



REPUBLIC OF KENYA

# **NATIONAL ACTION PLAN AND IMPLEMENTATION FRAMEWORK TO COMBAT ILLICIT TRADE 2019-2022**



**JUNE 2019**





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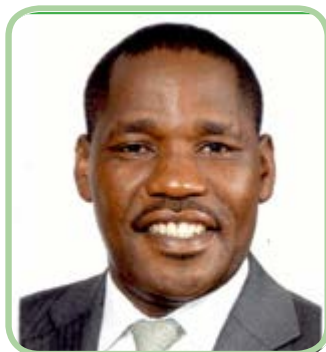
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## FOREWORD



The Big 4 Agenda for the Jubilee Government envisages doubling the GDP contribution of the manufacturing sector from 8.4% to 15%; attaining food security and nutrition, universal healthcare for all and 500,000 affordable housing by the year 2022. One major challenge that can affect the achievement of the Big 4 and other development goals such as the Vision 2030 is the menace of illicit trade.

Illicit trade creates unfair competition to manufacturers of genuine products. It manifests in various forms such as tax evasion, dealings with smuggled, sub-standard and counterfeit goods among others. The government has put measures in place to counter the effect of illicit trade, which include establishment of a Multi-Agency Team to combat illicit trade through enforcement and awareness creation. Key achievements include the development of the National Action Plan to Combat Illicit Trade, National Trade Policy while the National Intellectual Property Policy is on course. In combating illicit trade, the government will be addressing harmful effects of the vice on consumers' health and safety as well as the degradation to environmental systems and biodiversity, erosion of government tax revenues and winding up of legitimate industries that leads to loss of job opportunities.

As a country, we need a collective action to fight illicit trade. I am happy that the Executive Office of the President appointed the Deputy Head of Public Service, Mr. Wanyama Musiambo as the national coordinator of the enforcement Multi - Agency Team against illicit trade. This team has seized over Kshs 8.5 billion of illicit goods out of which a substantive amount has been destroyed. For sustainability purpose and in line with best practice, this Action Plan has proposed a multi-agency framework to be anchored in the Executive Office of the President, which will provide policy guidance, monitor the implementation of various programs, and report to the appointing authority on its achievements.

I call upon all stakeholders to play their proactive roles as envisaged in this Action Plan. This is the only way of ensuring effectiveness in the implementation of this strategy. Together, we stand strong to eliminate illicit trade, for health, safety and prosperity of all.

**Hon. Peter G. Munya, EGH**

Cabinet Secretary,  
Ministry of Industry, Trade and Cooperatives.

## STATEMENT FROM THE CHAIRS OF THE EXECUTIVE FORUM



*The war against illicit trade requires a well-coordinated approach by national and international partners.*



Illicit trade is an organized transnational crime that harms economic growth and job creation, challenges the rule of law, robs governments of needed revenue and threatens human rights and quality of life. Illicit trade is any form of trade that infringes on the rules, laws, regulations, licenses, taxation systems, embargos and all procedures that countries use to organize trade, protect citizens, raise standards of living and enforce codes of ethics.

Illicit trade is a global problem thus not unique to Africa and Kenya in particular. Available statistics show that illicit trade has increased 7 times faster than legal trade since the 1990s. It was well over USD 12 trillion in 2014. This represents 15 - 20% of global GDP. The Business Action to Stop Counterfeiting and Piracy (BASCAP) estimated in 2018 that the global economic value of counterfeit and pirated products was US\$ 923b - 1.13 trillion in 2013, projected to increase to between US\$ 1.90 - 2.81 trillion by 2022.

In the East African Community region, OECD estimated that in 2008 the EAC lost over US\$500 million in tax revenue annually due to counterfeiting. Unfortunately, there are no statistics on the economic size and impact of counterfeiting or illicit trade as a whole in Kenya.

The war against illicit trade requires a well-coordinated approach by national and international partners. At the national level, this Strategy takes cognizance of the fact that there are various institutions that play a role in the war against illicit trade. Therefore, it is critical that these institutions are coordinated to ensure that there is maximum synergy and impact in their activities. In this endeavour, the Strategy proposes a national structure that is capable to marshal all the needed resources required to win the war against illicit trade in Kenya. It also identifies key strategic objectives, their measurement and how they will be implemented, monitored and reported. While the Action plan encourages collaboration, each organization is expected to implement the identified strategic objectives that are specific to their mandates.

The overall objective of the strategy is to progressively reduce the level of illicit trade. This requires the determination of the current levels of illicit trade through a baseline survey and subsequently implementing strategies to reduce the levels. The strategy also strives to: strengthen the capacity of agencies to combat illicit trade; strengthen collaborations and partnerships; enhance public-private partnerships towards managing the vice; and increase the level of awareness on illicit trade by 20% p.a.

The partners are committed to winning the war against illicit trade in order to ensure: health and safety of consumers; protection and enforcement of the intellectual property rights, promotion of innovation and industrialization; and protection of markets.

### **Dr. Chris Kiptoo, CBS**

Chairman - Anti-Illicit Trade Executive Forum  
Principal Secretary - State Department of Trade.

### **Ms. Phyllis Wakiaga**

Co-Chair - Anti-Illicit Trade Executive Forum  
Chief Executive - Kenya Association of Manufacturers.

## ACKNOWLEDGEMENT



This Action Plan was developed through collaborative efforts of several players in the public and private sectors who are passionate to eliminate illicit trade in Kenya. The Anti-Counterfeit Authority and the State Department of Trade coordinated the drafting of the Action Plan. The invaluable input, comments and contributions from various stakeholders is acknowledged and appreciated.

I wish to acknowledge the input of every technical staff from various institutions. These include the State Department for Trade in the Ministry of Industry, Trade and Cooperatives, the Anti-Counterfeit Authority, Kenya Bureau of Standards, Kenya Revenue Authority, Kenya Industrial Property Institute, National Intelligence Service, Office of the Director of Public Prosecutions, Kenya Copyright Board, Ministry of Agriculture, National Authority for the Campaign Against Alcohol and Drug Abuse, Kenya Association of Manufacturers, Kenya National Chamber of Commerce and Industry, Kenya Private Sector Alliance and Compol Associates, among others.

Special recognition goes to Ms Philda Maiga (SDT), Dr. John Akoten (ACA), Ms. Redemta Cherotich (KEBS), Mr. Elijah Ruttoh (ACA), Ms Agnes Karingu (ACA), Mr. Joseph Wairiuko (KAM) and Mr. Jackson Wambua (KAM) for leading in drafting and revising the various versions of the draft document.

Finally, through the Kenya Association of Manufacturers (KAM), I would like to convey our appreciation to the Business Advocacy Fund (BAF) for their continued support to the Private sector in the fight against illicit trade in Kenya. We thank KAM and BAF more specifically for their financial support in the publication of this Action Plan.

### **Mr. Elema Halake, SS**

Secretary - Anti-Illicit Trade Executive Forum  
Executive Director - Anti-Counterfeit Authority



## EXECUTIVE SUMMARY

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Kenya is experiencing a heightened level of illicit trade perpetrated by individuals and organized illicit trade networks. Smuggling, counterfeits, tax evasion, etc. are costing government billions of shillings in tax revenue losses; while legitimate businesses are being undermined and consumers exposed to unsafe products. The vice has grown to great proportions in recent years, threatening the economy and the realization of a number of the country's development goals.

According to the Business Action to Stop Counterfeits and Piracy (BASCAP), an IP arm of the International Chamber of Commerce, the total value of counterfeit and pirated goods stood at between USD 923 billion – USD1.13 trillion in 2013, and it is forecast to rise to between USD 1.9 - USD 2.81 trillion by 2022. The World Bank indicates that illicit trade has increased 7 times faster than legal trade since the 1990s and is well over USD 12 trillion in 2014<sup>10</sup>. The IMF & World Bank estimate that the parallel economy represents 15-20% of global GDP.

Weaknesses of national regulatory regimes and global financial and transportation systems facilitate illicit trade. Digital technology has exacerbated the problem and contributed immensely to the proliferation of the vice. The circulation channels of illicit goods are typically widespread among income populations where genuine products do not ordinarily reach and if they do, are normally too expensive for the residents of such areas. Public awareness on the dangers of the vice will be central in changing consumer attitudes.

Recent seizures of substandard sugar, as well as the circulation in the market of fake fertilizer, among other products, have caused the government to re-think strategies towards fighting illicit trade. To combat the vice, stakeholders need to update their approaches on several fronts. Policy, regulatory, and legal frameworks for example need to be up-dated to increase enforcement outcomes and achieve operational coordination. It is in view of this that an Action Plan to Combat Illicit Trade is prepared; in addition to providing a coherent approach for the coordination of enforcement agencies.

Kenya currently administers and enforces fair trade practices through various institutions and through a number of laws and regulations. Inadequate coordination between the institutions may have contributed to the exploitation of administrative and governance loopholes by criminals to propagate illicit trade. This Action Plan is designed to overcome existing coordination and enforcement challenges. An 'Inter-Agency Anti-Illicit Trade Executive Forum' and a Technical Working Group; representing all the enforcement agencies and the private sector; have been set up and gazetted Vide gazette notice No. 7270 of 20th July 2018. These two will ensure the implementation of the Action Plan.

The Action Plan considers countering illicit trade as a strategic priority in realizing Vision 2030 aspirations as well as the Big 4 Agenda. The essence of the Action Plan therefore, is to lay foundations to combat illicit trade thus facilitating the attainment of the country's development goals. It lays emphasis on the need for effective collaboration between the public, private sector and the international community for effective outcomes.

