or sale of a fertilizer or animal foodstuff.</p>	<p>Produce the fertiliser manufactured</p> <p>Demonstrate fertiliser manufactured from bone or animal carcass not imported on a certificate signed in country of origin</p>	<p><u>Provided under Section 16:</u></p> <p>First offence: Fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month.</p> <p>Second or subsequent offence: Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</p>
<p>Using certificate in an advertisement</p> <p>Section 11:</p> <p>Causing or permitting any copy of an analyst's certificate obtained under the Act to be used in any advertisement.</p>	<p>Identify the certificate</p> <p>Demonstrate use of certificate in an advertisement</p>	<p><u>Provided under Section 16:</u></p> <p>First offence: Fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month.</p> <p>Second or subsequent offence: Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</p>
<p>Selling foodstuff containing deleterious ingredients</p> <p>Section 12:</p> <p>Knowingly selling a fertilizer or animal foodstuff containing deleterious ingredients</p>	<p>Show that person knew or ought to have known foodstuff contained deleterious ingredients</p>	<p>Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months.</p>

Obstructing an officer

Section 13:

Obstructing, hindering, deceiving or misleading an inspector in the exercise of his powers or the performance of his duties under this Act or any rules made thereunder; or

Knowingly making use of, issuing or maintaining any false or misleading records, statement, document, declaration, marking or label in connexion with the manufacture, importation, mixing, compounding or sale of any fertilizer or animal foodstuff.

Demonstrate how officer was obstructed in the execution of his/her duty

Show that officer was performing duty

Show that person knew or ought to have known that statement/ declaration/ document was false

Demonstrate that person made statement/ declaration/ document that was false

First offence: Fine not exceeding two thousand shillings or imprisonment for a term not exceeding two months or to both such fine and such imprisonment.

Second or subsequent offence: Fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

Section 17:

A court convicting any person of an offence against the Act or against any rules made thereunder may make such order as the Court shall deem proper, as to the forfeiture or disposal of any fertilizer, animal foodstuff, bone or other product of an animal carcass; the payment by the defendant of all or any fees and other expenses incidental to the analysis of a fertilizer or animal foodstuff, in respect of which the conviction is obtained.

Pest Control Products Act, Cap 346

Offence	Elements of offence	Penalty
Dealing with pest control product contrary to Act Section 3: <ol style="list-style-type: none"> 1) Manufacturing, packaging, storing, displaying, distributing, using or advertising any pest control product in contravention of conditions prescribed by regulations made under the Act. 2) Packaging, labelling or advertising any pest control product in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quality, composition, merit or safety. 	Identify the pest control product Identify provisions of Act infringed Demonstrate that person dealt with pest control product contrary to provisions of Act Produce the packaged product Demonstrate that packaging/ labelling was false/ misleading or deceptive	<u>Provided under Section 12(1):</u> Imprisonment for a term not exceeding two years or to a fine not less than two hundred and fifty thousand shillings, or to both. <u>Provided under Section 12(1):</u> Imprisonment for a term not exceeding two years or to a fine not less than two hundred and fifty thousand shillings, or to both.

<p>Importing or selling unregistered pest control product</p> <p>Section 4:</p> <ol style="list-style-type: none"> 1) Importing into, or selling in, Kenya any pest control product not registered, packaged and labelled in accordance with regulations made under the Act and conforming to the standards specified in those regulations. 2) Exporting or re-exporting out of Kenya any pest control products without complying with the requirement specified in regulations made under the Act. 	<p>Produce the product imported or sold</p> <p>Demonstrate that product is not registered</p> <p>Identify the product exported or re-exported</p> <p>Identify requirements or regulations not complied with</p> <p>Demonstrate failure to comply with requirement or regulations</p>	<p><u>Provided under Section 12(1):</u></p> <p>Imprisonment for a term not exceeding two years or to a fine not less than two hundred and fifty thousand shillings, or to both.</p> <p><u>Provided under Section 12(1)</u></p> <p>Imprisonment for a term not exceeding two years or to a fine not less than two hundred and fifty thousand shillings, or to both.</p>
<p>Adulterating or counterfeiting pest product</p> <p>Section 4A:</p> <p>Adulterating or counterfeiting, or being in possession of adulterated or counterfeit pest control products, labels or packages.</p>	<p>Produce the product</p> <p>Demonstrate that product is adulterated or counterfeited</p>	<p>Fine of not less than two hundred and fifty thousand shillings, and not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both.</p>
<p>Offence by inspector or analyst</p> <p>Section 8(2):</p> <p>Inspector or analyst engaging in any business connected with the manufacture, sale or distribution of pest control products.</p>	<p>Demonstrate that person is an inspector or analyst</p> <p>Demonstrate that person engages in the business of manufacture/ sale/ distribution of pest control products</p>	<p><u>Provided under Section 12(2):</u></p> <p>Fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months, or to both.</p>

<p>Obstruction of an inspector from making an inspection</p> <p>Section 9(4):</p> <p>Refusing entry to an inspector acting under the Act or obstructing him in making an entry or making an inspection or, without reasonable excuse, failing to produce any pest control product or material for examination or any document the production of which is required of him under the Act.</p>	<p>Demonstrate that inspector was denied entry or obstructed in the course of his/ her duty</p> <p>Demonstrate failure to produce pest control product for inspection under the Act without any reason</p>	<p><u>Provided under Section 12(2):</u></p> <p>Fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months, or to both.</p>
<p>Obstruction of an inspector</p> <p>Section 10(5):</p> <p>Hindering or obstructing an inspector acting in exercise of his powers under the Act.</p>	<p>Demonstrate that inspector was obstructed in the course of his/her work</p>	<p><u>Provided under Section 12(2):</u></p> <p>Fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months, or to both.</p>
<p><i>NB: Section 12(2) and 12A both provide general penalties which appear to be contradictory.</i></p>		

SUPPRESSION OF NOXIOUS WEEDS ACT, CHAPTER 325 OF THE LAWS OF KENYA

<p>Failure to report presence of noxious weed on land</p> <p>Section 4:</p> <p>Person responsible for land failing to report to an inspector, or to a District Commissioner or to the Director of Agriculture the presence of any noxious weed on the land.</p> <p>Person responsible for land failing to clear the noxious weed, or cause it to be cleared, from that land.</p>	<p>Show that person was responsible for land</p> <p>Produce the noxious weed</p> <p>Show that person failed to report</p> <p>Show that person failed to clear noxious weed or cause it to be cleared</p>	<p><u>Provided under Section 9:</u></p> <p>Fine not exceeding one thousand shillings, or to imprisonment for a period not exceeding six months, or to both, and in case of a continuing offence to a fine not exceeding forty shillings for each day during which the offence continues.</p>
<p>Obstructing and inspector</p> <p>Section 5:</p> <p>Obstructing or attempting to obstruct or hinder an inspector in the exercise of his duties under the Act.</p>	<p>Give particulars of obstruction of inspector</p> <p>Show that inspector was in the course of his/her duties</p>	<p><u>Provided under Section 9:</u></p> <p>Fine not exceeding one thousand shillings, or to imprisonment for a period not exceeding six months, or to both, and in case of a continuing offence to a fine not exceeding forty shillings for each day during which the offence continues.</p>

