

**LEGAL AND INSTITUTIONAL CHALLENGES IN CURBING DRUG
TRAFFICKING IN MAINLAND TANZANIA**

CHRISTINA GERVAS RWESHABURA

**THE THESIS SUBMITTED IN FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF LAW (LLM)
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CERTIFICATION

The undersigned certify that they have read and hereby recommend and approve for acceptance by the Open University of Tanzania a thesis entitled; “**Legal and Institutional Challenges in Curbing Drug Trafficking in Mainland Tanzania**” in fulfilment of the requirements for the Master Degree of Law (LLM).

.....

Dr. Hashil T. Abdallah
(Supervisor)

.....

Date

.....

Dr. Abdallah M. Ally
(Supervisor)

.....

Date

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Signature

.....

Date

DEDICATION

This work is dedicated to my family, friends, and all colleagues that supported me morally and spiritually in accomplishing this academic journey.

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Undertaking on this Thesis has been a major challenge and experience and I thank God for his Grace, and for giving me the strength, will and perseverance to carry on. I would like to express my heartfelt gratitude to my supervisors, Dr. Abdallah Ally and Dr. Hashil T. Abdallah who offered very useful inputs and intellectual guidance on substance, methodology and framework of this thesis. They offered me the motivation and support I needed to start the study and write this Thesis. They have always served as my academic role models, and I aspire to be like them. My family has my sincere gratitude in a very particular way for their support, love, prayers, and encouragement as well as for always having faith in me. Their encouragement and tolerance provided me the courage I needed to achieve my goal of receiving the highest academic awards.

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ABSTRACT

Drug trafficking is a problem which affects the world and Tanzania is not exonerated from the problem. To address the ever-increasing number of illicit drugs, various measures have been taken including enacting laws and establishment of institutions to fight drug problem. However, the problem still exists. According to the National Drug Situation Report of 2020 the DCEA seized more than 13.23 tons of marijuana and in April 2022 DCEA seized about 859.36 kg comprising heroin and methamphetamine; hence this study intended to evaluate the legal gaps and institutional challenges in the prevention and control of drugs in Mainland Tanzania. To accomplish this purpose, the study applied doctrinal research method supplemented with comparative study method. The study has found that there are various legal and institutional challenges which hinder effective implementation of the laws, namely: discretionary powers in providing punishment; the absence of rules regarding drugs that are prohibited, unrestricted legal ability in entering nolle prosequere, committal proceedings, different institutions governing the control of drug trafficking with different hierarchies as well as limited staff and financial resources that prevent DCEA from conducting operations, inspection and search to address drug trafficking problems in the country. This study recommends to the Government for amendment of the laws to address the identified legal challenges and administrative measures to ensure effective prosecution, conviction and sentencing of offenders considering practices from other countries.

Keywords: *Legal, Institutional, Drug, Tanzania.*

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Economic and Organized Crime Control Act, Cap. 200 R.E 2022

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LIST OF ABBREVIATIONS

ADU	Anti-Drug Unit
CEO	Chief Executive Officer
CECD	Corruption and Economic Crime Division
CGC	Chief Government Chemist
CN	Counter Narcotic
CND	Commission for Narcotic Drugs
DCC	Drug Control Commission
DCEA	Drug Control and Enforcement Authority
DPP	Director of Public Prosecution
EAC	East African Community
ECP	European Council and Parliament
EOCCA	Economic and Organized Crimes Control Act
EU	European Union
FIU	Financial Intelligence Unit
HRC	Human Rights Resource Centre
GCLA	Government Chemist Laboratory Authority
HIV	Human Immunodeficiency Virus
ICT	Information and Communication Technology
INCB	International Narcotic Control Board
INCS	International Narcotic Control Strategy
INTERPOL	International Police Organisation
LEAD	Law Enforcement Assisted Diversion Program
LPO	Liaison and Partnership Office

MHC	Ministry of Home Affairs
NCI	National Cancer Institute
NDC	National Drug Commission
NPS	New Psychoactive Substances
PCCB	Prevention and Combating of Corruption Bureau
PGO	Police General Orders
SADC	Southern Africa Development Community
TZCA	Tanzania Court of Appeal
TISS	Tanzania Intelligence Security Services
TPF	Tanzania Police Force
TRA	Tanzania Revenue Authority
UN	United Nations
UNDCP	UN Drug Control Programme
UNGASS	UN General Assembly Special Session on Drugs
UNODC	United Nations Office of Drugs and Crime
USA	United States of America
USAID	United States Agency for International Development
WDR	World Drug Report
WHO	World Health Organization

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE PROBLEM

1.1 Background to the Problem

Illicit drug is any substance, natural or artificial, other than food that changes the structure or function of a living organism due to its chemical nature.¹ On the other hand, concept of drug trafficking comprises of selling, buying, supplying, possession, storing, transporting, production, importation, exportation, manufacturing, delivery or distribution of illicit drugs. Because of negative impacts of drugs to humankind, states and international community criminalized trafficking of drugs like cannabis, heroin, and cocaine except under license through the use of penal laws.

Tanzania Mainland formerly known as Tanganyika, enacted the Cultivation of Noxious Plants (Prohibition) Ordinance of 1926 and the Dangerous Drugs Ordinance of 1935. Soon after independence various legal reforms have been taken by Tanzania's government to address the issue including repeal of colonial drug control and enforcement Laws. The most notable legislation is the Drugs and Prevention of Illicit Traffic in Drugs Act of 1995. This Act applied to both Mainland Tanzania and Zanzibar. It established an Inter-ministerial Commission for Coordination of drugs control responsible for defining, promoting and coordinating policy of the government for control of drug abuse and drug trafficking. Further the Act established the Secretariat with not more than fifteen (15) members appointed by the Commission from Mainland Tanzania and Zanzibar.² These members comprised of ministers responsible for legal affairs, home affairs, health, foreign affairs, finance

¹ Ray, O. & Ksir, C., (2004) Drugs, Society and Behavior 10th Edition, McGraw Hill Companies Inc., New York, p.5

² Drugs and Prevention of Illicit Traffic in Drugs of 1995 (repealed), s.4(1), (2) and (3).

and youth development from the mainland Tanzania and ministers of State -office of the Chief Minister, Tourism and State Planning from Zanzibar.