## ABBREVIATIONS

ACA	Anti-Counterfeit Authority	KIPI	Kenya Industrial Property Institute
APSD	Anti-Piracy Security Device	KIPO	Kenya Industrial Property Office
ARA	Assets Recovery Agency	KRA	Kenya Revenue Authority
ASCM	Agreement on Subsidies and Countervailing Measures	LIA	Leadership and Integrity Act
BASCAP	Business Action to Stop Counterfeits and Piracy	MAAITO	Multi-Agency Anti-Illicit Trade Outreach
C&BC	Customs and Border Control Department	MEAs	Multilateral Environmental Agreements
CEA	Council of Economic Advisors	NACADA	National Authority for the Campaign Against Alcohol and Drug Abuse
CEO	Chief Executive Officer	NATCOC	National Anti-Illicit Trade Coordination Centre
CET	Common External Tariff	NCEN	National Customs Enforcement Network
CITES	Convention on International Trade in Endangered Species of Wild Fauna and	NCLR	National Council for Law Reporting
CMO	Collective Management Organization	NEC	National Economic Council
COMESA	Common Market for Eastern and Southern Africa	NEDPS	National Export Development and Promotion Strategy
DOI	Declaration of Intent	NEMA	National Environment Management Authority
EAC	East African Community	NSC	National Security Council
EACCMA	East African Community Customs Management Act	NTP	National Trade Policy
FDI	Foreign Direct Investment	ODPP	Office of the Director of Public Prosecutions
GATS	General Agreement on Trade in Services	OECD	Organization for Economic Cooperation and Development
GATT	General Agreement on Tariffs and Trade	OSTP	Office of Science and Technology Policy
GDP	Gross Domestic Product	OVP	Office of the Vice President
ICC	International Chamber of Commerce	PCPB	Pest Control Products Board
ICT	Information and Communication Technology	PPB	Pharmacy and Poisons Board
ICTA	Information and Communication Technology Authority	RECTS	Regional Electronic Cargo Tracking System
IGAD	Inter-Governmental Authority on Development	SDT	State Department of Trade, Ministry of Industry, Trade and Cooperatives
IMF	International Monetary Fund	SO	Strategic Objective
IOR-ARC	Indian Ocean Rim and Association for Regional Cooperation	SOP	Standard Operative Procedure
IP	Intellectual Property	TNOC	Trans National Organized Crimes
IPEC	U.S. Intellectual Property Enforcement Coordinator	TRIPS	Trade Related Aspects of Intellectual Property Rights
IPM	Interface Public Members	UNICRI	United Nations Inter-Regional Crime and Justice Institute
IPR	Intellectual Property Rights	UNODC	United Nations Office on Drugs and Crime
JSC	Judicial Service Commission	USTR	Office of the U.S. Trade Representative
JTI	Judiciary Training Institute	W&M	Weights and Measures
KAM	Kenya Association of Manufacturers	WCO	World Customs Organization
KEBS	Kenya Bureau of Standards	WCT	WIPO Copyright Treaty
KECOBO	Kenya Copyright Board	WHO	World Health Organization
KENTRADE	Kenya Trade Network Agency	WIPO	World Intellectual Property Organization
KEPHIS	Kenya Plant Health Inspectorate Service	WPPT	WIPO Performances and Phonograms Treaty
KETRA	Kenya Trade Remedies Agency	WTO	World Trade Organization



## CHAPTER

## 1

## INTRODUCTION

## 1.1. Background Information

Trade is the key driver of Kenya's economy dominated by three sectors: services, agriculture and manufacturing. Government policy has for several years focused on developing the trade sector by providing an enabling environment for the private sector to produce and trade competitively. Significant political, structural and economic reforms have been made over the past decade, leading to sustained economic growth.

The country's economic growth has given rise to a growing middle class, and a high demand for consumer goods. This has also provided an opportunity for illicit trade to thrive. Subsequently, Kenya has become a source, transit route and target destination for illicit trade. Illicit trade is an underground/shadow economy recognized as a multibillion-dollar industry, and one of the most challenging phenomena of our time. It comprises both trade in illegal goods and services, as well as instances where normally legal goods are traded illegally. Generally, illicit trade may be defined as any form of trade that infringes the rules, laws, regulations, licenses, taxation systems, embargos and all procedures that countries use to organize trade, protect citizens, raise standards of living and enforce codes of ethics<sup>10</sup>. The concept extends to money, goods or value gained from illegal or otherwise unethical activity; and includes all actions or conduct intended to facilitate such activities.

Illicit trade takes several forms such as smuggling of excisable goods; intellectual property infringement; trading with illegal weights and measures; human trafficking; environmental crime; illegal trade in natural resources; trade in harmful or substandard goods or substances that may carry serious health and safety risks; trade in illegal drugs; trade in illegal plant parts, seeds and animal material, illegal manufacturing; illicit arms trade; and illicit financial flows, among others. These can be broadly classified into four major and interrelated ways: smuggling; counterfeiting, piracy and substandard goods; transit fraud/dumping; and trade in prohibited goods or products<sup>11</sup>. (see Table 1 for definitions)

Table 1 presents definition of terms related to illicit trade.

*Table 1: Definition of Terms*

<b>Counterfeit goods</b>	goods whose intellectual property has been infringed, i.e. a fraudulent imitation of genuine goods deceptively passed off as genuine
<b>Undervalued goods</b>	goods whose real cost is concealed by the importer or shipper so that customs duties and taxes are assessed on a lower amount. (a fake price is used on the invoice for customs clearance)
<b>Uncustomed goods</b>	goods that have not passed through customs (usually smuggled)
<b>Contraband goods</b>	goods prohibited by law from being imported or exported
<b>Substandard goods</b>	goods below a satisfactory standard as established by law and are usually of inferior quality
<b>Dumped goods</b>	goods sold at a price lower than the selling price in the exporting country
<b>Subsidized goods</b>	goods produced with financial support from government or public body to keep their prices low. Due to this conferred benefit, they are cheaper in the market compared to products produced without similar support. Usually, domestic industries in the country of export are unable to compete with subsidized goods.
<b>Unfair trade practices</b>	practices which grossly deviate from good commercial conduct and are contrary to good faith and fair dealing

<sup>10</sup> Moises Naim (2005).

<sup>11</sup> <https://www.aca.go.ke/images/downloads/ENFORCEMENT-MANUAL-TO-COMBAT-ILLCIT-TRADE-IN-KENYA.pdf>

## 1.2. Costs of Illicit Trade

Consumers, manufacturers/producers and government are the most severely affected by illicit trade in terms of health, trade losses and erosion of government revenue.

The OECD estimates that EAC loses over US\$500 million in tax revenue annually due to counterfeiting<sup>12</sup>. In a study by the Kenya Association of Manufacturers (KAM) on illicit trade in Kenya, it is estimated that Kenyan manufacturers are losing close to 40% of their market share to counterfeiters<sup>13</sup>. Available information from the Kenya Publishers Association estimates that publishers in Kenya lose more than KES 2 billion annually through book piracy. Research done by the Anti-Counterfeit Authority showed that the level of counterfeiting in major towns in Kenya stood at 23% in 2016 and 16% in 2018. The reduction in counterfeiting in major towns is due to enhanced enforcement, public awareness activities and collaboration with various stakeholders. There is however need to conduct a nationwide baseline survey on the magnitude of illicit trade in Kenya. Whereas existing research covers only counterfeits, it is clear that illicit trade threatens severely the success of Vision 2030 and the Big 4 Agenda. The country's progression from lower middle to upper middle-income status thus rests on successful reduction/ elimination of the vice.

### 1.2.1 Cost of Consumers

Illicit trade, and in particular the presence of substandard and counterfeit goods in the market poses a grave danger to the health, safety and lives of the public (consumers). The exact magnitude of this damage cannot be established as some effects are immediate (e.g. illness arising from counterfeit pharmaceutical products) while others are long term (e.g. injury from cosmetics). Another obvious impact of illicit trade to consumers includes loss of consumer choice due to investment disincentives caused by counterfeit/pirated goods.

### 1.2.2 Costs to Manufacturers/Agricultural Producers/creatives

#### a) Cost to Manufacturers

Manufacturers are among the most severely affected by all forms of illicit trade through brand erosion, loss of reputation, loss of sales, reduction of market share, closure of factories and unfair competition. Manufacturers generally spend large sums of money on production, marketing, research and development, paying wages and taxes, etc., while counterfeiters incur much lesser costs but instead benefit from already established goodwill. As illicit trade products are usually low cost, manufacturers conducting genuine business cannot compete with counterfeiters. The result in some cases is closure of legitimate businesses.

#### b) Cost to Agricultural Producers

Illicit trade also affects agricultural productivity because of use of substandard and/or counterfeited farm inputs. Counterfeit fertilizers, agro-chemicals, seeds, veterinary medicines, and animal feeds have severely affected the sector, leading to a decrease in agricultural productivity.

#### c) Cost to Creatives

Counterfeits and piracy have impeded the growth and development of local creative industries in Kenya. According to the World Intellectual Property Organization (WIPO), copyright-related industries generate substantial GDP and employment contributions in emerging and developing countries. WIPO estimates that creative industries in Kenya contribute more than 5% to GDP and over 3% to employment. Unfortunately, like other trade sectors, it is severely affected by illicit trade and in particular, piracy. The Kenyan music industry estimates that over 90% of music is pirated.

### 1.2.3 Costs to Government

Illicit traders do not pay tax on their imports or produce. If they do, the declared value of the merchandise is lower than the declared value of genuine products resulting in lower taxes payable. This deprives the economy of legitimate jobs, tax revenue and increases social costs (resulting from an increased health burden and reduced revenue). Illicit trade therefore frustrates long-term government policies.

<sup>12</sup> OECD 2008. These figures have certainly gone up, 10 years after the research.

<sup>13</sup> KAM Study to Determine the Severity of Counterfeiting Problem in Kenya (2012).

### 1.3 Impact of Illicit Trade

Illicit trade negatively affects innovation and competitiveness, businesses, foreign direct investments and security as detailed below:

#### a) Impact of Illicit Trade on Innovation

Innovation enables the development and exploitation of ideas, new products and processes. Innovators protect these ideas through patents, copyright, industrial designs and trademarks. Without adequate protection of these intellectual property rights the incentive to innovate is reduced. Counterfeiting and piracy thus robs innovators and creators of their just reward and undermines local culture by reducing the incentive to be creative.

#### b) Impact of Illicit Trade on Businesses

Businesses whose products are counterfeited or pirated experience loss of direct sales, reputation and brand equity; trademark dilution and loss of goodwill and prestige; unfair competitive advantage by illegitimate enterprises that free-ride on the research, development and marketing expenses of legitimate enterprises; and rebranding costs to disassociate from counterfeit versions, among others.

#### c) Effect of Illicit Trade on Foreign Direct Investment (FDI)

Multinationals usually make the decision to locate their firms in a particular country based on a number of factors, including level of IPR protection. There is therefore a strong correlation between effective IPR protection and the level of Foreign Direct Investment (FDI) inflow<sup>14</sup>, which plays an important role in technology and knowledge transfer for developing countries. IPRs constitute perhaps the most valuable assets of most modern businesses. High prevalence of illicit trade reduces the inflow of FDI. There should, therefore, be an enabling and secure investment climate with an effective legal regime for the protection of IPRs to create investment incentives for Kenya.

#### d) Effect of Illicit Trade on Security

Illicit trade is considered a major source of revenue for organized crime, and in some cases, terrorist groups. Because of their big financial muscle, terrorist groups are likely to impact negatively on the security and safety of Kenyans. This can come in the form of bribery of public servants, dealing in illegal firearms and animal trophies, human trafficking, trading in dangerous and unsafe goods that in turn affect economic growth and development.