<p>Failing to comply with notice to clear land</p> <p>Section 6:</p> <p>Person responsible for the land failing to comply with a notice from an inspector to clear the land of noxious weed within a time specified in the notice.</p>	<p>Produce the notice served</p> <p>Show that person failed to comply with notice</p>	<p><u>Provided under Section 9:</u></p> <p>Fine not exceeding one thousand shillings, or to imprisonment for a period not exceeding six months, or to both, and in case of a continuing offence to a fine not exceeding forty shillings for each day during which the offence continues.</p>
<p>SEEDS AND PLANT VARIETIES ACT, CHAPTER 326 OF THE LAWS OF KENYA</p>		
<p>Giving false information</p> <p>Section 3(6):</p> <p>Including in a statutory statement anything which is false in a material particular.</p>	<p>Produce the statutory statement</p> <p>Demonstrate falsity of statement</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both</p>
<p>Obstructing an inspector</p> <p>Section 3C(3):</p> <p>Refusing entry to an inspector exercising powers under the Act, or obstructing inspector from entering or inspecting, or, without reasonable excuse, failing to produce any seed material for examination or any document required under the Act.</p>	<p>Give particulars of obstruction of inspector</p> <p>Show that inspector was in the course of his/her duties</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both</p>
<p>Disclosure of information</p> <p>Section 3E:</p> <p>Person engaged in the enforcement of the provisions of the Act disclosing, other than for the purpose of the exercise of his functions or when required to do so by a court or under any written law, any information acquired in the exercise of functions under the Act.</p>	<p>Demonstrate that person disclosed information</p> <p>Show that disclosure was not in furtherance of purpose of Act or in compliance with a court order</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both</p>

<p>Selling seed using name not given in index</p> <p>Section 7(5):</p> <p>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, being a name which serves or is intended to serve to distinguish the seed from seed of other plant varieties within the class to which the Index relates.</p>	<p>Identify the seed/ produce the seed sold</p> <p>Show that seed was sold in a name not given in index</p> <p>Show mental intent to distinguish</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both</p>
<p>Selling seed within a class using name to distinguish</p> <p>Section 8(1): Selling seed of a plant variety which is within a class to which a Section of the Index relates, but which is not in the Index, using a name which serves or is intended to serve to distinguish such seed from seed of other plant varieties within that class.</p>	<p>Identify/ produce the seed</p> <p>Show that seed not in index</p> <p>Demonstrate mental intent to distinguish seed from other plant varieties</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both.</p>
<p>Selling/advertising seed subject to performance trials</p> <p>Section 9(4):</p> <p>Selling or advertising for use seed of a new plant variety subject to performance trials and reports before seed of that plant variety has been submitted for the purpose of performance trials, and until a report on the result of such trials has been published in the prescribed manner.</p> <p>Section 9(5):</p> <p>Using in the course of business seed of a new plant variety subject to performance trials and reports in Kenya, where a person has acquired, being seed which was not in Kenya when he acquired it, as reproductive material at any time when it is unlawful to sell seed of that plant variety; or disposing of any of that seed, otherwise than by way of sale, while it is in Kenya as to make it available for use in Kenya as reproductive material.</p>	<p>Identify/ produce the seed</p> <p>Demonstrate that seed subject to performance trials</p> <p>Demonstrate that seed was offered for sale or advertised for use</p> <p>Demonstrate use of seed</p> <p>Show seed subject to performance trials</p> <p>Show that it is unlawful to sell seed of that plant variety in Kenya</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both.</p> <p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both</p>

<p>Giving false information</p> <p>Section 10(1):</p> <p>Knowingly or recklessly giving information that is false in a material particular by or on behalf of a person making an application or representations in respect of any matter connected with the compilation or alteration of the national varieties list or an applicant for exemption from an Index.</p> <p>Section 10(4)</p> <ul style="list-style-type: none"> a) Giving false information to a seed inspector, a seed analyst or a plant examiner, with intent to defraud. b) Obstructing, hindering, interfering with or failing to comply with any lawful order given by any seed inspector in execution of powers or duties under the Act. c) Making or causing to be made any false statement, false advertisement, and/or producing or displaying any certificates required to be produced or displayed, under the Act which are false in any material particular. d) Importing, processing seed and packaging seed for sale purposes while not registered as a seed merchant. e) Selling or displaying for sale any seed which does not correspond with the description in any certificate required to be produced or displayed under the Act. f) Offering for sale, seed that fails 	<p>Prove mental intent</p> <p>Produce the information given</p> <p>Show falsity in information given</p> <p>Show that information was given to inspector/ prove intent to defraud</p> <p>Give particulars of obstructing, hindering with inspector/ show inspector was executing his duties</p> <p>Produce the advertisement</p> <p>Show falsity in advertisement</p> <p>Produce the seeds/ demonstrate that person not registered as a seed merchant</p> <p>Demonstrate that seed does not correspond with description in</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both</p> <p>Fine not exceeding one million shillings or imprisonment for a term not exceeding two years, or to both.</p>
<p>Tampering with samples</p> <p>Section 14:</p> <p>Tampering with samples.</p>	<p>Demonstrate how samples were tampered with</p> <p>Produce the samples</p>	<p>Fine not exceeding one million shillings or imprisonment for a period not exceeding two years or to both such fine and imprisonment.</p>