Similarly, this Act established the Fund for Control of Drug Abuse, and offences related to drug trafficking with maximum penalty of fine of ten million shillings, imprisonment for life or both fine and imprisonment.³ However, the court was given mandate to impose fine exceeding ten million shillings subject to statement of reasons in a judgment. On the other hand, the Act vested discretionary powers to the government to establish centers for identification, treatment, education, after-care, rehabilitation and social integration of drug addicts.⁴ Finally, the Act vested discretionary powers to the Commission to make rules which comply with international standards governing control of drug trafficking.⁵

However, in the year 2009 Zanzibar adopted its own drug trafficking legislation known as Drugs and Prevention of Illicit Traffic in Drugs Act No.9 of 2009. This Act was further amended through the Written Laws (Miscellaneous Amendment) Act No.12 of 2011. The legislation did not establish an enforcement organ, so in the year 2021 the law was repealed and The Zanzibar Drugs Control and Enforcement Act,⁶ was enacted. The Law established the Zanzibar Drugs Control and Enforcement Authority to coordinate the activities of fighting drug trafficking and drug prevention in Zanzibar. Thus, making drug trafficking control a non-union issue.

³ Opcit., ss.11, 16 and 20.

⁴ Opcit., s.55.

⁵ Opcit., s.54.

⁶ Act No.8 Of 2021

Generally, the Drugs and Prevention of Illicit Traffic in Drugs Act of 1995 was faced with various challenges including inadequate penalties and challenges related to investigation and prosecution of offenders. Further, DCC was only vested with coordination and policy functions, with no capacity to arrest and investigate drug related cases. Hence, there was a need to adopt new legislation which would provide a more robust framework to curb the problem of drug trafficking. Thus, in the year 2015 the government of Tanzania enacted the Drug Control and Enforcement Act.⁷ This Act established the Drug Control and Enforcement Authority with more powers to deal with the problem of drug trafficking in Mainland Tanzania.⁸ Specifically, the Authority was given powers to *inter alia*: implement international conventions, bilateral and multilateral agreements on control of narcotic drugs and psychotropic substances; powers to arrest, search, seize and investigate drug related cases.⁹

Similarly, this Act established two more supportive organs, namely: the National Drug Control Council and the Advisory Committee. While the Council comprise of ministers from key ministries, namely: home affairs, legal affairs, health, foreign affairs, finance, community development, education, agriculture and transport,¹⁰ the latter comprised of members not exceeding nine (9) with vast experience on matters pertaining to drug control, to be appointed from ministries, government departments, Non-Government Organisations (NGOs), enforcement agencies and other stakeholders.¹¹ The Council's mandate is to oversee implementation of the National

⁷ Act No.5 of 2015

⁸ Ibid., s.1(2) read together with s.3.

⁹ Ibid., s.4(2).

¹⁰ Ibid., s.5(2) and (3).

¹¹ Opcit., s.9.

Drug Control Policy while the Committee's mandate is to advise the Commissioner General on matters related to drug control.

On the other hand, Act No.5 of 2015 contained penal provisions with reasonably harsh penalties, including imprisonment of thirty (30) years and life imprisonment or both fine and imprisonment. Further, it designated drug trafficking offences which are bailable and non bailable offences,¹² imposed a burden of proof on the person charged with drug-related offences¹³ and vested discretionary powers to court to make orders regarding medical treatment of offenders taking into account factors such as age, character, physical and mental condition of convicted person.¹⁴

Notwithstanding, the government of Tanzania has also domesticated the list of prohibited drugs as per standards stipulated under different conventions of which Tanzania is a party. These conventions include: the Single Convention on Narcotic Drugs 1961; the United Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the Protocol of 1972 amending the said Convention and Convention on Psychotropic Substances of 1971. All these conventions are expressly made part of the law of Tanzania under the First Schedule to the Drug Control and Enforcement Act.

Despite the above legal reforms, still the problem of drug trafficking increased in Tanzania due to global dynamics, hence the desire to adopt more stringent provisions to curb the problem. The Drug Control and Enforcement Act¹⁵ removes the concept

¹² Opcit., s.29.

¹³ Act No.5 of 2015, s.28

¹⁴ Ibid., s.31.

¹⁵ Act No. 5 of 2015

of fine as alternative penalty to imprisonment except on drug use offences and possession of narcotic drugs of small quantities.¹⁶ Instead, imprisonment of 30 years or life sentence was maintained, with the power vested to court to impose prescribed fine as addition to compulsory imprisonment sentence.¹⁷

In 2021 the Government of Tanzania amended Act No.5 of 2015 through the Written Laws (Miscellaneous Amendments) (No. 5) Act 2021. The Act vests powers to subordinate courts to try cases involving heroin and cocaine of weight less than 200gms and cannabis not exceeding 100kgms.¹⁸ Any drug related case beyond the above designated weights must be determined by the High Court of Tanzania (Economic Crimes Division).¹⁹ The need to reduce backlog of drug cases in the High Court of Tanzania necessitated reforms so as to allow subordinate courts to try drug related cases of designated weight.

Furthermore, officers of DCEA, under the instrument issued by the DPP, have been given powers to prosecute drug related offences in designated courts. All these reforms are sought to ensure that the problem of drug trafficking in Tanzania is eradicated. Apart from the above legal reforms, the government adopted other substantive and procedural criminal legislations for smooth administration of criminal justice in Tanzania, including drug related cases. These legislations include but not limited to the Constitution of the United Republic of Tanzania 1977,²⁰ the

¹⁶ Ibid., s.17(1) (a).

¹⁷ See s.16 of Cap 95 R.E 2019 on possession of machines, equipment and laboratory for manufacturing of narcotic drugs and psychotropic substances whereby a fine of not less than two hundred million is established as addition to life imprisonment.

¹⁸ Ibid., Sections 7,11, 15A, 17-22, 25,34,39,42,47, 51A, 54 and 65.

¹⁹ Ibid., Sections 15,16 and 23.