### 1.4 Enabling Conditions for Illicit Trade

The following weaknesses have enabled criminal networks to take advantage and exploit gaps in combating illicit trade and hence evade detection and enforcement.

- i) Weaknesses in national regulatory regimes (non-punitive penalties and sanctions);
- ii) Uncoordinated enforcement mechanisms;
- iii) Limited resources which lead to inefficiency in combating illicit trade;
- iv) Technological advancements – slow rate of adoption of new/emerging technology;
- v) Inadequate consumer awareness;
- vi) Inadequate screening of goods passing through customs border points; and
- vii) Unmanned border points/ illegal border crossing.

### 1.5 Need for an Action Plan

The Action Plan takes cognizance of the existing policies in the inter-agency institutions and seeks to synergize them with a view to creating a policy environment that facilitates the development of the private sector. The Action Plan thus represents the overarching framework for combatting illicit trade in the country. The policy rationale to formulate a robust Action Plan derives from H.E. Uhuru Kenyatta's directive to put in place a Rapid Results Initiative to combat illicit trade and to form a multi-agency task force for better coordination of enforcement activities, following increased proliferation of the vice. This mandate has been given further prominence by Executive Order No.1/ 2018.

The enforcement of fair trade practices in Kenya is currently a shared responsibility of the Anti-Counterfeit Authority (counterfeit goods), the Customs Department of KRA (contraband, uncustomed and under-customed goods), the Kenya Bureau of Standards (substandard goods), Pharmacy and Poisons Board, Weights and Measures Department, Pest Control Products Board, etc. with coordination from line ministries.

Despite several high profile seizures by the agencies, illicit trade continues to thrive due to the sophisticated and evasive nature of its networks enabled in some cases by corruption and loopholes in the regulatory system. It has been noted that the efforts are not effective due to poor coordination and synchronization of activities which can be addressed through an inter-agency approach.

<sup>14</sup> ACA Research (2012): Effects of Counterfeiting on Economic Growth and Foreign Direct Investment in Kenya.

Therefore, a National Anti-Illicit Trade Coordination Centre shall be set up to coordinate Inter Agency efforts geared towards combating illicit trade with the support of the Executive Forum and the Technical Working Groups. Strong partnerships with the private sector associations shall also be intensified in order to achieve optimal exploitation of the synergy between private sector and government. Therefore, there is need to develop a comprehensive Action Plan that will guide the interagency collaboration.

This Action Plan places emphasis on the need for a conducive environment for trade and investments; protect industries from losses arising from illicit trade as well as protection of intellectual property rights. The Action Plan seeks to reconcile trade-based economic objectives with broader public policy objectives such as the health and welfare of Kenyan citizens, hence introducing a social dimension.

The Action Plan is guided by Kenya's aspirations under Vision 2030 and the Big 4 Agenda; as well as international and regional obligations such as the World Trade Organization (WTO) specifically Article VI of the General Agreement on Tariffs and Trade (GATT), the Agreement on Subsidies and Countervailing Measures (ASCM), the Anti-Dumping Agreement, the Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS) and the East African Community Customs Management Act (EACCMA), among others.

The Action Plan will be implemented by the National Coordination Centre through the Technical Working Groups and with the support of the Executive Forum. The Technical Working Groups shall report to the National Anti-Illicit Trade Executive Forum<sup>15</sup> and comprises of various enforcement agencies working in joint action across the country. The Action Plan shall be implemented in tandem with key institutional specific complementary policies and strategies. The Action Plan will address inconsistencies and incoherency where they exist by establishing a Coordination Mechanism at the secretariat. An effective and efficient Public-Private Partnership arrangement is envisaged for the Action Plan implementation. It is recognized that the Action Plan will be most effective when complemented by effective and efficient enforcement institutions, a supportive legal regime, adequate infrastructural capacity, appropriate human capital and skills in both the private and public sectors.

## 1.6 Objectives of the Action Plan

The overall objective of the Action Plan is to provide a framework to combat illicit trade in a synergized, coherent and collaborative manner. It synchronizes all institutional enforcement and public awareness strategies to combat illicit trade in Kenya in order to allow for reduction and elimination of the vice; and for effective monitoring and reporting. This Action Plan is therefore intended to harmonize all these efforts.

The specific objectives (SO) of the Action Plan are the following:-

**SO 1: Reduce illicit trade in the Kenyan market by 20% p.a.**

**SO 2: Strengthen the capacity of agencies to combat illicit trade**

**SO 3: Strengthen collaborations and partnerships**

**SO 4: Enhance public-private partnerships towards managing the vice**

**SO 5: Increase the level of awareness on illicit trade by 20% p.a.**

The objectives will be achieved through the following interventions: -

- a) Inter-agency coordination augmented by private sector engagement;
- b) Pursuance of a carefully articulated open public campaign to enhance consumer awareness about the dangers of illicit products so as to promote the buying of legitimate goods;
- c) Creation of an enabling environment for trade and investments to thrive, through protection and enforcement of intellectual property rights;
- d) Strengthening border enforcement; and
- e) Development of institutions, human skills capabilities and capacities to combat illicit trade.

The Action Plan prioritizes and sequences issues to be addressed as follows: -

- Formation of a permanent structure for engagement and coordination at the highest level;
- Strengthening the capacity of agencies;
- Strengthening collaboration and partnerships;
- Legal and regulatory reform;
- Enhancing public private partnerships; and
- Increasing public awareness.

<sup>15</sup> Established vide gazette notice No. 7270 of 20<sup>th</sup> July, 2018

## CHAPTER 2

# CURRENT INSTITUTIONAL STRUCTURES AND MANDATE

## 2.1. Agencies responsible for Combating Illicit Trade

The responsibility of promoting fair trade practices is currently shared by the following institutions as defined in their respective legal instruments.

## 2.2. Ministry of Industry Trade and Cooperatives, State Department of Trade

The State Department of Trade was established in 2016 with a mandate that transcends domestic and international trade. The Department performs the following functions:-

- i) Oversee implementation of Trade Policy
- ii) Oversee implementation of Buy Kenya Build Kenya Policy
- iii) Promotion of Retail and wholesale Markets
- iv) Export Promotion
- v) Fair Trade Practices
- vi) Coordination of Regional Trade matters – COMESA, AGOA, IOR-ARC & IGAD
- vii) Trade Negotiations and Advisory Services
- viii) Enforcement of International Trade Laws, Regulations and Agreements

With regard to implementation of the Action Plan to Combat Illicit Trade, the core functions of the Ministry of Industry, Trade and Cooperatives are:

- i) Strategy formulation and development of the implementation plan;
- ii) Provision of policy guidance to inter-agency institutions in respect of the strategy;
- iii) Coordination and spearheading of implementation of all aspects of the Action Plan; and
- iv) Ensuring that the Action Plan is an integral component of national trade development plans.

## 2.3. Anti-Counterfeit Authority (ACA)

The Anti-Counterfeit Authority (ACA) was established under Section 3 of the Anti-Counterfeit Act, 2008 and has been in operation since 2010, under the State Department for Trade, Ministry of Industry, Trade and Cooperatives.

The Authority is mandated to:-

- i) Enlighten and inform the public on matters relating to counterfeiting;
- ii) Combat counterfeiting, trade and other dealings in counterfeit goods in Kenya in accordance with the Anti-Counterfeit Act No. 13 of 2008 or under any other written law;
- iii) Devise and promote training programs to combat counterfeiting;
- iv) Co-ordinate with national, regional or international organizations involved in combating counterfeiting;
- v) Advise the government through the Cabinet Secretary on policies and measures concerning the necessary support, promotion and protection of intellectual property rights as well as the extent of counterfeiting;
- vi) Carry out inquiries, studies and research into matters relating to counterfeiting and the protection of intellectual property rights;
- vii) Carry out any other functions prescribed for it under any of the provisions of the Act or under any other written law; and
- viii) Perform any other duty that may directly or indirectly contribute to the attainment of the foregoing.

## 2.4. Kenya Copyright Board (KeCoBo)

The Kenya Copyright Board is a State Corporation that was established under Section 3 of the Copyright Act Cap 130 of the Laws of Kenya to administer and enforce copyright and related rights in Kenya. The Board is mandated to :-

- i) Implement copyright laws including the provisions of international treaties

- ii) License and supervise the activities of Collective Management Organizations
- iii) Facilitate training and awareness creation on copyright and related rights in Kenya
- iv) Update copyright legislation
- v) Maintain an effective database on authors and their works
- vi) Liaise with national, regional and international organizations on matters of copyright and related rights
- vii) Advise the government on matters of copyright and related rights
- viii) Facilitate the implementation of the antipiracy security device (APSD)

## 2.5. Kenya Revenue Authority (KRA)

The Kenya Revenue Authority (KRA) was established by an Act of Parliament, Chapter 469 of the laws of Kenya, and became effective in 1995. The Authority is charged with the responsibility of collecting revenue on behalf of the Government of Kenya.

KRA's core mandate is to:-

- i) enhance efficiency and effectiveness in tax administration by increasing the rate of compliance;
- ii) ensure protection of local industries and facilitating economic growth through effective administration of tax laws relating to trade;
- iii) control exit and entry points to the country to ensure that prohibited and illegal goods do not pass through Kenya's borders, among other roles.

## 2.6. The Kenya Bureau of Standards (KEBS)

The Kenya Bureau of Standards (KEBS) is a statutory body established by the Standards Act (Cap 496). Its mandate includes:-

- i) Development of standards relating to products, measurements, materials, and processes
- ii) Certification of industrial products; assistance in quality controls;
- iii) Metrology and calibration services
- iv) Testing services
- v) Compliance Assessment (Market Surveillance)
- vi) System certification
- vii) Training on standards (dissemination of information relating to standards)

## 2.7. Pharmacy and Poisons Board (PPB)

The Pharmacy and Poisons Board is the drug regulatory authority established under the Pharmacy and Poisons Act, Chapter 244 of the Laws of Kenya. The Board's main mandate is to:-

- i) Regulates the practice of pharmacy
- ii) Regulate manufacture and trade in drugs and poisons
- iii) Implement appropriate regulatory measures to achieve the highest standards of safety, efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer as envisaged by the laws regulating drugs in force in Kenya.

## 2.8. Department of Weights and Measures (W&M)

The Department of Weights and Measures (Legal metrology) falls under the Ministry of Industry, Trade and Cooperatives. The department administers two Acts of Parliament namely, the Weights and Measures Act, Cap. 513, and the Trade Descriptions Act, Cap. 505. Its mandate is to facilitate fair trade by ensuring use of accurate weighing and measuring equipment, promoting fair business practices and protecting the consumer against exploitation in the sale of goods and services.