<p>Importing/ attempting to import deleterious seeds</p> <p>Section 15(3):</p> <p>Importing or attempting to import potentially deleterious seeds without the authority of, and/or in contravention of the terms of, a licence granted by an authorized officer, and any person who imports or attempts to import any seeds in</p>	<p>Produce the seeds or samples</p> <p>Demonstrate that seeds originated from a foreign country</p> <p>Show overt act taken towards importing seeds</p> <p>Show lack of authority or contravention of terms of a license</p>	<p>Fine not exceeding ten thousand shillings or imprisonment for a term not exceeding two years or to both such fine and imprisonment.</p>
<p>False representation of plant breeders rights</p> <p>Section 25:</p> <p>Knowingly or recklessly making any false representation that one is entitled to exercise any plant breeder's rights, or any rights derived therefrom.</p>	<p>Show that person knew or ought to have known falsity of representation</p> <p>Demonstrate that person made representation of entitlement as a plant breeder</p>	<p><u>Provided under Section 33:</u></p> <p>Fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both</p>
<p>Owner of seeds giving false statement</p> <p>Section 30(7):</p> <p>Owner of any seeds which are offered or exposed for sale, or are stored for the purposes of sale, or any person authorized to sell such seeds, giving a false statement in relation to any material particular may when required by an authorized officer to deliver to him such statement as the person selling them would, by seeds regulations, be obliged to deliver to a purchaser of such seeds.</p>	<p>Demonstrate falsity in statement given</p>	<p>Fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding one year or to both.</p>
<p>PLANT PROTECTION ACT, CHAPTER 324 OF THE LAWS OF KENYA</p>		
<p>Introducing pest or disease into cultivated land</p> <p>Section 7(1):</p> <p>Knowingly introducing any pest or disease into any cultivated land.</p>	<p>Identify pest or disease introduced/ identify land</p> <p>Show that person knew or ought to have known of pest or disease</p> <p>Demonstrate that person introduced pest or disease in cultivated land</p>	<p>Fine not exceeding two thousand shillings or imprisonment for a term not exceeding six months.</p>

<p>Failing to comply with a lawful order given by inspector</p> <p>Section 9:</p> <p>Failing to comply with any lawfully given order of an inspector, or contravening or failing to comply with an order made to control importation or exportation of articles likely to spread pests or diseases or any rules made under the Act.</p>	<p>Identify the lawful order given</p> <p>Show that order was made to control importation or exportation of articles likely to spread pests or diseases or any rules made under the Act</p> <p>Show that person failed to comply with the order</p>	<p>Fine not exceeding two thousand shillings or imprisonment for a term not exceeding six months.</p>
<p>AGRICULTURAL PRODUCE (EXPORT) ACT, CHAPTER 319 OF THE LAWS OF KENYA</p>		
<p>Exporting/ attempting to export agricultural produce</p> <p>Section 3:</p> <p>Exporting, or causing or permitting to be exported, or attempting to export, any agricultural produce for which rules are made before such produce has been inspected, or inspected and branded, in manner prescribed by such rules.</p>	<p>Identify agricultural produce exported</p> <p>Show overt act made towards attempting to export produce</p> <p>Demonstrate that exportation or attempt was made before produce was inspected</p>	<p><u>Provided under Section 14:</u></p> <p>First conviction: Fine not exceeding two thousand shillings.</p> <p>Second or subsequent conviction: Fine not exceeding five thousand shillings.</p> <p>In default of payment in either case: Imprisonment for a term not exceeding six months.</p>
<p>Exporting or attempting to export produce of animal infected with disease</p> <p>Section 4:</p> <p>Exporting, or causing or permitting to be exported, or attempting to export the produce of any animal intended for human consumption, which is infected with any disease rendering such produce unfit for such consumption; or agricultural produce intended for human consumption which at the time of presentation for export is unfit for such consumption; or agricultural produce which owing to its condition or for any other reason is unlikely to be brought to its destination in a sound or good marketable state.</p>	<p>Identify/ produce the animal produce</p> <p>Show that produce infected with disease</p> <p>Show that person exported produce to a foreign country</p> <p>Demonstrate overt act person took to attempt to export produce to a foreign country</p>	<p><u>Provided under Section 14:</u></p> <p>First conviction: Fine not exceeding two thousand shillings.</p> <p>Second or subsequent conviction: Fine not exceeding five thousand shillings.</p> <p>In default of payment in either case: Imprisonment for a term not exceeding six months.</p>

Exporting meat from an unsanctioned abattoir

Section 6(1):

- 1) Exporting, or causing or permitting to be exported, or attempting to export, any meat or any produce thereof where the abattoir or slaughtering place used for the slaughter of the animal from which such meat is to be taken is not a place sanctioned by the Director as fit for the purpose.
- 2) Exporting, or permitting to be exported, or attempting to export, any milk products, compositions or substitutes thereof where the dairy, factory, creamery or premises where such products, compositions or substitutes are collected, prepared or stored are not premises sanctioned by the Director as fit for such purpose.

Identify/ produce the meat

Demonstrate that abattoir not sanctioned by Director

Show that meat was exported (taken out of the country)

Demonstrate that dairy, factory, creamery is not sanctioned by Director

Show that produce was exported out of the country

Provided under Section 14:

First conviction: Fine not exceeding two thousand shillings.

Second or subsequent conviction: Fine not exceeding five thousand shillings.

In default of payment in either case: Imprisonment for a term not exceeding six months.

Interfering with work of inspector

Section 12:

- 1) Obstructing, resisting or hindering an inspector in the lawful exercise of his powers or duties.
- 2) Failing, within the time required by an inspector, to remove any produce from any place of inspection, reception or shipment whenever such removal is so required.

Demonstrate how inspector was obstructed

Show that inspector was performing his/ her duties

Demonstrate failure to remove produce from place of inspection when required to do so

Fine not exceeding one thousand shillings.

Fine not exceeding one hundred shillings for every day during which the offence continues.

Forging a certificate

Section 13:

Forging or uttering knowing it to be forged,
any certificate or brand or label, or any
writing or signature required by or provided
in the Act, or any subsidiary legislation.

Wilfully applying to agriculture produce intended for export a certificate or invoice or label or warranty given in relation to any other agricultural produce.

Issuing a written warranty or invoice, label or certificate or notification in respect of agricultural produce intended for export with intent to deceive, if such written documents falsely describe such produce or are false in any other material particular.

Show that person knew or ought to have known that certificate was forged

Produce the certificate

Demonstrate that certificate was forged

Demonstrate falsity in the warranty or invoice, label or certificate

Penalties prescribed by law for the crime of forgery. (Penal Code Section 349 Imprisonment for 3 years)

Imprisonment for a term not exceeding twelve months.