²⁰ Cap 2 R.E 2019

Criminal Procedure Act²¹, the Evidence Act²², the Electronic Transactions Act,²³ the Magistrates Courts Act,²⁴ the Economic and Organized Crimes Control Act,²⁵ the Anti- Money Laundering Act,²⁶ the Proceeds of Crime Act,²⁷ and the Whistle Blowers and Protection of Witness Act.²⁸ Similarly, Tanzania has signed and ratified treaties prohibiting the use and trade in narcotic drugs and other related drugs.²⁹

Despite the above legal reforms, incidences involving trafficking of drugs appear to be increasing in Tanzania. According to a report released in 2019 there were 503 heroin and cocaine cases that were still pending in court,³⁰ whereas 7,418 *cannabis* and *khat* cases were reported, some of which were still ongoing in court.³¹ Consequently, studies must be done to assess the institutional and legal challenges in curbing drug trafficking in Tanzania, the subject matter of this study.

1.2 Statement of the Problem

The existing laws governing control of drug trafficking in Mainland Tanzania contains provisions which vest discretionary powers to the Court and the DPP, leading to conflicting interpretations and sentencing and delays in prosecuting drug related cases respectively. On the other hand, existence of multiple institutions for enforcement of drug related laws with no clear rules on chain of custody adversely

²¹ Cap 20 R.E 2022

²² Cap 6 R.E 2022.

²³ Cap 442 R.E 2019.

²⁴ Cap 11 R.E 2019.

²⁵ Cap 200 R.E 2022.

²⁶ Cap 423 R.E 2022.

²⁷ Cap 256 R.E 2022

²⁸ Cap 446 R.E 2022

²⁹ https://en.wikipedia.org/wiki/Category:Treaties_of_Tanzania

³⁰ Mamlaka ya Kudhibiti na Kupambana na Dawa za Kulevya (2019): Taarifa ya Hali ya Dawa za Kulevya ya Mwaka 2019, Ofisi ya Waziri Mkuu, Jamhuri ya Muungano wa Tanzania, p.13.

³¹ Ibid.,

affect investigation and prosecution of drug related laws. There is need for amendment of the laws so as to remedy the apparent legal and institutional challenges in curbing drug trafficking in Mainland Tanzania.

The above inadequacies suggest that the organisations and laws responsible for addressing the problem of drug trafficking in Tanzania are only partially successful in fighting drug trafficking in mainland Tanzania. Hence, this study intended to examine the legal and institutional challenges and the ways to address them to be able to combat the problem of drug trafficking in Tanzania.

1.3 Research Objective

This Study has been conducted to achieve the following objectives: -

1.3.1 General Objective

The main objective of the study is to examine the legal and challenges encountered in curbing the problem of drug trafficking in Mainland Tanzania.

1.3.2 Specific Objective

The study is guided by four specific objectives:

- i. To explore on standards and practices related to drug trafficking control from foreign countries and various regional and international instruments.
- ii. To examine legal gaps in the existing laws on curbing drug trafficking problem in Mainland Tanzania
- iii. To assess various institutional challenges which hinder effective prosecution and sentencing of drug-related offences in Mainland Tanzania.
- iv. To propose measures and mechanisms to be taken to curb the problem of

drug trafficking in Mainland Tanzania

1.4 Research Questions

- i. What are standards and practices for control of drug trafficking at regional and international levels?
- ii. What are the legal gaps in the existing laws addressing drug trafficking problems in Mainland Tanzania?
- iii. What are institutional challenges which hinder effective prosecution and sentencing of drug-related offences in Mainland Tanzania?
- v. Which measures and mechanisms should be taken in order to curb the problem of drug trafficking in Mainland Tanzania?

1.5 Significance of the Study

The results of this study are anticipated to advance our understanding on the factors affecting Tanzanian law enforcement agencies to combat drug trafficking effectively. Thus, by identifying the impediments on the existing legislation responsible for combating drug trafficking, this study will press the need on the Parliament to amend laws so as to strengthen measures on combating drug trafficking in Tanzania. In a similar vein, the findings of the Thesis can help practitioners, specifically law enforcement authorities responsible in fighting drug trafficking on how best they can do to address legal and institutional challenges which hinder enforcement of drug legislations. Through this study legislators might learn the importance of fast trucking the enactment and amendment of drug control laws in order to cope with the speed of the increase of trafficking especially NPS. NPS are produced and replaced as quickly as possible.

A substitute is frequently already on the shelves as soon as one new psychoactive substance is discovered and controlled by the Law Enforcement Authorities. Through borrowing experience from other countries, Tanzania will be able to import rules and solutions implemented by those countries in fighting drug trafficking to improve Tanzania drug enforcement laws. Thus, this study will be useful as it will improve Tanzania drug control legal system in combating drug trafficking.

1.6 Limitation of the Study

Obtaining data directly connected to the study proved challenging due to a number of factors, including the lack of previous legal research on drug trafficking. The majority of drug-related research were focusing on societal issues, especially from a health perspective. Additionally, most of the institutions governing the countering of drug trafficking hesitate to provide information since they consider them to be top secret. Since drug trafficking is an organised crime that operates in high secrecy, institutions may have withheld information about the measures taken for fear of being victimized or tarnishing their reputation. Cuba was one of the nations the researcher revised for comparative purpose. Information in this nation is classified as top secret. As a result, obtaining published information about Cuba was extremely challenging.

1.7 Scope of the Study

This study mainly focuses on the legal factors that hinder Tanzania Government efforts in fighting drug trafficking. The study has focused on the laws that are administered or enforced by the government organs responsible for the drug control in Tanzania to see if they are effective enough to eliminate the problem of drug

trafficking. Also, the study has reviewed international and regional instruments as well as legal development of other jurisdictions. International and regional instruments on drug control were reviewed under this study because they are legal regime on which the efficient control of availability of narcotics and psychotropic substances is based. Also, drug control legislation implements the provisions of the international instruments on Narcotic drugs and Psychotropic Substances.

Legal development of other jurisdictions has been reviewed because drug trafficking is an organised crime involving more than one nation. Thus, as the study tries to improve Tanzania legal system specifically on combating drug trafficking, it becomes obvious to look at the other side of the borders in order to get bench mark on planning to fight drug trafficking. Drug control and enforcement laws of China, Cuba and Singapore have been reviewed to see how Tanzania can cope some of the provisions of these countries to improve and strengthen measures in combating drug trafficking in the country.