The functions of the department include:-

- i) Establishment of a uniform system of measurement in trade,
- ii) Control of weighing and measuring equipment in use for trade,
- iii) Control of the sale of goods, and
- iv) Protecting the consumer against cheating through the use of falsehood in the sale of goods and in the provision of services in the course of trade.

## 2.9. Kenya Plant Health Inspectorate Service

Kenya Plant Health Inspectorate Service (KEPHIS) is a regulatory body established under the State Corporations Act (Cap 446) pursuant to Legal Notice No. 305 of 18th October 1996. Its responsibility is to assure the quality of agricultural inputs and produce to prevent adverse impact on the economy, the environment and human health. The mandate of KEPHIS is to provide:-

- i) Phytosanitary Services
- ii) Seed Certification Services
- iii) Analytical Chemistry and Food Safety Services

## 2.10. Kenya Industrial Property Institute

Kenya Industrial Property Institute (KIPI) is a government parastatal under the Ministry of Industry, Trade and Cooperatives. The Institute was established on 2nd May 2002 upon the coming into force of the Industrial Property Act 2001. Previously, the Institute existed as Kenya Industrial Property Office (KIPO), which was established in February 1990 after enactment of the Industrial Property Act, CAP 509 of the Laws of Kenya.

The functions of the Institute are to:-

- i) Administer industrial property rights;
- ii) Provide industrial property information to the public;
- iii) Promote inventiveness and innovativeness in Kenya; and
- iv) Provide training on Industrial Property.

## 2.11. Pest Control Products Board

The Pest Control Products Board was established by Cap 346 of the Laws of Kenya to ensure access to safe, quality and efficacious pest control products for animal, plant and human health while safeguarding their health and the environmental protection.

## 2.12. National Police Service

The National Police Service consists of the Kenya Police Service, the Administrative Police Service and the Directorate of Criminal Investigation. The NPS plays an important role in security matters as well as enforcing all laws.

## 2.13. Director of Public Prosecutions

The mandate of ODPP as derived from Article 157 of the Constitution is to institute and to undertake prosecution of criminal matters and all other related incidents. These include:

- i) Instituting and undertaking criminal proceedings against any person before any court of law except the court martial;
- ii) Taking over and continuing with any criminal proceedings commenced in any court by any

person or authority with the permission of the person or authority;

- iii) Discontinuing at any stage before judgment is delivered of any criminal proceedings with the permission of the court; and
- iv) Directing the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct.

## 2.14. The Judiciary

The Judiciary is one of the three State organs established under Chapter 10, Article 159 of the Constitution of Kenya. The Act establishes the Judiciary as an independent custodian of justice in Kenya. The institution is mandated to deliver justice in line with the Constitution and other laws. It is expected to resolve disputes in a just manner with a view to protecting the rights and liberties of all, thereby facilitating the attainment of the ideal rule of law.

The Judiciary and its related institutions (Judicial Service Commission (JSC), Kenya Law; previously National Council for Law Reporting (NCLR), Tribunals and the Judiciary Training Institute (JTI) perform the following functions;

- i) Administration of justice
- ii) Formulation and implementation of judicial policies
- iii) Compilation and dissemination of case law and other legal information for the effective administration of justice

## 2.15. Assets Recovery Agency (ARA)

The Assets Recovery Agency was created by the Proceeds of Crime and Anti-Money Laundering Act as a semi-autonomous body under the office of the Attorney General. The Agency is mandated to recover assets that were at least suspected to have been acquired illegally or with illegally acquired finances. The specific mandate of ARA include:

- a) Liaising with other investigative agencies to get information on individuals and other entities who acquire wealth through illicit trade
- b) Identification and tracing of assets obtained from proceeds of illicit trade
- c) Institution of court proceedings in freezing, seizure and confiscation of such assets
- d) Recovery of assets from all suspects of illicit trade and restoring the asset to the state or their rightful owners

## 2.16. Central Bank of Kenya and Other Financial Institutions

Illicit financial flows are the movement of illegally acquired, transferred or spent funds across borders. They have pervasive effects on a country's social and economic development. To prevent illicit financial flows, the global standards for identifying and preventing cases of money laundering need to be strengthened and enforced. This includes rules, procedures and policies for identification of politically exposed persons and beneficial owners.

The Central Bank of Kenya is responsible for formulating monetary policy to achieve and maintain price stability. The Central Bank also promotes financial stability; an effective and efficient payment, clearing and settlement system; formulates and implements foreign exchange policies; holds and manages foreign exchange reserves; issuing of currency; and is the banker for, adviser to and fiscal agent of the Government. The Bank is also legally mandated to deal with issues of counterfeiting of the currency.

Since international trade transactions are channelled through banks, financial institutions and the Central Bank of Kenya have an important role to play in curbing illicit trade. Any confirmation of payments must be cleared by anti-illicit trade interagency unit in coordination with the respective bank.

## 2.17. Trade Supportive Domestic Policies and Legislation

Kenya's domestic policies and legislation define the context in which trade is conducted in the domestic economy with the aim of providing an enabling business environment, promoting Kenya's global competitiveness, and enhancing export growth. The key trade - supportive policies and strategies inter-alia include:

- (i) Kenya Vision 2030 which defines the broad policy framework for the country
- (ii) The National Trade Policy
- (iii) Industrial Development Policy and Competition Policy
- (iv) National Export Development and Promotion Strategy (NEDPS)
- (v) Investment Policy

In addition to the trade supportive policies and strategies above, Kenya also has trade-supportive

legislation. These include: Constitution of the Republic of Kenya, 2010, EAC Customs Management Act 2004, Competition Act 2010, Consumer Protection Act No 46 of 2012, Trademark Act Cap 506, Industrial Property Act 2001, Trade Remedies Act, 2017, among others.

## 2.18. External Obligations

### (a) East African Community (EAC)

Kenya, Tanzania, Uganda, Rwanda and Burundi form the East African Community. The EAC trading bloc brings the six countries together on issues of economic, social and political cooperation. EAC integration has expanded the market for goods through adoption of a Common External Tariff (CET). The East African Community Customs Management Act of 2004 recognizes the adverse effects of unfair trade and prohibits the importation of counterfeit goods into the EAC region, and has provisions for imposition of anti-dumping and countervailing duties, among others (Section 137 on Anti-Dumping and Countervailing Duties). Kenya, therefore, has an obligation to enforce the provisions of the EACMA Act for the health and welfare of Kenyan and EAC citizens.

### (b) World Trade Organization (WTO)

Kenya is a member of the World Trade Organization (WTO), an international rule making organization for world trade. The WTO administers several Agreements including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS requires WTO members to provide protection for IP rights covering copyright rights, geographical indications, industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; and undisclosed or confidential information. WTO Members are required to make available the necessary border measures to control counterfeit/piracy trade and, when counterfeiting and piracy is wilful and on a commercial scale, apply criminal procedures. Kenya, therefore, has an obligation under TRIPS to combat illicit trade, and in particular, IPR infringement.

Other obligations can be found in multilateral agreements such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), World Customs Organisation World Intellectual Property Organization, among others.

# CHAPTER 3

## SITUATIONAL ANALYSIS

The operations of existing agencies are carried out in a dynamic environment. The constant changes within and outside the agencies affect the operations and can either impede or facilitate the achievement of the objectives. An analysis of the external and internal environment was undertaken as part of the strategic planning process. The objective of SCOT analysis was to provide detailed information on how internal and external environments impact on the operations of the Agency. The SCOT analysis explores the strengths and challenges while the external environment provides the opportunities that are available and the threats that may affect operations for combating illicit trade. PESTEL and stakeholder analysis were also undertaken in order to describe and appreciate environment under which the operations will be undertaken. Such analyses will allow the inter-agency team to find the best match between environmental trends and internal capabilities.

### 3.1. SCOT Analysis

The following strengths, challenges, opportunities and threats are likely to affect the fight against illicit trade.