Penalties prescribed by law for the crime of cheating. (Penal Code Section 349 Imprisonment for 3 years)

CUSTOMS AND EXCISE REGULATIONS

Offence	Elements	Penalty
<p>Using concession to release commercial shipments</p> <p>Regulation 38(9):</p> <p>Courier service company using concession it has been granted to release commercial shipments without pre-shipment inspection.</p>	<p>Identify the commercial shipments</p> <p>Demonstrate release without pre-shipment inspection</p>	<p>Fine not exceeding two hundred thousand shillings.</p>
<p>Landing at un-appointed place</p> <p>Regulation 42:</p> <p>Landing from any aircraft or vessel at an un-appointed place.</p>	<p>Identify aircraft or vessel</p> <p>Identify landing place</p> <p>Demonstrate that landing place un-appointed</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Failing to take baggage for examination</p> <p>Regulation 44:</p> <p>1) Failing to take baggage and any uncustomed goods to the nearest place appointed for the examination of baggage, or such other place as the proper officer may direct.</p> <p>2) Removing any baggage or goods out of the baggage room or other place until the proper officer authorizes their removal.</p>	<p>Demonstrate that person failed to take baggage to appointed place</p> <p>Demonstrate removal of baggage without authorization of proper officer</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p> <p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>

<p>Warehousing goods not suitable for warehousing</p> <p>Regulation 61:</p> <p>Warehousing goods deemed to be unsuitable for warehousing.</p>	<p>Identify the goods</p> <p>Demonstrate that goods were warehouses</p> <p>Show that goods not suitable for warehousing</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Making alteration to warehouse without permission</p> <p>Regulation 75:</p> <p>Making any alteration or addition to any bonded warehouse without first obtaining the permission of the Commissioner.</p>	<p>Show the alteration or addition made</p> <p>Demonstrate failure to obtain permission from Commissioner</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Failure to mark warehouse</p> <p>Regulation 77:</p> <p>Failing to clearly mark on the principal entrance of bonded warehouse or elsewhere as the proper officer shall approve the words 'Customs Bonded Warehouse' and failing to remove the same when a warehouse ceases to be licensed under the Act.</p>	<p>Demonstrate failure to mark the warehouse</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Contravening conditions of a licence</p> <p>Regulation 79B:</p> <p>Contravening conditions of a license for premises for manufacturing under bond.</p>	<p>Identify condition contravened</p> <p>Demonstrate manner of contravention of condition</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Embarking form a vessel</p> <p>Regulation 85:</p> <ol style="list-style-type: none"> 1) Master or his agent failing to deliver to the proper officer, before any passenger embarks on any aircraft or vessel, a correct list of the passengers embarking upon request of the proper officer. 2) Embarking on any aircraft or vessel otherwise than at an appointed place, or, in the case of a passenger, before permission to embark has been granted by the proper officer. 3) Loading the baggage of passengers of an aircraft or vessel proceeding to a foreign port at a place not directed by proper officer, or loading such baggage before proper officer has examined and passed them for shipment. 	<p>Identify the vessel</p> <p>Show that Master/agent failed to deliver correct list of passengers before passengers embarked</p> <p>Demonstrate embarking from unappointed place</p> <p>Demonstrate loading at an improper place or loading before examination by officer</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p> <p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p> <p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>

<p>Regulation 90:</p> <p>Master of an aircraft or vessel transferring stores from one aircraft or vessel to another without first making an application to proper officer.</p>	<p>Demonstrate transfer of stores from one craft to another</p> <p>Identify the aircrafts involved</p> <p>Show failure to make an application to proper officer</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Failing to produce stores</p> <p>Regulation 93:</p> <p>Failing to produce stores to the proper officer before putting on board an aircraft or vessel; or upon being put on board taking into use without the express permission of the proper officer while the aircraft or vessel is within Kenya:</p>	<p>Demonstrate failure to produce stores</p> <p>Identify the stores</p> <p>Show that stores were put on aircraft or vessel</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Contravening conditions on exportation by overland routes</p> <p>Regulation 95:</p> <p>Contravening conditions on exportation by overland routes.</p>	<p>Identify condition contravened</p> <p>Give particulars of contravention of the conditions on overland routes</p>	<p>Fine not exceeding five hundred thousand shillings.</p>
<p>Contravening condition on transit goods</p> <p>Regulation 96:</p> <p>18) Contravening conditions relating to goods in transit or for transshipment.</p> <p>20) Agent failing to re-export transit goods or to cancel bond-in-force within seven days from the date of expiry of the transit period or within such longer period as the Commissioner may, in any particular case.</p>	<p>Identify condition contravened</p> <p>Demonstrate how condition contravened</p> <p>Show that goods were export goods</p> <p>Identify the goods</p> <p>Demonstrate that goods were export goods</p> <p>Show that goods were still in country after seven days from date of expiry of transit period</p>	<p>Fine not exceeding five hundred thousand shillings.</p> <p>Forfeiture of any goods in respect of which the offence is committed.</p> <p>Fine not exceeding one million five hundred thousand shillings.</p>
<p>Storing transit goods in premises without a valid licence</p> <p>Regulation 96B(2):</p> <p>Owner or occupier of any premises permitting such premises to be used in to store goods entered in transit pending re-exportation without a valid licence to use such premises as a transit go-down.</p> <p>Regulation 96B(14):</p> <p>Licensee using or permitting to be used his transit go-down in contravention of his licence.</p>	<p>Identify the goods</p> <p>Demonstrate that premises did not have a licence</p> <p>Show that goods were transit goods</p> <p>Show that goods were stored in the premises</p> <p>Demonstrate contravention of a licence</p> <p>Identify conditions of a licence contravened</p>	<p>Fine not exceeding five hundred thousand shillings, and forfeiture of goods in respect of which the offence has been committed.</p> <p>Fine not exceeding one million five hundred thousand shillings forfeiture of any goods in respect of which the offence is committed.</p>