1.8 Literature Review

This part reviews various literatures which relate to the study at hand. From the reviewed literatures various legal gaps have been identified and explanation done on how this study is going to fill those gaps. The available literatures on the study are as follows: Patil and Pandey,³² observe that drug trafficking is a global problem that involves distribution of banned substances under narcotics and associated laws. They inter alia provide that the use of drugs among young generation is increasing from

³² Patil, K. & Pandey, A. Drug Trafficking: A Growing Problem for India, Asian Journal of Forensic Science, Volume 1 Issue No.1 of 2022.

bad to worse whereby internet is interposed.

To address the problem, the authors argue that there is a need to improve investigation of drug related cases through the use of forensic science, increase public awareness, adopt rehabilitation programs and forge international cooperation in investigation and prosecution of organised crimes.³³ Basically, the study has focused on remedial measures to effectively tackle the problems of drug use. The Study at hand agrees with the authors' observation and since the study has been conducted in India the researcher wants to research in Tanzania and see if there are other findings on how institutional and legal challenges can affect drug control measures in the country.

On the other hand, Scarlet³⁴ examines various international instruments including conventions and practices that require cooperation among states in order to address illicit drug issues. Generally, these instruments provide for police cooperation at the national, regional and international levels, criminalization and punishment of illicit drugs traffickers. The author explains reason for international cooperation being lack of jurisdiction to enforce penal laws outside its territorial limits. Hence, the author recommends the following: law-enforcement cooperation mechanisms among states, namely: information sharing; placing liaison officers in the diplomatic missions abroad; and conducting joint investigations through special investigative teams including undercover operations and surveillance.³⁵ The present study is in the same position as the author but focuses on Tanzania and went further to examine the legal

³³ Ibid., pp.34-41.

³⁴ Scarlet, R., the Role of the UN International Drug Control Conventions in Facilitating Law Enforcement Cooperation in the Policing of Transnational Drug Trafficking, the Global Crime Justice and Security Journal, Volume 2 October 2021.

³⁵ Opcit., pp.172-191.

and institutional challenges in countering drug trafficking in Tanzania.

Likewise, Kuznietsov³⁶ keenly evaluates the need to control use of vessels in the high seas which are used in the commission of drug trafficking. The author specifically calls upon 'flag states' to comply with international conventions adopted under the auspices of UN, by taking up measures to prevent illegal use of flag vessels through setting in place coordination units, ensure international cooperation between appropriate agencies and adopting legislations which regard trafficking of drugs as one of serious offences punishable by imprisonment or other penalty of deprivation of liberty.³⁷ These observations continue to emphasize on the need for cooperation among states to reduce the problem of drug trafficking.

The researchers are focusing generally about trafficking of drugs in the high seas by means of vessels. They argue that flag state should adhere with the conditions established by UN under the International Conventions. On the other hand, this study on international issues raised the question of what can be learned from the experience of international legal frameworks and practices. Additionally, the current study focuses on Tanzania and seeks to analyse how the country's drug trafficking laws comply with international drug control conventions.

The above observations by Kuznietsov are supported by Orina³⁸ who discusses various strategies for combating drug trafficking in East Africa, especially in Kenya.

³⁶ Kuznietsov, S., Combating Drug Trafficking: The International Legal Dimension, Amazonia Investiga, Volume 11 Issue No.51 of March 2022.

³⁷ Ibid., pp.220-223.

³⁸ Orina, W.N., Strategies to Combat Drug Trafficking in Africa: Case Study of Kenya, A Research Project Submitted in Partial Fulfillment for the Award of Postgraduate Diploma in Strategic Studies, Department of Diplomacy and International Studies, University of Nairobi, November 2021.

She avers that five measures must be taken to address the issue of drug trafficking in the nations of East Africa. These include fighting corruption, creating policies and laws that adhere to international standards, protecting witnesses and victims, creating special units and strengthening police capabilities, and engaging in international cooperation and collaboration between nations and intelligence agencies.³⁹

Furthermore, Orina calls upon for cross border and regional cooperation mechanisms including establishing systems, infrastructure and capacity to effectively detect substances in foods and beverages; and establishing independent crime units.⁴⁰ This study supports the authors' notion, but it goes on to touch on several factors that must be considered in order to abolish drug trafficking in Tanzania, such as chain of custody, arresting procedures, committal proceedings, nolle prosequere, plea bargaining and capacity building of drug control organisations.

Shaw,⁴¹ critically assesses the reasons as to why drug trafficking was rampant in Guinea-Bissau since 1988 to 2014. The author avers that existence of illicit drugs is facilitated by the African elite networks which operate on the same basis like mafia groups. He is listing down the actors of drug trafficking to include small groups of politicians, military officers and small entrepreneurs who receive fees from traffickers in order to protect movement of illicit goods.⁴²

³⁹ Ibid., pp.38-45.

⁴⁰ Ibid.,

⁴¹ Shaw, M., Drug Trafficking in Guinea-Bissau, 1988-2014: The Evolution of an Elite Protection Network, *Journal of Modern African Studies*, Volume 53 Issue No.3 of 2015.

⁴² Opcit., pp.339-364.

Furthermore, the author shows how political regimes have relied on revenues generated from illegal businesses to run the governments which have accelerated conflicts and chronic instability in the region.⁴³ Generally, the author has highlighted that drug trafficking is likely to increase in African states if there are no strong institutions and justice system in the country is weak. Similarly, the author clarifies that illicit drug trafficking involves networks of professional people including political leaders, security organs and businessmen. This would require a state to adopt effective laws and multi-sectoral agency for enforcement of the laws. The current study agrees with the author but goes on to investigate why, despite the fact that Tanzania has tight laws with very severe penalties up to life imprisonment and institutions to enforce the laws, drug trafficking problems have not been reduced.