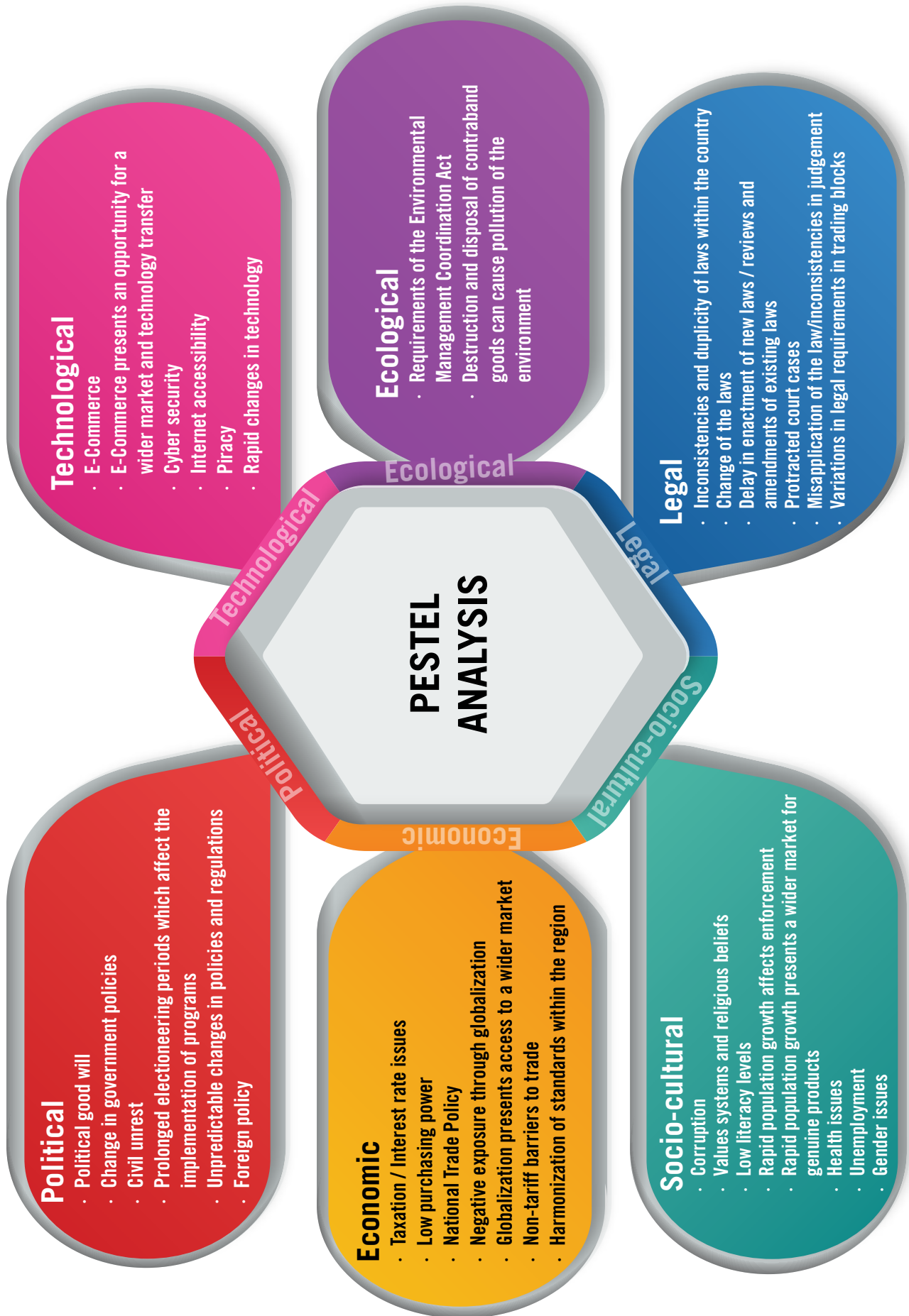
Table 2: SCOT Analysis

<p><b>Strengths</b></p> <p>Strengths are internal, positive attributes that fall within the Inter- Agency's control.</p>	<ul style="list-style-type: none"> <li>• Competent staff in all Agencies</li> <li>• Workforce Diversity</li> <li>• Inter-Agency transfer of skills and knowledge</li> <li>• Government funding which facilitates operations</li> <li>• Specialized capabilities within the Agencies</li> <li>• Enabling legal instruments</li> <li>• Established systems and processes</li> <li>• Availability of Modern equipment</li> <li>• Automated systems</li> </ul>
<p><b>Challenges</b></p> <p>Challenges are negative factors that detract from the Inter- Agency's strengths and must be checked to enable attainment of Objectives.</p>	<ul style="list-style-type: none"> <li>• Inadequate staff in technical areas</li> <li>• Uncompetitive remuneration</li> <li>• Moral decay which affects efficiency in delivery of service</li> <li>• Low level of commitment</li> <li>• Inadequate training which affects competency of staff</li> <li>• Inadequate product knowledge</li> <li>• Lack of succession planning</li> <li>• High staff turnover</li> <li>• Delays in disbursement of funds</li> <li>• Poor coordination of interagency activities</li> <li>• Inadequate knowledge management</li> <li>• Poor coordination between the National and County governments</li> <li>• Low regional coverage</li> <li>• Lack of harmonization of legal instruments</li> <li>• Outdated legal instruments</li> <li>• Overlapping mandates among the Agencies</li> <li>• Slow update of legal instruments</li> <li>• Bureaucracy</li> <li>• Inadequate and obsolete ICT systems</li> <li>• Inadequate SOPs</li> <li>• Poor uptake of emerging technologies</li> </ul>

<p><b>Opportunities</b></p> <p>Opportunities are external factors to the Inter- Agency operational environment likely to contribute to its success. The Inter- Agency can take advantage of them in order to enhance its ability to meet its objectives.</p>	<ul style="list-style-type: none"> <li>• Political good will</li> <li>• Foreign policy provides an opportunity for strategic multilateral partnerships</li> <li>• Donor funding which enhances operations</li> <li>• National Trade Policy</li> <li>• Globalization presents access to a wider market</li> <li>• Harmonization of standards within the region provides an opportunity to enhance requirements</li> <li>• Cultural value systems and religious beliefs presents an opportunity for cohesion</li> <li>• Rapid population growth presents a wider market for genuine products</li> <li>• Gender issues</li> <li>• E-Commerce presents an opportunity for a wider market</li> <li>• Internet accessibility presents an opportunity to leverage on technology.</li> </ul>
<p><b>Threats</b></p> <p>Threats are external factors that could reduce performance levels. The Inter- Agency has no control over them but may put in place contingency plans for addressing them if they occur.</p>	<ul style="list-style-type: none"> <li>• Change in government policies, structures and regulations can affect Inter- Agency operations</li> <li>• Civil unrest can interrupt business operations</li> <li>• Prolonged electioneering periods which affect the implementation of programs</li> <li>• Taxation / Interest rate issues affects pricing of products making genuine products inaccessible to low income earners</li> <li>• Low purchasing power which exposes the public to illicit products</li> <li>• Negative exposure through globalization</li> <li>• Non-tariff barriers to trade</li> <li>• Corruption affects efficiency in service Delivery</li> <li>• Low literacy levels lead to low understanding of product requirements</li> <li>• Rapid population growth affects enforcement</li> <li>• Health issues</li> <li>• Unemployment predisposes the public to illicit trade</li> <li>• E-Commerce which proliferates illicit trade</li> <li>• Cyber security</li> <li>• Rapid changes in technology</li> <li>• Requirements of the Environmental Management Coordination Act</li> <li>• Destruction and disposal of contraband goods can cause pollution of the environment</li> <li>• Inconsistencies and duplicity of laws within the country</li> <li>• Change of the laws</li> <li>• Delay in enactment of new laws / reviews and amendments of existing laws</li> <li>• Protracted court cases which affects efficiency</li> <li>• Variations in legal requirements in trading blocks</li> </ul>

### 3.2. PESTEL Analysis

Outlined herein are Political, Economic, Sociocultural, Technological, Ecological and Legal issues which are considered important for this Action Plan.



### 3.3. Conversion strategies

The inter agency forum will leverage on the strengths to build robust systems for the realization of this Action Plan. The forum will seize the opportunities and the strengths so as to convert challenges and manage threats while minimizing their impacts on genuine business. The core competencies and capabilities that exist among the agencies will be useful with effective coordination of activities.

#### a) Political issues

One of the key drivers for economic development is industrialization. However, this cannot be realized if the business environment facilitates illicit trade. Some of the threats identified in the PESTEL which include changes in government policies and governance structure, civil unrest, and changes in foreign policies may affect the realization of the objectives of this Action Plan. These threats will be mitigated through institutionalization of policies and regulations, creation of awareness amongst the public on socio- economic effects of illicit trade, enforcement of law and order and enhanced stakeholder engagement. Inter-Agency collaboration will leverage on the political will to fight illicit trade.

#### b) Economic issues

PESTEL identified low purchasing power which has increased the demand for cheap counterfeit and/or substandard products, negative exposure as a result of globalization etc. as complicating the fight against illicit trade. The Action Plan will seek to increase public awareness, enhance stakeholder engagement, create an environment for manufacture of affordable quality products and increased participation in regional and international standards setting.

#### c) Technological issues

Technology has exposed organizations to cybercrime and enabled infringement of intellectual property rights through piracy. Technology has enhanced communication with the illicit trade networks and eased financial transactions.

Technological threats can, inter-alia, be addressed through enactment, strengthening and enforcement of laws, enhance existing systems, implementation of information security management system. Each agency is expected to institutionalize measure that will ensure information security and technological advancement to augment the fight against illicit trade. This Action Plan will leverage on technological advancement to enhance the fight against illicit trade.

#### d) Legal issues

Agencies that are mandated to deal with illicit trade are established by different legal instruments, sometimes with overlapping mandates. There has also been no effective coordination of the activities of these agencies and this has created gaps that illicit trade networks have exploited to the disadvantage of the businesses, consumers and the government. Some of the notable threats to the fight against illicit trade include inconsistencies and duplicity of laws, delay in enactment of new laws/reviews and amendments of existing laws, protracted court cases, misapplication of the law/inconsistencies in judgement and variations in legal requirements in trading blocks. These threats will only be addressed through a review of existing legal instruments, building the capacity of judicial officers and harmonization of laws within the country and region.

### 3.4. Stakeholder Analysis

The Inter-Agency Executive Forum has members drawn from different agencies mandated with the responsibility of combating illicit trade. These agencies have strong linkages with various government ministries and agencies; the private sector; customer and customer organizations; and research institutes. Each of these stakeholders has certain expectations that should be considered in the implementation of this Action Plan. It is important to note that these stakeholders may affect or be affected by the implementation of this Action Plan. The following table presents a stakeholders' analysis, which highlights needs and expectations as well as the inter-agency's expectations:

Table 3: Stakeholder Analysis

STAKEHOLDER	STAKEHOLDER EXPECTATION	INTERAGENCY EXPECTATION
Consumers	<ul style="list-style-type: none"> <li>• Access to genuine products</li> <li>• Health &amp; safety protection</li> <li>• Access to information on products in the market</li> <li>• Access to justice</li> <li>• Improved standards of living</li> <li>• Value for money</li> </ul>	<ul style="list-style-type: none"> <li>• Sharing of information on products in the market through provided channels</li> <li>• Mutually beneficial relationship</li> </ul>
Manufacturers / Producers / Intellectual Property Rights owners	<ul style="list-style-type: none"> <li>• Protection of their rights (Intellectual Property Rights)</li> <li>• Conducive business environment</li> <li>• Access to business information</li> <li>• Mutual beneficial engagement</li> <li>• Stability and political good will</li> <li>• Access to justice</li> <li>• Fair trade</li> <li>• Compliance with Service Delivery Timelines</li> <li>• Stability and political good will</li> <li>• Access to quality raw materials/inputs</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance with the Law</li> <li>• Provision of product information</li> <li>• Mutual beneficial engagement</li> </ul>
Distributors (Wholesalers & Retailers)	<ul style="list-style-type: none"> <li>• Protection of their rights</li> <li>• Access to business information</li> <li>• Mutual beneficial engagement</li> <li>• Access to justice</li> <li>• Fair trade</li> <li>• Compliance with Service Delivery Charters</li> <li>• Access to quality products</li> <li>• Capacity building</li> <li>• Access to quality genuine products</li> </ul>	<ul style="list-style-type: none"> <li>• Mutual beneficial engagement</li> <li>• Sharing information</li> </ul>
Importers/ Exporters	<ul style="list-style-type: none"> <li>• Protection of their rights (Intellectual Property Rights)</li> <li>• Conducive business environment</li> <li>• Access to business information</li> <li>• Mutual beneficial engagement</li> <li>• Stability and political good will</li> <li>• Access to justice</li> <li>• Fair trade</li> <li>• Compliance with Service Delivery Timelines</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance with the Law</li> <li>• Provision of information</li> <li>• Mutual beneficial engagement</li> </ul>
National government (Executive)	<ul style="list-style-type: none"> <li>• Compliance with legal requirements / policies / directives</li> <li>• Efficient and effective delivery of services</li> <li>• Accountability and good governance</li> <li>• Revenue increase</li> </ul>	<ul style="list-style-type: none"> <li>• Timely response to requests</li> <li>• Timely release of funds</li> </ul>
Legislature	<ul style="list-style-type: none"> <li>• Public participation in the legislative process</li> <li>• Access to information on deliberations on trade issues</li> </ul>	