<p>Loading and unloading without authority of officer</p> <p>Regulation 112:</p> <p>Loading coastwise cargo on an aircraft or vessel for carriage coastwise or removing from a customs area or a transit shed after it has been unloaded or landed without the prior authority of the proper officer.</p>	<p>Identify cargo</p> <p>Demonstrate that cargo was loaded or removed from customs area</p> <p>Demonstrate that proper officer did not authorise the act</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Failure to give satisfactory explanation</p> <p>Regulation 127A(8):</p> <p>Enterprise failing to give a satisfactory explanation to the proper officer if, on inspection of the records and physical stocktaking of goods entering the export processing zone, goods are found missing.</p>	<p>Show that some goods were missing/ identify missing goods</p> <p>Demonstrate that enterprise was unable to give proper explanation or record of missing goods</p>	<p>Fine not exceeding two hundred thousand shillings or twice the amount of duty payable on the missing goods, whichever is the higher.</p>
<p>Failing to mark excise factory</p> <p>Regulation 130B:</p> <p>Failing to clearly mark on the principal entrance to an excise factory or such other prominent place as the proper officer may approve the distinguishing number allocated by the Commissioner and the words 'Customs Excise Factory', or failing to remove the same when the factory ceases to manufacture excisable goods.</p>	<p>Demonstrate that excise factory was not marked</p> <p>Show that mark was not removed when factory ceased to manufacture excisable goods</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Contravening provisions relating to manufacture of tobacco/packing wine/ export goods diverted for sale</p> <p>Regulation 148C:</p> <p>Contravention of provisions relating to manufactured tobacco and cigarettes, matches, packing and making of wine, duty on goods for export diverted for sale</p>	<p>Identify provision contravened</p> <p>Demonstrate contravention of provision in the manufacture of tobacco/cigarettes, packing of wine and duty on goods for export diverted for sale</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>
<p>Failure to remit duty on imports for use in production of exports duty free or specified duty exempt goods</p> <p>Regulation 240A(26):</p> <p>Failing to comply with or contravening any provision relating to remission of duty on imports for use in the production of exports duty-free or specified duty exempt goods.</p>	<p>Identify provision contravened</p> <p>Demonstrate failure to remit duty on imports</p>	<p>Fine not exceeding the higher of one million five hundred thousand shillings or three times the value of the goods involved, or imprisonment for a term not exceeding three years, or to both.</p>

<p>Claiming to act as customs agent without license</p> <p>Regulation 261:</p> <p>Claiming to be, or in any way acting as a customs and excise agent without having a valid licence</p>	<p>Identify person</p> <p>Demonstrate that person did not have a valid license</p> <p>Show that person acted as customs agent</p>	<p>Fine not exceeding twenty thousand shillings.</p>
<p>Using aircraft or vessel for conveyance of goods subject to customs control</p> <p>Regulation 278:</p> <ol style="list-style-type: none"> 1) Using aircraft, vessel or vehicle, not owned by the Government when used in the service of the Government, for the conveyance of any goods subject to customs control without licence or without the written permission of the Commissioner. 6) Unlicensed vessel or aircraft going, or remaining, alongside, or approaching within fifty metres of, any aircraft or vessel, without the permission of the proper officer. 7) Using or employing a licensed vessel fitted with hatches and whose hatches cannot be securely locked and sealed by the customs for the conveyance of any warehoused goods, goods under drawback, dutiable goods intended for transshipment, restricted goods, or such other goods as the Commissioner may determine without the permission of the proper officer. 	<p>Identify the vessel and the goods</p> <p>Demonstrate that goods subject to customs</p> <p>Show lack of license or written permission of Commissioner</p> <p>Show that vessel not licensed</p> <p>Demonstrate that vessel went or remained within fifty metres of an aircraft without permission</p> <p>Demonstrate use of vessel</p> <p>Show that hatches of vessel cannot be securely locked</p> <p>Show that vessel was used in conveyance of warehouse goods, goods under drawback, dutiable goods intended for transshipment, restricted goods, or such other goods as the Commissioner may determine</p>	<p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p> <p><u>Provided under Regulation 279:</u></p> <p>Fine not exceeding twenty thousand shillings.</p>

PREVENTION OF ORGANISED CRIMES ACT, CHAPTER 59 OF THE LAWS OF KENYA

(Illicit Trade)

Offence	Elements	Penalty
General offences Section 4:		
a) Acting in concert with other persons in the commission of a serious offence for the purpose of obtaining material or financial benefit or for any other purpose;	Identify the other persons or indicate persons unknown. Identify material or financial benefit. Disclose the serious offence committed.	Fine not exceeding five million shillings or imprisonment for a term not exceeding fifteen years, or both. If as a result of the act a person dies, the member of the organized criminal group shall on conviction be liable to imprisonment for life
b) Possessing, collecting, making or transmitting a document or records likely to be useful to a person committing or preparing to commit a serious crime involving an organised criminal group;	Identify document Demonstrate that document may be useful in committing serious crime involving an organised group Identify property	
c) Providing, receiving, or inviting another to provide property and intending that the property should be used for the purposes of an organised criminal group;	Demonstrate that property used for purposes of an organised criminal group Identify property and organised criminal group	
d) Using, causing or permitting any other person to use property belonging to an organised criminal group for the purposes of the activities of an organised criminal group;	Demonstrate that property belonged to and was used for purposes of activities of organised criminal group	
e) Knowingly entering into an arrangement whereby the retention or control by or on behalf of another person of criminal group funds is facilitated	Identify arrangement and funds Demonstrate how arrangements facilitates fund of criminal group	

<p>Offences relating to firearms by authorised persons</p> <p>Section 4A:</p> <p>If being licensed to possess, hold, trade in or otherwise have custody of any specified firearms, ammunition or parts of such firearm or ammunition, hiring or otherwise unlawfully permitting another person to take possession of or use that firearm or ammunition to advance the course of organised criminal activity.</p>	<p>Demonstrate that person licensed to possess, hold or trade in firearms or ammunition</p> <p>Demonstrate that firearm or ammunition used to advance course of organised criminal activity</p>	<p>Imprisonment for life.</p>
<p>Inchoate offences</p> <p>Section 6:</p> <p>Attempting, aiding, abetting, counselling, procuring, or conspiring with another to commit an offence under the Act</p>	<p>Set out the details of attempt, aiding, procuring or conspiring to commit an offence under the Act</p> <p>Identify the offence involved</p>	<p>Fine not exceeding one million shillings or imprisonment for a term not exceeding fourteen years, or both.</p>
<p>Interfering with materials to affect investigations</p> <p>Section 13:</p> <p>Wilfully interfering with material which is likely to be relevant to a police officer's investigation into the activities of an organised criminal group.</p>	<p>Identify material</p> <p>Demonstrate act of interference with material and how it affect investigations into activities of an organised criminal group</p>	<p>Fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding ten years or to both.</p>
<p>FORESTS ACT, CHAPTER 385 OF THE LAWS OF KENYA (Illicit Trade)</p>		
<p>Interfering with sacred groves without authority</p> <p>Section 33(4):</p> <p>Felling, cutting, damaging or removing, without lawful authority, any sacred groves found in any State forest, nature reserve, local authority forest or private forest, or tree or regeneration thereof, or biodiversity therein, or abetting in the commission of any such act.</p>	<p>Identify the sacred grove</p> <p>Demonstrate act of felling, cutting, damaging or removing.</p> <p>Show that person had no lawful authority</p>	