On the other hand, Yashasri,⁴⁴ describes the dangers of drug trafficking in the global security issues. The author describes two substances utilised in the illicit drug trade: opiates (originating from Afghanistan) and cocaine (from Latin American countries). The author explains about two major illicit drug trade networks in the world. The first is the opiate trading network with three major routes: the Balkan route (which connects West and Central Europe to the Islamic Republic of Iran and Turkey), the northern route (which travels via Central Asia to the Russian Federation and back to Europe), and the southern route (South Asia, Gulf Countries and

⁴³ Opcit.,

⁴⁴ Yashasri, C., *Illicit Drug Trafficking and Financing of Terrorism: The Case of Islamic State, Al Qaeda and their Affiliate Groups*, Journal of Defence Studies, Volume 14 Issues No.1-2, January-June, 2020.

countries in the near and Middle East, Africa and back to Europe).⁴⁵

The second route is the cocaine trading network which consist of Trans-Atlantic route (from Latin America to Europe); the final route of cocaine runs from the United States, Canada, Central America, and Australia to South East Asia via South Africa and East Africa. This route passes through South American nations like Ecuador, Brazil, and Venezuela as well as the Caribbean and West Africa through the ports of Guinea-Bissau, Sierra Leone, Ghana, Guinea, and Senegal.⁴⁶

Also, the author explains how terrorist groups acquire large sums of money from drug trafficking and the need for states to develop financial regulations to prevent entry of money from illegal businesses. Nevertheless, the author describes how the complex web of drug networks across the world has posed enormous challenges for security agencies.⁴⁷ Accordingly, this requires states to collaborate in addressing such transnational crime through international law enforcement mechanisms. Thus, all the above scholars have shown the need for the states to cooperate in reducing the problem of illicit drug trafficking. The present study does not differ from the previous study, but takes the position that the problem of drug trafficking can be minimized by strengthening legal system and institutions responsible for drug control.

Yusuph and Negret,⁴⁸ explain how Tanzania has implemented the International Drug Control Conventions by enacting the Drugs and Prevention of Illicit Traffic in

⁴⁵ Opcit., pp.72-75.

⁴⁶ Opcit., p.76

⁴⁷ Ibid., pp.77-83

⁴⁸ Yusuph, K., & Negret, I. (2016) Adolescents and Drug Abuse in Tanzania: History and Evolution. *Advances in Research*, 7(2), 1-10. <https://doi.org/10.9734/AIR/2016/24897>.

Drugs Act 1995, which provided stiff punishment for those involved in drug trafficking including life imprisonment. They argue further that despite of strong laws in place and the agency to fight drug trafficking, Tanzania still continues to be a transit route for illicit drug due to lack of functional equipment and resources and rampant corruption.⁴⁹ Further, the authors have highlighted the main causes of drug trafficking problem in the country to include corruption, working equipment, and increase in poverty and unemployment.

Although the central aspect of this study is the concept of methadone treatment, HIV testing and counseling, the study managed to highlight the measures Tanzania has taken to address the problem of drug trafficking, including the enactment of tough laws with severe penalties up to life imprisonment. It also managed to identify the main causes of the drug trafficking problem in Tanzania, including corruption, increasing poverty and unemployment. The authors take the position that strong law is a solution in the fight against drug trafficking. The researcher agrees with the authors; however, he believes that even though Tanzania has a strong statute prohibiting drug trafficking, the problem persists.

Nsimba et al,⁵⁰ argue that trafficking in illicit drugs/substances to Tanzania and other developing countries appears to be increasing, despite the socio-economic impact on users. The study also identifies core characteristics of drug addicts in Dar es Salaam that could be used by investigators to identify drug traffickers and users.

⁴⁹ Yusuph, K., & Negret, I. (2016). Adolescents and Drug Abuse in Tanzania: History and Evolution. *Advances in Research*, 7(2), 1-10. <https://doi.org/10.9734/AIR/2016/24897> , pp.3-4

⁵⁰ Nsimba E.D, et al., (2013). Characteristics of drug abusers in an urban community of Tanzania.

The current study supports the Authors' solution. The current investigation, however, discovered that institutions tasked with combating drug trafficking are economically incapable of acquiring intelligence on drug trafficking. As a result, they require financial support.

On the other hand, Mbwapbo, et al.,⁵¹ discusses various international efforts to control trafficking and supply of drugs. They argue that drug trafficking control is cumbersome due to the use of the newer trafficking technique and scarcely populated areas where law enforcement intelligence and monitoring is missing. The study insists that the inability to arrest drug traffickers is also a result of corruption, a lack of funding, technology, and manpower. Finally, the authors recommend that drug trafficking interventions should focus on staff training and working equipment such as surveillance equipment through the use of vision systems, cars, aircraft, and boats. The study has shown the need for capacity building to the staff participating in combating drug trafficking including training and provision of working equipment.

Moreover, the study points down that legislation with strong provisions is one of the tools in fighting drug trafficking. By recognizing this, Tanzania Government is making concerted effort to fight drug trafficking by enacting laws and revising drug control legislation in order to eliminate drug menace and safe guard the lives of the citizens. In addition to these aforementioned recommendations, the study at hand has gone further to examine Legal impediments in fighting drug trafficking in Tanzania.

⁵¹ Mbwapbo Jessie, et al., (2012). Drug trafficking, use, and HIV risk: The need for comprehensive interventions p.157

Yingyos and Longmire,⁵² point out that for many years drug trafficking has posed a major threat to the international community. As a response to emerging problems associated with drug trafficking, many nations as well as the United Nations have been taking various legal and administrative measures to control narcotic drugs. The authors do not support the use of death penalty for drug trafficking offences in Singapore, Indonesia, Malaysia and Thailand. However, the authors have highlighted the significance of the death penalty that it has contributed on today's debate questioning whether drug trafficking falls within the ambit of the most serious offences for which death punishment can be applied.

The Study also provides the important information explaining the movement towards the abolition of the death penalty for drug trafficking offences⁵³. The current study agrees with the views of the Authors who have concentrated in some Asian countries which practice death penalty. The current study focuses on Tanzania and aims to examine how some countries that practice the death penalty for drug trafficking offences have managed to minimize drug trafficking problems in their countries so that Tanzania can copy from those countries. Muoti et al,⁵⁴ assesses the effect of drugs on students' participation in the learning processes. It is estimated that majority of School Principals kept records of those students engaging in drug abuse. The authors have recommended that professionals should facilitate in setting guidance and counseling offices in all schools to counsel students who engage in

⁵²Leechaianan Y and Longmire D, (2013). The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis, pp. 116-117.

⁵³ Leechaianan Y and Longmire D, (2013). The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis page 117

⁵⁴ Muoti, S. *et al* (2014). Effects of drug and substance abuse on academic performance among Secondary School Students, Kathonzen District, Makueni, Kenya, p. 52.

drug abuse. The study at hand corresponds with the author's recommendations. However, the above authors conducted the study in Kenya and the present study is taking place in the locality of Tanzania.