STAKEHOLDER	STAKEHOLDER EXPECTATION	INTERAGENCY EXPECTATION
County governments	<ul style="list-style-type: none"> <li>• Legal compliance</li> <li>• Efficient service delivery</li> <li>• Collaborations and partnerships</li> <li>• Capacity building</li> <li>• Mutual beneficial engagement</li> <li>• Enforcement and awareness</li> </ul>	<ul style="list-style-type: none"> <li>• Timely response to requests</li> <li>• Timely release of funds</li> </ul>
Regulatory Agencies	<ul style="list-style-type: none"> <li>• Collaborations and partnerships among Agencies</li> <li>• Provision of resources</li> <li>• Capacity building</li> <li>• Mutual beneficial engagement</li> <li>• Enabling legal instruments</li> <li>• Efficient adjudication of cases</li> <li>• Staff security</li> <li>• Political good will</li> </ul>	<ul style="list-style-type: none"> <li>• Collaborations and partnerships among agencies</li> <li>• Sharing of Information</li> </ul>
Development Partners	<ul style="list-style-type: none"> <li>• Collaborations and partnerships among Agencies</li> <li>• Mutual beneficial engagement</li> <li>• Efficient delivery of services</li> <li>• Stability and political good will</li> <li>• Access to information</li> <li>• Accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Collaborations and partnerships</li> <li>• Sharing of information</li> <li>• Timely release of funds</li> </ul>
Employees and Boards of different agencies	<ul style="list-style-type: none"> <li>• Conducive work environment</li> <li>• Staff security</li> <li>• Competitive remuneration</li> <li>• Support from the government</li> <li>• Provision of resources</li> <li>• Access to justice</li> <li>• Access to information</li> <li>• Mutual beneficial engagement</li> <li>• Compliance with legal requirements / policies / directives</li> <li>• Capacity building</li> </ul>	<ul style="list-style-type: none"> <li>• Productivity</li> <li>• Compliance with Leadership and Integrity Act (LIA)</li> <li>• </li> </ul>
Formal & Informal sector	<ul style="list-style-type: none"> <li>• Capacity building</li> <li>• Fair trade practices</li> <li>• Conducive business environment</li> <li>• Access to information</li> <li>• Access to justice</li> <li>• Compliance with Service Delivery Charters</li> </ul>	<ul style="list-style-type: none"> <li>• Productivity</li> <li>• Compliance with Leadership and Integrity Act (LIA)</li> </ul>
Regional and international bodies	<ul style="list-style-type: none"> <li>• Compliance with standards, regulations and international obligations</li> <li>• Ratification of the conventions related to IP</li> <li>• Access to information</li> <li>• Collaborations and partnerships</li> </ul>	<ul style="list-style-type: none"> <li>• Access to information</li> <li>• Collaborations and partnerships</li> </ul>
Learning and Research Institutions	<ul style="list-style-type: none"> <li>• Access to information</li> <li>• Collaborations and partnerships</li> <li>• Protection of their Intellectual Property Rights</li> </ul>	<ul style="list-style-type: none"> <li>• Access to information</li> <li>• Collaborations and partnerships</li> </ul>

# CHAPTER 4

## STRATEGIC DIRECTION

### 4.1. Scope

This Action Plan will cover IPR violations, substandard goods, contraband, undercustomed, uncustomed goods and trade misdescriptions. Other unfair trading practices, and in particular dumping and subsidization shall be dealt with separately by the Kenya Trade Remedies Agency (KETRA), as the technicalities involved in determining dumping or subsidization are guided by WTO rules.

### 4.2. Objective of the Action Plan

The overall objective of the Action Plan is to provide a framework for combating illicit trade in a synergized, and collaborative manner. The Action Plan shall therefore synchronize all institutional enforcement and public awareness strategies to combat illicit trade in Kenya for effective implementation, monitoring, evaluation and reporting. This Action Plan is intended to harmonize all these strategies into a single document, without undermining the mandate of individual institutions.

### 4.3. Strategic Objectives

The following strategic objectives and related strategies will be pursued in the FY 2018-2022 strategic period.

#### SO 1: Reduce illicit trade in the Kenyan market by 20% p.a.

- a) Undertake surveys and update a database on the level and magnitude of illicit trade.
- b) Undertake risk assessment and profiling of illicit trade.
- c) Market surveillance and inspection.
- d) Investigation of cases on illicit trade.
- e) Prosecution and determination of cases on illicit trade.
- f) Disposal of condemned illicit products.
- g) Prevent entry of foreigners involved in illicit trade.
- h) Recover assets from proceeds of illicit trade.

#### SO 2: Strengthen the capacity of agencies to combat illicit trade.

- a) Recruitment and training of staff.
- b) Procurement of motor vehicles, plant and equipment.
- c) Mobilization of financial resources.
- d) Automation of key processes and integration.
- e) Establishment of a Call Centre.
- f) Review of relevant laws and policies.

#### SO 3: Strengthen collaborations and partnerships.

- a) Coordination between County and National government, MDAs.
- b) Collaboration with financial institutions (to deal with illicit financial flows).
- c) Collaboration with regional agencies.
- d) Collaboration with international organizations.
- e) Collaboration with international associations.
- f) Partnerships with international agencies along the supply chain (source, transit and destination).

#### SO 4: Enhance public-private partnerships towards managing the vice.

- a) Develop and implement a community engagement framework.
- b) Develop and implement a public-private partnership framework.

#### SO 5: Increase the level of awareness on illicit trade by 20% p.a.

- a) Undertake surveys to determine the level of awareness and behaviour change on illicit trade.
- b) Develop and implement a capacity building framework.
- c) Develop and implement an outreach framework.

The implementation of the objectives will be as presented in the implementation matrix in Annex 1.

The Action Plan will pursue a comprehensive, coherent and integrated approach to achieve its objectives by:

- (i) Setting and re-defining Government Policy relating to Illicit Trade;
- (ii) Designing appropriate complementary measures to dismantle illicit trade cartels and networks;
- (iii) Increasing support to the multi-agency team to facilitate coordinated functions;
- (iv) Mobilize resources for the multi-agency team in order to enhance efficiency in the execution of their duties;
- (v) Improving co-ordination of institutions and agencies responsible for enforcement; and
- (vi) Ensuring effective participation of key stakeholders.

#### 4.4. Guiding Principles

The Action Plan will be guided by the following principles:

- (i) Support for the country's Vision 2030 and Big 4 Agenda;
- (ii) Fostering of a Private Sector Partnership approach in the implementation and monitoring of the vice;
- (iii) A coordinated approach to implementation with emphasis on coherence, synergies and complementarities;
- (iv) Strengthening the capacity of enforcement officers to engage in identification; surveillance and monitoring of the vice through improved logistical support and organized coordination; and
- (v) Defining intervention targets but remaining aware of the need to ensure that efforts to stamp out illicit trade do not imperil legitimate businesses.

#### 4.5. Inter-Agency Mission

The Inter-Agency's Mission is to support fair trade practices, promote health and safety of Kenyans and grow the economy.

#### 4.6. Implementation

Each agency shall develop an implementation plan based on the matrix. Institutional budgets shall provide for activities identified in the Action Plan.

The Secretariat shall develop a work plan and budget for logistical and technical support in crosscutting issues. The implementation budget shall be provided by the host Ministry/Department to the Secretariat.

#### 4.7. Monitoring, Evaluation, Reporting

##### a) Monitoring and evaluation

An implementation framework shall be developed by each agency. Monitoring will be done on monthly, quarterly, and annual basis. Overall monitoring and Evaluation shall be done by the Secretariat, which shall report to the Coordination Centre on a quarterly basis.

All agencies will be required to take action to address the deviations identified during monitoring and evaluation.

##### b) Reporting

All agencies will be required to submit reports on the achievements realized on a quarterly basis by the 15th of the succeeding month after the end of a quarter. The secretariat will analyse the results and give feedback to respective agencies for further action.

##### c) Evaluation of the implementation of the Action Plan

The duration of the Action Plan is 5 years, FY 2018/19-2023/24. A mid-term evaluation of the implementation of the Action Plan will be done and an end term evaluation will be done at the end of the implementation period.

# CHAPTER 5

## IMPLEMENTATION FRAMEWORK

One of the challenges that were identified by situational analysis was poor implementation of policies against illicit trade, and a lack of coordination among enforcement agencies and across borders, which allows criminal networks to evade detection and enforcement. Successful implementation of the Action Plan is dependent on sound institutional capacity in terms of structure, strategic partnerships, legal framework, risk management and resource mobilization. The Action Plan seeks to address these issues as follows:

### 5.1. Legal and institutional reforms

A major setback in the effort to control illicit trade is the inadequate and sometimes inconsistent legal framework. For instance, existing legislation and policies have loopholes that make it difficult to sustain litigations and each institution has an establishing statute. On the other hand, some legislation such as Kenyan tax laws promotes illicit trade due to differences in the tax regimes in the EAC member states. Other laws such as the Tobacco Control Act do not allow advertisement of the dangers of consuming tobacco products, yet consumer education and awareness is key in discouraging the demand for illicit tobacco products. Thus, it is necessary that legal and institutional reforms be undertaken to strengthen the fight against illicit trade.

### 5.2. Establish and Institutionalize Inter-Agency Coordination

An appropriate organizational structure is necessary to enhance coordination, management, communication flow and reporting linkages, all of which are crucial for effective implementation of the Action Plan. An effective structure for coordination of multiple agencies requires benchmarking with relevant jurisdictions.

#### a) The US Model

The US has a National IPR Coordination Centre (IPR Centre) that brings together 23 partner agencies and industry consisting of 19 key federal agencies, Interpol, Europol and the governments of Canada and Mexico in a task-force setting. The task force structure enables the IPR Centre to effectively leverage the resources, skills, and authorities of each partner and provide a comprehensive response to IP theft. The IPR Centre is led by a Director who is assisted by Deputy Directors.

IPR Centre partners employ a strategic approach to combat IP Theft. That approach includes: Investigation, Interdiction and Outreach and Training.

The US President has established the Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC) who coordinates and develops the United States' overall intellectual property policy and Action Plan, to promote innovation & creativity, and to ensure effective intellectual property protection and enforcement, domestically and abroad. The IPEC is appointed by the President and confirmed by the Senate.

Through an Executive Order, the US President also established the IP Enforcement Advisory Committee consisting of Senate-confirmed members. The IPEC chairs this committee.