<p>Dealing in protected tree species or family of trees</p> <p>Section 34(2):</p> <p>Felling, cutting, damaging or removing, trading in or exporting or attempting to export any protected tree, species or family of trees or regeneration thereof or abetting in the commission of any such act.</p>	<p>Identify the specie</p> <p>Demonstrate act of felling, cutting, damaging, removing or trading in the specie</p>	
<p>Contravening provisions of Act</p> <p>Section 44:</p> <p>Contravening the provisions of the Act in relation to activities in forest areas relating to mining, quarrying or re-vegetation.</p>	<p>Identify the Section contravened</p> <p>Demonstrate how Section of Act is contravened</p>	<p>Imprisonment for a term of not less than six months, or a fine of not less than one hundred thousand shillings, or both such fine and imprisonment.</p>
<p>Offences relating to forest produce</p> <p>Section 52:</p> <p>a) Felling, cutting, taking, burning, injuring or removing any forest produce;</p> <p>h) Collecting any honey or beeswax, or hanging on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting any honey or beeswax, or entering therein for the purpose of collecting honey and beeswax, or being therein with any equipment designed for the purpose of collecting honey or beeswax;</p> <p>k) Possessing, bringing or introducing any chain saw or logging tools or equipment;</p> <p>in a State, local authority or provisional forest without a licence or permit or a management agreement.</p>	<p>Identify forest produce affected</p> <p>Produce honey or beeswax</p> <p>Demonstrate person was collecting beeswax or honey from forest</p> <p>Show that person was in forest. Identify equipment brought</p> <p>Produce the chain saw, logging tool or equipment. Demonstrate that material person brought material into forest</p> <p>Demonstrate that person had no permit or authority</p>	<p>Fine of not less than fifty thousand shillings or imprisonment for a term of not less than six months, or both such fine and imprisonment.</p>

Offences related to marking

Section 53:

- a) Marking any forest produce, or affixing upon any forest produce, a mark ordinarily used by a forest officer to indicate that the forest produce is the property of the Government, or that it may or has been lawfully cut or removed;
- b) altering, obliterating, removing or defacing any stamp, mark, sign, licence, permit or other document lawfully issued under the authority of this Act, or removing or destroying any part of a tree bearing the stamp or other mark used by any forest officer;
- c) covering any tree stump in any State or local authority forest or on any un-alienated Government land with brushwood or earth, or by any other means whatsoever concealing, destroying, or removing or attempting to conceal, destroying or removing such tree stump or any part thereof;
- e) counterfeiting or issuing without lawful authority any licence or other document purporting it to be a licence or document issued under the Act.

Identify forest produce. Demonstrate marking on produce. Show that mark not made by a forest officer

Identify and produce mark, stamp, sign, permit or licence interfered with. Demonstrate act of obliterating, removing or defacing stamp, mark, sign, licence, and permit. Show part of tree removed or destroyed bearing stamp or other mark.

Produce the tree stump

Demonstrate act of concealing the tree stump

Identify the original license or document counterfeited. Demonstrate that document is an imitation of original

Fine of not less than two hundred thousand shillings, or imprisonment for a term of not less than three years, or both such fine and imprisonment.

Failing to comply with provisions of Act

Section 54(1)

- a) Breaching or failing to comply with the provisions of the Act;
- b) Breaching or failing to comply with the terms or conditions of a licence;
- c) failing to comply with a lawful requirement or demand made or given by a forest officer;
- d) obstructing a person in the execution of his powers or duties under the Act;
- e) making or being in possession of charcoal in a state, local authority or provisional forests, in private forest or farmland without a licence or permit of the owner as the case may be;

Operating a saw mill

Section 54(2):

Operating a sawmill in a manner contrary to that prescribed in rules made under this Act.

Identify provisions of Act breached or not complied with

Demonstrate failure to comply with the provisions of the Act

Give particulars of obstruction. Identify officer obstructed

Produce the charcoal

Demonstrate that person was in possession of charcoal in a forest without a licence or permit

Identify the saw mill operated

Demonstrate that saw mill operated contrary to rules

Fine of not less than fifty thousand shillings or imprisonment for a term of not less than one year, or both such fine and imprisonment.

Fine of not less than five hundred thousand shillings, or imprisonment for a term of not less than three years, or both such fine and imprisonment

Capturing, killing or snaring animal in a forest or possession of poison in a forest

Section 54(4):

Capturing or killing any animal in a forest, setting or being in possession of any trap, snare, gin or net, or digging any pit, for the purpose of catching any animal, or using or being in possession of any poison or poisoned weapon without licence or permit or a management agreement.

Section 54(8):

Introducing any exotic genetic material or invasive plants in a forest without authority from the Service; dumping any solid, liquid, toxic or other wastes in a forest; growing any plant from which narcotic drugs can be extracted in a forest; or extracting, removing or causing to be removed, any tree, shrub or part thereof for export from a forest.

Identify the animal or snares used to trap animal. Demonstrate that person killed or captured an animal in a forest. Identify the animal and forest.

Produce the poison or poisoned weapon

Identify the exotic genetic material or invasive plants introduced in forest

Demonstrate that person had no authority to introduce material or plant in forest

Identify forest where material introduced

Fine of not less than ten thousand shillings or to imprisonment for a term not exceeding three months ([Section 57](#)).

Fine of not less than three million shillings or to imprisonment for a term of not less than ten years, or both such fine and imprisonment.

ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, CHAPTER 65 OF THE LAWS OF KENYA

(Offences relating to bribery and abuse of office)

Section 33:

Disclosing the details of an investigation under the Act, including the identity of anyone being investigated without leave of the Director or without other lawful excuse.

Demonstrate that officer disclosed details of an investigation under the Act without Authority

Fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding three years, or both

Section 39(3):

Corruptly receiving or soliciting, or corruptly agreeing to receive or solicit, a benefit that is an inducement or reward for, or otherwise on account of, an agent; or corruptly giving or offering, or corruptly agreeing to give or offer, a benefit that is an inducement or reward for, or otherwise on account of, an agent.