Additionally, the current study highlights institutional and legal challenges to effectively addressing drug trafficking in Tanzania and makes recommendations for strengthening of legal system and capacity building of institutions responsible for combating drug trafficking. Similarly, Werb et al,⁵⁵ discusses the effect of drug enforcement on violence in the drug market. The study demonstrates that violent drug markets continue to exist in Mexico and other places. The current study focuses on Tanzania and concludes that drug enforcement through the imposition of the death sentence can favorably contribute to the reduction of drug trafficking. Meanwhile, the writers (Werb and others) discuss societal issues related to the death sentence.

Jenner et al,⁵⁶ insist on legalization of drug trafficking with the reason that illegality of drug business is seriously linked to violence. The study argues that illegality attracts criminals and makes drug business most lucrative business in the world. The study highlights that legalizing drugs takes the profits out of the drug industry and end up violence related to drug trafficking and probably ending the global drug trafficking problem. Also, they argue that legalization is an opportunity to reallocate the funds used to prohibit drug trafficking and freeing up prison space; hence

55 Werb, D. et al., (2011); Effect of drug law enforcement on drug market violence: A systematic review, p. 1

56Jenner, S., et al., (2011) International Drug Trafficking: A Global Problem with a Domestic Solution, Indiana Journal of Global Legal Studies: Vol.18 Issue No.10, p. 917.

reducing violent crime among drug traffickers. Basically, the author explains the relationship between drug trafficking and domestic violence. Yet, the current study's context is Tanzania and it emphasizes on criminalizing drug trafficking as a means of ending drug trafficking and attracting genuine business. Mazerolle et al.,⁵⁷ reviewed five categories of drug control interventions to see which is more effective at reducing drug problems. Such interventions include drug interdiction and seizure, proactive/partnership interventions like third-party policing, problem-oriented policing, community policing, and drug nuisance abatement; reactive/directed interventions like crackdowns, raids, buy-busts, and saturation patrol.

Other mechanisms include arrest, referral, and diversion as well as a mix of reactive/directed and proactive/partnership tactics are examples of personalised interventions. The author contends that collaborations between the police, outside parties, and/or community organisations appear to be more effective at reducing both drug and non-drug problems than reactive action. The study has reviewed categories of the drug law enforcement interventions. The present study agrees with the researchers that cooperation between law enforcement agencies, society, and effective measures can play essential role in eradicating drug trafficking. The study at hand takes a step further, looking into potential roadblocks to drug-control initiatives.

Hong Lu and Bin Liang,⁵⁸ points out that the number of drug offences has risen since China's economic reforms. In order to manage these new and evolving crimes, laws

⁵⁷Mazerolle, L. et al., (2007). *Drug Law Enforcement A Review of the Evaluation Literature*, p. 1.

⁵⁸ HongLu & Bin Liang, (2008); *Legal Responses to Trafficking in Narcotics and Other Narcotic Offences in China*, *International Criminal Justice Review*, page. 212.

and executive orders have been passed and changed in response to this situation. The legislation and policies for the prohibition of drug offences in China are the main topic of this essay. Using the judgement records from 362 criminal trials after 1978⁵⁹, the authors evaluate to what extent extra-legal and legal factors had an impact on sentencing choices by analysing the sentencing trends of various drug offences. The study at hand conquers with Hong Lu and Bin Liang, and since the study has been conducted in China, the focus of the Study at hand is Tanzania where the researcher wants to see if there are other findings affecting illicit drug trafficking enforcement in the country.

USAID's Africa Bureau,⁶⁰ evaluates causes of the drug trafficking, effects as well as potential countermeasures are discussed. According to the paper, governments are aware of the link between drug trafficking and development and are actively looking for measures to lessen any negative effects. The report highlights the issues caused by increasing illicit drug trafficking flows in Africa, including threats to good governance, security, peace, and economic growth as well as public health. The author goes on to say that interdiction measures alone are insufficient to stop drug trafficking but they must be accompanied by other interventions such as drug demand reduction initiatives.

Furthermore, it has been submitted that interdiction must lead to prosecution of traffickers beyond the lowest level to effectively disrupt drug trafficking networks.

⁵⁹ Opcit., p.212.

⁶⁰ USAID'S African Bureau, (2013). The Development Response to Drug Trafficking in Africa: A Programming Guide, p. 6

Thus, the report makes analysis of drug trafficking and its consequences to development in Africa and recommends for coordinated efforts to comprehensively eliminate the problem of drug trafficking. The report provides the solution to the problem that coordinated efforts are more likely to result in system-wide reform than those undertaken by any single entity. The report is talking generally about Africa while the Study at hand intends to pay attention specifically in Tanzania to see how legal challenge affect measures in fighting drug trafficking including prosecution of drug cases.

On the other hand, Nasrijal, *et al.*,⁶¹ examine the use of capital punishment in eliminating drug trafficking in Malaysia. The author's view is that drug trafficking crime has not been reduced by the imposition of capital punishment. The author explores various challenges in imposing capital punishment including difficult in securing convictions, and other evidential procedural requirements. The authors concentrate at examining capital punishment as the only hindrance of drug trafficking enforcement efforts. Finally, the author submits that without a concerted effort and steadfast cooperation, the death penalty would not be able to have the necessary deterrent effect. The study at hand intends to examine legal impediments in curbing drug trafficking in Tanzania and also to look on the practice of other countries on the imposition of penalty against drug traffickers.

Last but not least, Shehu, H. and Rao D,⁶² investigate effects of drug trafficking in Nigeria in relation to increase of substance abuse. The author explains various

⁶¹ Nasrijal, H. et al, (2011): Enforcement of Capital Punishment: Legal Issues in Eliminating Drug Trafficking

⁶² Shehu, H and Rao D, (2020); Drug Trafficking: A Leading Factor to The Prevalence of Substance Abuse In Nigeria,

government control measures that have been taken to eradicate drug trafficking in Nigeria, including enactment of strong laws. The author submits towards stricter enforcement of drug laws and more government funding of state agency operations towards prevention and control of drugs. This study was conducted in Nigeria and the current Study is conducted in Tanzania and needs further to examine legal impediments in addressing drug trafficking in Tanzania.