The duties of IPEC include:

- Chair Interagency IP Enforcement Advisory Committee
- Coordinate the development of Joint Strategic Plan by the Advisory Committee
- Assist in the implementation of the Joint Strategic Plan
- Facilitate the issuance of policy guidelines
- Report to the President and Congress

The IPEC has established the White House Intellectual Property Strategy Group that regularly brings together the National Economic Council (NEC), National Security Council (NSC), Office of Science and Technology Policy (OSTP), Council of Economic Advisors (CEA), Office of the Vice President (OVP), Office of the U.S. Trade Representative (USTR), other relevant White House Offices, and Departments and Agencies.

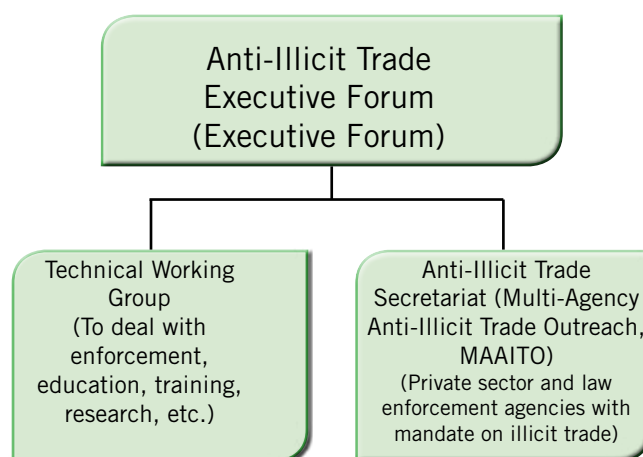
## b) The Kenyan Model

### I. Current Model

The current inter-agency model was established via the gazette notice No. 7270 of 20th July 2018. It consists of two layers: at the top is the Inter-Agency Anti-Illicit Trade Executive Forum (Executive Forum) and at the bottom is the technical working group. The Executive Forum is the policy organ with over 20 members from government and the private sector mandated to provide policy direction on matters illicit trade. The Technical Working Group is the implementing arm, which consists of technical officers from the institutions who sit in the Executive Forum. The Technical Working Group brings together law enforcement agencies and they are expected to have a coordinated approach when dealing with illicit trade in the areas of enforcement, education, training, research, etc. The Executive Forum is chaired by the Principal Secretary of the State Department of Trade, Ministry of Industry, Trade and Cooperatives, and deputised by the Chief Executive of the Kenya Association of Manufacturers.

One of the challenges faced by the Executive Forum was coordination across different government ministries. This is because the coordinating ministry is at the same level as the other ministries. This created a challenge in terms of mobilizing human, financial and non-financial resources. To resolve the challenge, the Head of State appointed Mr. Wanyama Musiambo (based at the Office of the President) to lead and coordinate a multi-agency enforcement team against illicit trade. While the OP coordinated enforcement issues, the State Department of Trade in the Ministry of Industry, Trade and Cooperatives was left to coordinate a multi-agency anti-illicit trade outreach program. Technically, this led to two groups: enforcement team being coordinated from the Office of the President, and the awareness team being coordinated from the State Department of Trade.

The structure for this multi-agency coordination is shown below.



The above structure brought a number of challenges:-

- i) Reporting: The technical working group was reporting to the Executive Forum. The Deputy Head of Public Service was coordinating the multi-agency enforcement team and also sitting in the Executive Forum. His position (hierarchy) in the Forum was also not clear. The PS Trade was also coordinating the multi-agency outreach program, yet he was chairing the Executive Forum.
- ii) Sustainability: The Deputy Head of Public Service was appointed in person to lead the multi-agency team. An office was not created to undertake the coordination role nor was the mandate of that office enhanced to include multi-agency coordination. This brought the challenge of sustainability.

### II. Proposed Kenyan Model

It is proposed that an inter-agency model for Kenya that mirrors that of the US; that is sustainable, well-resourced and effective be developed. The model will also be informed by the current structures that have been established to coordinate efforts towards combatting illicit trade.

Structured and coordinated engagement with the different agencies mandated to fight illicit trade is necessary to collaboratively combat the vice. A multi-agency team to counter illicit trade has therefore been established to foster coordination between the different agencies administering and enforcing fair trade practices, optimize resource utilization and to foster the sharing of intelligence. At the helm of the inter-agency coordination structure is the National

Anti-Illicit Trade Coordination Centre comprising of Principal Secretaries of line ministries responsible for promoting fair trade practices.

A Secretariat shall be established to support the Coordination Centre. The Secretariat will be the liaison between the Coordination Centre and the Executive Forum. The Anti-Illicit Trade Executive Forum comprises CEOs of enforcement agencies, ministries, private sector and the working group. The Executive Forum shall provide managerial guidance through the Secretariat while the overall mandate to oversee the coordination shall reside with the National Anti-Illicit Trade Coordination Centre. It is important to note that the Executive Order No.1 of 2018 was issued before this Action Plan was developed. Based on international best practice and on-ground practical experience, however, the overall coordination of this Action Plan is best positioned at the National Anti-Illicit Trade Coordination Centre.

Currently, a working group that has been undertaking the rapid results initiatives for combating illicit trade is in place. The working group is being coordinated by the Deputy Head of Public Service in the Office of the President. To ensure sustainability of the work of the inter-agency team, there is need to entrench inter-agency coordination in the office of the president. It should be noted that the mandate of each institution under the multi-agency team is not ceded to the team. As such, the institutions shall retain their respective mandates and continue with usual functions. However, coordination between the institutions shall be synergized and strengthened for better outcomes. With the devolved system of government, institutional collaboration and coordination among agencies involved in counter illicit trade at the county level will be prioritized.

The Kenyan model can be summarized as indicated in the figure below. A budget on the resource requirements to implement the framework will be prepared.



### 5.3. Membership and Roles

#### 5.3.1 National Anti-Illicit Trade Coordination Committee (NATCoC)

The NaTCoC is the apex body mandated with the overall coordination and provision of policy guidelines on the fight against illicit trade. The body must be anchored in the highest office and empowered to coordinate efforts across government ministries, departments and agencies and to mobilize necessary resources for effective implementation of the Action Plan.

**Membership:**

- Principal Secretaries of line ministries responsible for promoting fair trade practices
- Private sector
- Chairperson – an appointee of the President

**Roles:**

- 1) Advise the Cabinet on all matters involving illicit trade including policy, laws, and regulations to strengthen the war against illicit trade;
- 2) Oversee the coordination with other ministries, departments and agencies and county governments with regard to issues of illicit trade;
- 3) Consider and approve the National Action Plan on Combating Illicit Trade;
- 4) Mobilize resources to implement the National Action Plan;
- 5) Develop a financing strategy with legal backing to compel inter-agency institutions to contribute towards the implementation of the Action Plan;
- 6) Dispute resolution involving agencies;
- 7) Submit an annual report on its work to the Cabinet; and
- 8) Perform any other functions as directed by the Cabinet.

**Roles:**

- 1) Coordinate with other ministries, departments and agencies and county governments with regard to issues of illicit trade;
- 2) Develop the national Action Plan on combating illicit trade;
- 3) Coordinate the surveillance and investigations of the sources of merchandise that infringe on various laws, regulations and policies which form part of illicit trade;
- 4) Coordinate the enforcement of various laws, regulations and policies on illicit trade;
- 5) Coordinate with county governments on enforcement of laws to combat illicit trade;
- 6) Coordinate with KRA on the importation and exportation of merchandise that are illicit in nature;
- 7) Monitor and review the implementation of the Action Plan;
- 8) Review the work of the Multi-Agency working groups on a quarterly basis;
- 9) Submit semi-annual report on its work to the Coordination Committee; and
- 10) Perform any other functions as directed by the Coordination Committee.

The decisions of the Executive Forum will be implemented by the public awareness/outreach working group and the enforcement working group.

There will be a Secretariat to support the Coordination Centre and serve as the liaison between the Coordination Centre and the Executive Forum.

### 5.3.2 Anti-Illicit Trade Executive Forum

The Executive Forum shall provide managerial guidance in the war against illicit trade through the Secretariat.

**Membership:**

- CEOs of enforcement agencies, ministries, private sector and the working group.
- Chairperson: private sector and public sector.

#### 5.3.2.1 Public Awareness/Outreach

The Public Awareness/Outreach Working Group is responsible for coordinating multi-agency efforts towards sensitizing the public about the dangers of illicit trade as well as training various stakeholders. Outreach is a key component of the inter-agency operations. Public awareness programs are expected to promote understanding of illicit trade and the associated economic and social harm. It is important for consumers, right-holders and government officials to be aware of the problem, understand the economic and social effects, and to know what concerned parties can do to combat the vice.

The following group shall undertake the following tasks, among others:

- 1) Design and conduct joint campaigns against illicit trade;
- 2) Design and conduct joint training on illicit trade.
- 3) Design and conduct joint research on illicit trade;
- 4) Develop a means to receive and organize information regarding illicit trade from domestic and international law enforcement agencies;
- 5) Collect and integrate information on illicit trade from domestic and international law enforcement agencies;
- 6) Develop an overall communication strategy on enforcement-related activities including the use of social media networks and the design and development of an exclusive enforcement related website in close cooperation with the private sector; and
- 7) Design nationwide awareness campaigns, which will educate the public and decision makers on the harms and costs of illicit trade and raise awareness.

### 5.3.2.2 Enforcement

The Enforcement Working Group will combat illicit trade through surveillance, interdiction investigations and other appropriate action. The Working Group will leverage strategic linkages and alliances with other enforcement agencies.

The group shall undertake the following tasks, among others:

- 1) Undertake surveillance and investigations of the sources of merchandise that infringe on various laws, regulations and policies which form part of illicit trade;
- 2) Enforce various laws, regulations and policies on illicit trade;
- 3) Take measures to stop the importation and exportation of merchandise that are illicit in nature;
- 4) Engage in international interdiction of merchandise destined for Kenya that are illicit in nature;
- 5) Develop and implement risk-based alert systems, in coordination with KRA, to improve the targeting of persons that deal with illicit trade; and
- 6) Coordinate with the Offices of the Director of Public Prosecutions in order to develop expertise in, and assist with the investigation and prosecution of, crimes relating to illicit trade.

## 5.4. Roles of Public and Private Sectors and Standard Operating Procedures

For effective implementation of the Action Plan with respect to combating illicit trade, there is a need to define the roles of the private and public sector players.

Roles of the public sector:-

- Share intelligence on illicit trade
- Undertake surveillance, investigations and prosecution of cases
- Provide adequate and timely evidence to facilitate prosecution
- Contribute towards implementation of the Action Plan
- Destroy goods that have been condemned and issue certificate of destruction
- Maintain high standards of confidentiality and integrity

Roles of the private sector:-

- Share intelligence on illicit trade
- Participate in surveillance, investigations and prosecution of cases
- Provide adequate and timely evidence to facilitate prosecution
- Participate in public awareness activities
- Contribute towards implementation of the Action Plan
- Maintain high standards of confidentiality and integrity

Standard operating procedures (SOPs) will be developed and revised when required to guide effective engagements between the public and private sector players.