Demonstrate officer received, solicited or agreed to receive or solicit a benefit on behalf of agent

Show that benefit was meant to induce or reward

Section 48:

Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and

An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

Receiving, soliciting a benefit to give advice

Section 40(2):

Receiving or soliciting, or agreeing to receive or solicit, a benefit that is an inducement or reward for, or otherwise on account of, the giving of advice to a person with the intention that the benefit be a secret from the person being advised; or giving or offering, or agreeing to give or offer, a benefit that is an inducement or reward for, or otherwise on account of, the giving of advice to a person if the person intends the benefit to be a secret from the person being advised

Demonstrate act of receiving, soliciting or agreeing to receive or solicit a benefit

Section 48:

Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and

An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

Interfering with public revenue

Section 45(1)

Fraudulently or otherwise unlawfully acquiring public property or a public service or benefit; or mortgaging, charging or disposing of any public property; or damaging public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service; or failing to pay any taxes or any fees, levies or charges payable to any public body or effecting or obtaining any exemption, remission, reduction or abatement from payment of any such taxes, fees, levies or charges.

Demonstrate interference with computer or machinery and how it results in loss of public revenue

Section 48:

Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and

An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

Section 45(2):

An officer or person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property fraudulently making payment or excessive payment from public revenues for sub-standard or defective goods, goods not supplied or not supplied in full, or services not rendered or not adequately rendered; or wilfully or carelessly failing to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or engaging in a project without prior planning.

Section 48:

Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and

An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

Conferring a benefit on oneself or another using ones office

Section 46:

Using one's office to improperly confer a benefit on himself or anyone.

Demonstrate how one used his/her office to confer benefit to another

Section 48:

Fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or both; and

An additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

Annex1

Reporting Institutions

Members of the public can report illicit trade activities to any of the below listed institutions;

Kenya Police Headquarters

Vigilance House

2240000/0726-035455/020341411

Or any nearest Police Station or Police Post

Anti-Counterfeit Agency

4th Floor, Teleposta Towers, Kenyatta Avenue

P.O. Box 47771-00100 Nairobi Kenya

Phone: +254 (0)20 2280000

Fax: +254 (20) 222 5130

E-mail: info@aca.go.ke

Homepage: <http://www.aca.go.ke>

Kenya Bureau of Standards

Popo Road, Off Mombasa Road

Behind Bellevue cinema

P.O. Box 54974 - 00200, Nairobi Kenya

Tel: +254 20 6005634, +254 20 6948000

Mobile: +254 722202137/8, +254 734600471/2

PVoC: +254 724255242

Fax: (+254 20) 6004031

Email: info@kebs.org

National Authority for the Campaign Against Alcohol and Drug Abuse

NSSF Building 18th Floor, Eastern Wing, Block A

P.O. Box 10774 - 00100 Nairobi

Phone: +254 202721997

Email: info@nacada.go.ke

Website: www.nacada.go.ke

Competition Authority of Kenya

Kenya Railways Staff Retirement Benefit Scheme Block 'D', 1st Floor,

Haile Selassie Avenue.

P.O. Box 36265-00200

Nairobi, Kenya

Direct Line: +254 20 2628233

Pilot Line: +254 20 2779000

KEPHIS Headquarters

P.O. Box 49592-00100, Nairobi Tel: 020-3597201/2/3 | 3536171/2
Cell: 0722-516221, 0723-786779, 0733-874274, 0734-874141
Fax: 020-3536175
VOIP-YELLO 7730594/5
Email: director@kephis.org

Kenya Revenue Authority

Times Tower Haile Selassie Avenue
P.O.BOX 48240 - 00100 GPO Nairobi
Tel 020-310900, 020-2810000 Fax 341342

Department of Immigration Services

Nyayo House 9th floor, Kenyatta Avenue/Uhuru Highway
PO Box 30191, 00100 Nairobi.
Tel: +254-20-2222022, +254-20-2217544, +254-20-2218833
Email; dis@immigration.go.ke

Pharmacy and Poisons Board

P.O. Box 27663 – 00506
Nairobi
Lenana Road Opp. DOD
Telephone: +254 20 3562107 , +254 720 608811 , +254 733 884411

USEFUL SOURCES OF INFORMATION ON ILLICIT TRADE

Kenya Association of Manufacturers (KAM)

KAM is the representative organisation for manufacturing value-add industries in Kenya. It is a dynamic, vibrant, credible and respected business association that unites industrialists and offers a common voice for businesses. KAM provides an essential link for co-operation, dialogue and understanding with the Government by representing the views and concerns of its members to the relevant authorities. Its mission is to promote competitive local manufacturing in a liberalised market. <http://www.kam.co.ke/index.php/about-us/overview>

Telephone number: +254 722-201368,
+254 706-612384,
+254 734 646004/5
Email: info@kam.co.ke
Address: P. O. Box 30225 - 00100 GPO
Nairobi, Kenya, East Africa.
15 Mwanzi Road Opposite Westgate, Westlands, Kenya

Kenya Anti Counterfeit Agency (ACA)

This is a State Corporation with a mission to combat counterfeiting and prohibit trade in counterfeit goods through training, research, consumer awareness and co-ordination with national, regional and international organisations in the effective enforcement of intellectual property rights. It does this by: 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 co-ordinating with national, regional or international organisations involved in combating counterfeiting. www.aca.go.ke

Telephone number: +254 20 2225124-31
Email: info@aca.go.ke
Address: P. O. Box 47771 - 00100, Nairobi, Kenya
Hotline: 020 2280111

Kenya Bureau of standards (KEBS)

The Kenya Bureau of Standards has as its mission, the provision of standardization solutions for sustainable development. It offers services such as standards development and standardisation, enforcement of standards and production inspection. Its work towards standards has implication on the combatting of illicit trade and production of illicit goods. <http://www.kebs.org/index.php>

Telephone number: +254722202137/8
+254734600471/2
Email: info@kebs.org
Address: P. O. Box 54974 - 00200, Nairobi Kenya

Kenya Institute for Public Policy Research and Analysis (KIPPRA)

KIPPRA, an autonomous public institution provides advisory and technical services on public policy issues to the Government, government agencies, and other stakeholders. KIPPRA also collects and analyses relevant data on public policy and disseminates its research findings to a wide range of stakeholders through workshops/conferences, internal seminars, research papers, policy briefs, a newsletter, and the Kenya Economic Report. With the aim of helping Kenya achieve its development goals, KIPPRA takes an interest in issues that affect the same, such as illicit trade in the country. <http://www.kippira.org/About-KIPPRA/about-kippira.html#>

Telephone number: +254-20-4936000; +254-20-2719933/4
Address: P. O. Box 56445-00200, City Square, Nairobi

Kenya Police

The Kenya police's mandate includes maintaining law and order in the country, detecting and preventing crime and apprehending perpetrators of crimes. Among these crimes is the illicit trade of goods and services in the country. www.kenyapolice.go.ke

Telephone number: 020 2724154
020 240000
0721 228989
Email: info@kenyapolice.go.ke
Address: P. O. BOX 30083, Nairobi