1.9 Research Methodology

This study has applied doctrinal research methods supplemented by comparative research. This is because the study aimed at examining anti-drug trafficking legislations with a view of identifying gaps. Similarly, comparative research method was relevant in articulation of standards and experiences from other countries, with a view of harmonizing and improving national laws governing anti-drug trafficking in Mainland Tanzania.

1.9.1 Doctrinal Legal Research Methodology

This was the main methodology for this study because it primarily focuses on court decisions statutes and analysis of authoritative texts.⁶³ One of its assumptions is that ‘the character of legal scholarship is derived from law itself.’⁶⁴ Doctrinal method is the most preferred for this study because the primary data was obtained from legislations through reading relevant sources. The intention of the researcher here was to locate, collect the law (legislation or case law) and apply it to specific set of

⁶³McConville, M., and Chui, W.H (eds)., *Research Methods for Law*, Edinburgh University Press, 2007, pp.3-4.

⁶⁴Opcit., p.4.

material facts in view of solving legal problem.⁶⁵

Doctrinal method was used to address questions in connection to legal challenges, institutional frameworks and legal gaps in curbing drug trafficking problems in Tanzania. Basically, the researcher has gathered information from principal legislations, subsidiary legislations, international and regional instruments governing the prevention and control of drug trafficking. Moreover, the Study has reviewed various secondary sources containing published information on drug trafficking control in Tanzania and other parts of the world. Such documents include: relevant strategic plans, implementation reports, government papers, official speeches, published books and journal articles on drug trafficking.

The researcher has also referred to newspapers, magazines, and unpublished materials which include but not limited to research papers and reports such as USAID Report, INCB Reports and the World Drug Reports available in various libraries and online sources. For the purpose of identifying international standards for the management of the drug trafficking issues on various UN member states, a number of international and regional treaties have been examined. For purposes of accessing the above documentary sources, the researcher used a variety of libraries, both physical and online. The Open University of Tanzania Library, the University of Dar es Salaam Library, the British Council Library in Dar es Salaam, the Tanzania Commission for Human Rights and Good Governance Library, and the

⁶⁵ McGrath, J.E., *Methodology Matters: Doing Research in the Behavioral and Social Sciences*, in Baecker R.M et al.(eds)., *Readings in Human-Computer Interaction: Toward the Year 2000*, Morgan Kaufmann Publishers, 1995, USA, p. 154.

Law Reform Commission of Tanzania Library were among the places where these literary works were accessed. The qualitative data collected through doctrinal method was then analyzed through deductive reasoning and use of canons of statutory interpretation, particularly the golden and mischief rules, in order to substantiate the interpretation and application of national and international legal instruments.

1.9.2 Comparative Research Methodology

Comparative methodology aims to determine how a certain principle has been developed systematically at various regional and international levels as well as how the concept functions inside a specific legal system. It is a tool for improving domestic law and legal doctrine as well as a tool for learning and understanding the law.⁶⁶ Generally, Comparative study is important when seeking to make legal reforms by offering suggestions for future developments.⁶⁷ This method has been applied to address the research question on the experience of other jurisdictions on the area of suppressing drug trafficking that can be used to strengthen the local laws and institutions.

Specifically, the Study gathered information relating to legal and non-legal measures from foreign jurisdictions for purposes of learning and improving the laws of Tanzania. In particular, three countries have been selected, namely: Cuba, China and Singapore. The selection of these countries was based on the statistical data which

⁶⁶ Mark Van Hoecke., *Methodology of Comparative Legal Research*, June 2015, pp.1- 2, accessed at <https://www.researchgate.net/publication/291373684>, on ^{14th} July 2022 at 11.30 am.

⁶⁷ Wilson, G., 'Comparative Legal Scholarship' in Chui, W.H and McConville, M., (eds), *Research Methods for Law*, Edinburgh University Press, 2010, p.87.

shows them as having fewer incidences of drug trafficking compared to other countries. Similarly, these countries have domesticated various UN instruments and share more or less political conditions with Tanzania because they are described to be communist countries.⁶⁸

Comparative research was used in this study to address the research question concerning with the experiences from other countries and standards governing anti-drug trafficking as stipulated under international and regional instruments. Basically, data collected through comparative method was analysed by qualitative means considering the cultural context of law, and the relevance of such international standards in our country. Deductive and inductive reasoning were utilised to assess the data derived from foreign countries' laws and international agreements in order to determine the legal principles that could be applied to enhance Tanzania laws governing drug trafficking.

1.10 Organisation of the Study

This thesis is divided into Seven Chapters organised as follows: The First Chapter serves as an introduction. It provides background details to the research problem, general and specific objectives of the study and the review of the literature. It also includes the research questions, significant of the study as well as research methodology. Chapter Two deals with concepts, principles and theories governing commission of drug trafficking crimes. Essentially, it addresses the magnitude of drug trafficking problems, explores on the nature of drug trafficking and drug

⁶⁸ Justus M. van Der Kroef., *Communism in Malaysia and Singapore. A contemporary Survey* 1967

trafficking networks, theories governing drug trafficking and the impacts of drug trafficking.

Chapter Three explores on the international and regional legal instruments governing drug abuse and trafficking. Chapter Four focuses on drug trafficking control measures in other jurisdictions in order to extract best practices. Chapter Five presents discussion on national legal and institutional framework governing drug trafficking control in Mainland Tanzania. Chapter Six discusses legal and institutional challenges in prosecution and sentencing of drug traffickers in Mainland Tanzania. Finally, Chapter Seven presents summary of findings, conclusion and recommendations.

1.11 Conclusion

Drug trafficking has been criminalised in many countries except when it is conducted under licence. Tanzania mainland like other states has passed legislation and established institutions to address the problem yet it persists. It is the objective of this study to examine existing legal barriers in combating drug trafficking in mainland Tanzania. The reviewed literatures on drugs show the gap hence the need of this study. The outline of the study has been elaborated under the organisation of the study. The following chapter will look at the concepts and theories governing drug trafficking.