## 5.5. Private Sector Partnerships (Public–Private Partnerships)

Effective cooperation between private sector and public authorities is a key element in combating illicit trade. This is specifically important for IPR protection and policing. While industry has the primary responsibility for protecting its intellectual property, government plays a critical role in ensuring there is an effective IPR protection regime in place and enforcing the relevant laws and regulations.

Right holders have the technical expertise to distinguish counterfeits from original products and know the supply chain involved in manufacturing, distributing and selling their products, and can assist government in investigations and enforcements actions. Partnerships between manufacturers and government agencies will provide the technical expertise to enable authorities to intervene.

The following actions shall be undertaken:

- a) Undertake cooperative actions together with private sector to build strategies to promote genuine business and to promote and spread successful private sector strategies;
- b) Cooperate with private stakeholders to build an electronic information exchange, an early warning system on counterfeit and pirated products and a well-functioning company product registration system;
- c) Enhance pre-seizure information sharing with right holders about samples of products and packaging to aid customs in determining compliance of products; and
- d) Participate in the Interface Public Members (IPM) database program of the World Customs Organization (WCO) to facilitate communication and information exchange between right holders and Kenyan customs authorities and to receive access to training and product information on the 'genuine/fake' database.

## 5.6. Technical capacity building

The successful fight against illicit trade is dependent upon efficiency in enforcement. Therefore, in addition to reform of legislation, measures for improving knowledge, enhancing training, and developing skill capacities and competences should be put in place. In particular, the following require immediate attention;

- a) Enhanced knowledge on best public and private sector practices to combat illicit trade;
- b) Enhanced expertise of persons involved in the enforcement actions by providing an on-line inventory of available, relevant training programs and initiatives offered and organized at international level;
- c) Expanded cooperation with international organizations with a view to enforcement authorities such as police, prosecutors and customs participating in seminars organized

by specialist IP enforcement representatives from the World Customs Organization, Interpol, Europol and UNICRI (United Nations Inter-Regional Crime and Justice Institute). These enforcement seminars will secure a more sustainable flow of knowledge and learning throughout Kenyan enforcement agencies.

## 5.7. Establish Communication Structure

To improve and simplify illicit trade reporting, structures will be put in place to support inter-agency communication. The Outreach Working Group shall be responsible to develop a comprehensive communication Strategy, including a call centre to respond to issues on illicit trade.

## 5.8. Establish national, regional and international collaborations for the effective combat of illicit trade

Enforcement agencies will sign the International Declaration of Intent to Prevent the Maritime Transport of Counterfeit Goods (DOI). The Declaration is a direct reaction to the concerns raised by the brand owners that vessels transporting their legitimate products are also exploited by criminal networks to transport fake versions of their products. It calls on the maritime transport industry to address counterfeits through continuous proactive measures, and corporate social responsibility principles. The Declaration includes a zero tolerance policy on counterfeiting, strict supply chain controls and other due diligence checks to stop business cooperation with those suspected of dealing in the counterfeit trade.

Kenyan agencies signing DOI paves way for new voluntary collaboration programmes between intermediaries and brand owners to stop abuse of the global supply chain by counterfeiters.

## 5.9. Risk management

The war against illicit trade is faced with many risks from within and from the external environment.

The risks stem from a wide variety of sources including financial uncertainty, legal liabilities, IT security threats and data-related risks, among others. A risk management framework has been developed for crosscutting risks to ensure that all the potential risks are considered and the opportunities optimized. However, all the agencies will be required to develop comprehensive risk management plan.

No.	Risk Factor	Rating	Controls
1.	Inadequate support and goodwill from stakeholders	Medium	<ul style="list-style-type: none"> <li>• Lobbying</li> <li>• Regular performance reporting</li> <li>• Regular Executive forum meetings with CEOs of these organisations</li> <li>• Build consumer awareness</li> <li>• Establish strong linkages with consumer organisations</li> <li>• Formal stakeholder gatherings</li> <li>• Issue-based decisions</li> </ul>
2.	Inadequate resources	High	<ul style="list-style-type: none"> <li>• Develop annual work plans and budgets</li> <li>• Lobby for more funds from government</li> <li>• Efficiency in resource utilisation</li> <li>• Documentation and reporting on resource utilisation</li> <li>• Approach donors to support capacity building, technical assistance and exchange programmes</li> </ul>
3.	Inadequate co-ordination and collaboration from other agencies implementing fair trade practices at national and regional level	Low	<ul style="list-style-type: none"> <li>• Strengthen Secretariat coordination role</li> <li>• Establish information sharing channels with national, regional and international organisations</li> </ul>
4.	Corruption	High	<ul style="list-style-type: none"> <li>• Good corporate governance</li> <li>• Building strong ethical practices</li> </ul>
5.	Political interference	Low	<ul style="list-style-type: none"> <li>• Engage under relevant structures</li> </ul>

## 5.10. Resource Mobilization

A resource analysis to identify the resource gaps is required for the achievement of this Action Plan. A Resource Mobilization Strategy will be developed and implemented by each agency during the Action Plan period. The resources required shall be included in the individual agency's budgetary estimates.

## Annex 1: Implementation Matrix

Objectives	Agency Strategy	Measure	Baseline	Target	Timelines	Responsibility	Budget (Kshs, bn) <sup>16</sup>	Source of Funds	Remarks
1 Reduce illicit trade in the Kenyan market by 20% p.a.	Undertake surveys and update a database on the level and magnitude of illicit trade	Number	TBD	3	March 2019, 2021 and 2022	SDT & Lead Agencies	0.10	Development Partners	On-going negotiations with development partners
	Undertake risk assessment and profiling of illicit trade	Number	TBD	3	March 2019, 2021 and 2022	Lead Agencies	0.03	Internally generated funds	
	Market surveillance and inspection	% level of compliance	TBD	100	March 2019, 2021 and 2022	KEBS, ACA, W&M, KRA, PPB, NACADA, KEPHIS, KeCoBo, PCPB, Department of Veterinary Services	0.15	Internally generated funds	Already factored in the estimates
	Investigation of cases on illicit trade	% of cases forwarded for prosecution	TBD	100	Quarterly	Police, KEBS, ACA, W&M, KRA, PPB, NACADA	0.30	Internally generated funds	
	Prosecution and determination of cases on illicit trade	% of prosecution cases % of cases determined	TBD	100	Quarterly	ODPP, Judiciary	0.10	Internally generated funds	
	Disposal of condemned illicit products	% of seized goods destroyed	TBD	100	Annual	KEBS, ACA, W&M, KRA, PPB, NACADA, KEPHIS, KeCoBo, PCPB, Department of Veterinary Services, NEMA	0.06	Internally generated funds	
	Prevent entry of foreigners involved in illicit trade	% of cases actioned	TBD	100	Quarterly	Immigration	0.03	Internally generated funds	
	Recover assets from proceeds of illicit trade	% of cases actioned	TBD	100	Quarterly	Assets Recovery Agency (ARA) together with the lead Agencies	0.15	Internally generated funds	

Objectives	Agency Strategy	Measure	Baseline	Target	Timelines	Responsibility	Budget (Kshs, bn) <sup>16</sup>	Source of Funds	Remarks
2 Strengthen the capacity of agencies to combat illicit trade	Recruitment and training of staff	% of staff recruited and trained vs plan	TBD	100	Annual	All	0.30	Internally generated funds	
	Procurement of motor vehicles, plant and equipment	% of MVPE procured vs plan	TBD	100	Annual	All	0.60	Development Partners	
	Mobilization of financial resources	% of financial resources mobilized vs budget	TBD	100	Annual	All	0.01	Internally generated funds	
	Automation of key processes and integration	Level of automation and integration	TBD	80	Annual	All + KENTRADE, ICT Authority	1.00	Development Partners	
	Establishment of a call Centre	Level of operationalization of a call Centre	TBD	100	June 2019	All + ICT	0.05	Development Partners	
	Establishment of a Secretariat	Level of operationalization of the Secretariat	TBD	100	June 2019	SDT	0.05	Internally generated funds	
3 Strengthen collaborations and partnerships	Review of relevant laws and policies (e.g. tax policies/harmonization within EAC region, etc)	% of laws and policies reviewed	TBD	100	June 2019	All + ICTA	0.01	Internally generated funds	
	Coordination between County and National government, MDAs	% of resolutions implemented	TBD	100	Annual	All	0.006	Internally generated funds	
	Collaboration with regional agencies	% of resolutions implemented	TBD	100	Annual	All	0.007	Internally generated funds	
	Collaboration with international organizations	% of international treaties implemented	TBD	100	Annual	All	0.005	Internally generated funds	
	Collaboration with international associations	% of resolutions implemented	TBD	100	Annual	All	0.005	Internally generated funds	
	Partnerships with international agencies along the supply chain (source, transit and destination)	% of MOUs operationalized	TBD	100	Annual	KEBS, ACA, W&M, KRA, PPB, NACADA, KEPHIS, KeCoBo, PCPB, Department of Veterinary Services	0.001	Internally generated funds	

Objectives	Agency Strategy	Measure	Baseline	Target	Timelines	Responsibility	Budget (Kshs, bn) <sup>16</sup>	Source of Funds	Remarks
4 Enhance public-private partnerships towards managing the vice	Develop and implement a community engagement framework	% Level of implementation of the framework	TBD	100	Quarterly	All	0.009	Internally generated funds	
	Develop and implement a public-private partnership framework	% Level of implementation of the framework	TBD	100	Quarterly	All	0.001	Internally generated funds	
5 Increase the level of awareness on illicit trade by 20% p.a.	Undertake surveys to determine the level of awareness on illicit trade as well as behaviour change <sup>17</sup>	Number	TBD	3	March 2019, 2021 and 2022	SDT & ACA	0.05	Internally generated funds	
	Develop and implement a capacity building framework	% Level of implementation of the framework	TBD	100	Quarterly	All	0.01	Internally generated funds	
	Develop and implement an outreach framework	% Level of implementation of the framework	TBD	100	Quarterly	All	0.50	Internally generated funds	
<b>Total (Kshs, bn)</b>							<b>3.53</b>		

<sup>16</sup> Each institution to develop its detailed work plan and budget for the above activities that are specific to their mandates.

<sup>17</sup> Consumer behaviour change can be measured using parameters such as: whether consumers can report (or have reported on) illicit trade, stop buying illicit goods, measures they can take to stop illicit trade, etc.,