Kenya Revenue Authority

The KRA is charged with the responsibility of collecting revenue on behalf of the Government of Kenya. Its purpose is to assessment, administer and enforcement of laws relating to revenue. KRA serves as a 'watchdog' for the Government agencies (such as Ministries of Health, Finance, etc) by controlling exit and entry points to the country to ensure that prohibited and illegal goods do not pass through Kenyan borders. <http://www.revenue.go.ke/>

Telephone number: +254 (0711) 099 999
020-310900
020-2810000
Email: cic@kra.go.ke or callcentre@kra.go.ke
Address: P. O. BOX 48240 - 00100 GPO Nairobi

Kenya Wildlife Service

KWS is a state corporation that undertakes conservation and management of wildlife resources outside protected areas in collaboration with stakeholders. KWS provides security for animals in and therefore has interests aligned with the termination of illicit trade in wildlife. www.kws.org

Telephone number: +254 20 6000800, +254 20 6002345
Email: kws@kws.go.ke
Address: P. O. Box 40241 – 00100, Nairobi

The Ethics and Anti-Corruption Commission (EACC)

The EACC, established under the Constitution of Kenya 2010 is a public body mandated to combat and prevent corruption and economic crime in Kenya through law enforcement, preventive measures, public education and promotion of standards and practices of integrity, ethics and anti-corruption. The EACC investigates alleged economic crimes and corruption and receives complaints on the same. <http://www.eacc.go.ke/index.asp>

Telephone number: 020-2717318,
020-310722
Email: eacc@integrity.go.ke; report@integrity.go.ke
Address: P. O. Box 61130 00200 Nairobi

The Office of the Director of Public Prosecutions, Kenya (DPP)

Established under the Constitution of Kenya, 2010, the DPP's office is responsible for instituting and undertaking criminal proceedings against any person before any court (other than a court martial) in Kenya with respect of any offence (including illicit trade) alleged to have been committed. <http://www.odpp.go.ke>.

Telephone number: 020-2732090
Email: dpp@odpp.go.ke
Address: P. O. Box 30701-00100, Nairobi

World Economic Forum (WEF)

WEF is an international Institution committed to improving the state of the world through public-private cooperation. The institution engages political, business, academic and other leaders of society in collaborative efforts to shape global, regional and industry agendas. Together with other stakeholders, it works to define challenges, solutions and actions, always in the spirit of global citizenship. <http://www.weforum.org/world-economic-forum>

Global Agenda Council on Illicit Trade & Organized Crime

Part of the WEF, this Council an international Institution committed to improving the state of the world through public-private cooperation. It constitutes thought leaders who are the foremost experts in their fields of academia, business, government, international organisations and society. commit their extensive knowledge, expertise and passion to jointly shape the global, regional and industry agenda. It is committed to addressing the most pressing issues and opportunities of our time and aim to provide new thinking and solutions. The Council convenes globally recognised expert communities to provide interdisciplinary thinking, stimulate dialogue, shape agendas and catalyse initiatives. Through on-going collaboration and debate, as well as through findings, the Global Agenda Councils transform implications and recommendations into key deliverables and contribute to improving the state of the world individually and as a network. <http://www.weforum.org/content/global-agenda-council-illicit-trade-organized-crime-2012-2014>

United Nations Office on Drugs and Crime (UNODC)

The UNODC is a global leader in the fight against illicit drugs and international crime, operating in all regions of the world through an extensive network of field offices. It facilitates field-based technical cooperation projects to enhance the capacity of Member States to counteract illicit drugs, crime and terrorism. It also carries out research and analytical work to increase knowledge and understanding of drugs and crime issues and expand the evidence base for policy and operational decisions. <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>

East African Business Council (EABC)

The EABC is a body of business associations of the Private Sector and Corporates from Kenya, Tanzania and Uganda, Burundi and Rwanda. EABC's overarching objective is to be an effective change agent for fostering an enabling business environment and to promote private sector's regional and global competitiveness in trade and investment. It therefore provides a regional platform through which the business community can present their concerns at the EAC policy level, with the overall aim of creating a more conducive business environment through targeted policy reform. <http://www.eabc.info/eabc/about/category/who-we-are>

Global Financial Integrity (GFI)

The GFI is a research and advocacy organisation, which produces high-caliber analyses of illicit financial flows, advises developing country governments on effective policy solutions, and promotes pragmatic transparency measures in the international financial system as a means to global development and security. <http://www.gfintegrity.org/about/>

World Customs Organization (WCO)

The WCO develops and manages international Customs standards and is the global focal point for support, co-operation and dialogue on Customs matters. The institution provides leadership, guidance and support to Customs administrations to secure and facilitate legitimate trade, realise revenues, protect society and build capacity. <http://www.wcoomd.org/en.aspx>

Organization for Economic Co-operation and Development (OECD)

The OECD's aim is to promote policies that will improve the economic and social well-being of people around the world. It provides a forum in which governments can work together to share experiences and seek solutions to common problems. It also works with governments to understand what drives economic, social and environmental change and measures productivity and global flows of trade and investment. <http://www.oecd.org/about/>

World Health Organization (WHO)

The WHO is the directing and coordinating authority for health within the United Nations system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based

policy options, providing technical support to countries and monitoring and assessing health trends. <http://www.who.int/about/en/>

World Intellectual Property Organization (WIPO)

WIPO is the global forum for intellectual property services, policy, information and cooperation, with 187 member states, working in accordance with the WIPO Convention. Its mission is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all. <http://www.wipo.int/about-wipo/en/>

International Chamber of Commerce (ICC)

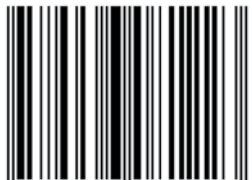
ICC provides a forum for businesses and other organisations to examine and better comprehend the nature and significance of the major shifts taking place in the world economy. We also offer an influential and respected channel for supplying business leadership to help governments manage those shifts in a collaborative manner for the benefit of the world economy as a whole. <http://www.iccwbo.org/about-icc/>

Business Action to Stop Counterfeiting and Piracy (BASCAP)

BASCAP was launched by the ICC to combat product counterfeiting and copyright piracy worldwide. BASCAP aims to connect and mobilise businesses across industries, sectors and national borders in the fight against counterfeiting and piracy. It works to increase both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. BASCAP also compels government action and the allocation of resources towards strengthened intellectual property rights enforcement. <http://staging.iccwbo.org/advocacy-codes-and-rules/bascap/about-bascap/mission/>



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