CHAPTER TWO

CONCEPTS, PRINCIPLES AND THEORIES ON DRUG TRAFFICKING

2.1 Introduction

Drug trafficking is one of the transnational crimes which tends to bring economic gains to perpetrators but cause negative impacts to citizens and national economies. Unlike other ordinary crimes, drug trafficking is highly perpetuated in organized syndicates across the globe, which makes it difficult to eradicate the problem in most states. Despite criminalization in various countries, drug trafficking business still prevails. Thus, it is important to understand the nature of drug trafficking business and theories behind commission of this offence. This will help us in devising mechanisms for integration into the law so as to curb the problem of drug trafficking in Tanzania.

2.2 Theoretical Framework

2.2.1 Concepts

This section specifically illustrates various concepts used in this study, namely: drug, crime, drug trafficking, drug traffickers, and drug related homicide.

(a) Drug:

This term has been defined differently depending on the context from which it is used. The first contextual meaning of drug is with regard to medical treatment of diseases. Here, NCI defines drug as ‘any substance (other than food) that is used to prevent, diagnose, treat, or relieve symptoms of a disease or abnormal condition,’ with possibility of affecting how the brain and the rest of the body work and cause

changes in mood, awareness, thoughts, feelings, or behavior.⁶⁹ Similarly, Baron, S. et al., define drug as ‘a chemical that is administered within a medical context with the aim of bringing about a positive health outcome.’⁷⁰

On the other hand, the ECP defines term drug as ‘any substance or combination of substances presented as having properties for treating or preventing disease in human beings; or any substance or combination of substances which may be used in, or administered to, human beings, either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.’⁷¹ Impliedly, it can be observed that a drug is any substance that is used for treatment of medical conditions facing humankind. This approach is what has been regarded by Baron, S. et al., as ‘monistic view of drugs’ which regards drug as medical or biomedical substance for treatment of diseases.⁷²

The second contextual meaning of drug is with regard to abuse of prohibited drugs. Here the term drug is defined to mean ‘something and often an illegal substance that causes addiction, habituation or a marked change in consciousness.’⁷³ It covers psychoactive substances which when taken in or administered into human system

⁶⁹ See the NCI Dictionary of Terms at <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/drug>. Accessed on 2nd August 2024 at 10:56 am.

⁷⁰ Baron, S. et al., On Drugs, *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine*, Volume 48 of 2023, p.560.

⁷¹ Refer to Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to medicinal products for human use, accessed at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32001L0083>, on 2nd August 2024.

⁷² See Baron, S. et al., On Drugs, *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine*, Volume 48 of 2023, pp. 552-555

⁷³ See Merriam Webster Dictionary at <https://www.merriam-webster.com/dictionary/drug>, accessed on 2nd August 2024 at 11.08 am.

affects mental processes, including perceptions, consciousness, mood or emotions. This is what Baron S. et al., regard as ‘pluralistic view of drug’ which looks at drugs from legal and recreational point of view.⁷⁴ This study applies the second approach because it seeks to assess national and international rules and standards regulating to manufacture, transportation and use of regulated drugs in Tanzania.

(b) Crime

The concept of crime has evolved from the society’s code of conduct during class societies. However, its characterization involves several elements, including prohibitions, prosecution by state and penalty. There have been varying attempts by different scholars to define the word ‘crime.’ Ross and Jones define crime as a legal wrong for which the offender is punished at the instance of the state.⁷⁵ Gledhill defines crime as a human conduct prescribed by the state enforced by threat of punishment and legal proceedings.⁷⁶ Similarly, Tapper regards crime as an intentional act in violation of criminal law, which is committed without any defence or excuse and penalized by the state as a felony or misdemeanour.⁷⁷

On the other hand, Hitcher regards crime as an act which render the actor liable to be proceeded against (prosecuted) in a certain kind of proceeding in the name of the state.⁷⁸ According to Hitcher the test for determination of crime is whether or not the act is prohibited by law and subjects one to prosecution.⁷⁹ Thus, one can

⁷⁴ See Baron, S. et al., On Drugs, *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine*, Volume 48 of 2023, p.552.

⁷⁵ Ross, R. & Jones. *An Introduction to Criminal Law*, Butterworths, London, 1972, p. 35.

⁷⁶ Gledhill, A., *The Penal Code of Northern Nigeria and the Sudan* London, 1963

⁷⁷ Tapper, P., ‘Who is the Criminal’, *American Sociological Review*, 1948, pp. 96-102.

⁷⁸ Hitcher, W.H. *The Definition of Crime*, *Dickinson Law Review*, Issue No.4, Volume 38 of 1933-1934, pp.223-225.

⁷⁹ *Opit.*, p.209.

reasonably argue that a crime is intentionally contravening the Public code of conduct established by the State which is punishable by penalties. However, for one to be convicted of committing a crime, it is mandatory to establish an intention on the part of the perpetrator. This principle is commonly known as “*actus non facit reum nisi mens sit rea*”, meaning an act does not make one guilty unless one’s mind is guilty.⁸⁰ Basically, the mens rea principle is now regarded as “sacred principle of criminal jurisprudence.”⁸¹ Thus, for purposes of this study, crime will be regarded as a deliberate violation of the Penal laws regulating drug trafficking, adopted by the government of Tanzania and punishable by prescribed criminal sanctions.

(c) Drug Traffickers

This concept is used to refer to persons who trade in illegal drugs. It also means unlicensed dealer of illicit drugs. Thus, anyone who manufactures transports and sells illicit drugs is known as drug trafficker. This is actual perpetrator of crime of drug trafficking.

(d) Drug-related Homicide

Homicide is a serious criminal act which involves exterminating one’s life, mostly punishable by capital punishment. It is an intentional killing of one person by another caused by different factors, including intoxication or drugs. Homicide has adverse social impacts on human beings, such as loss of life, feelings of insecurity, human sufferings and decreased community development.⁸² Drug related homicide

⁸⁰ Phillips, K.S., From Overdose to Crime Scene: The Incompatibility of Drug-Induced Homicide with Due Process, Duke Law Journal, Volume 70 of 2020, p..675.

⁸¹ Ibid., p.676

⁸² European Monitoring Centre for Drugs and Drug Addiction; Drug-related homicide in Europe: a First Review of the Data and Literature, EMCDDA Papers, Publications Office of the European

is one of the indicators and tools used for identifying trends and threats to human life. It shows direct relationship between drug use and homicide. Basically, drug related homicide includes murders related to drug distribution, drug use and murders committed in the acquisition of money for purchase of drugs.⁸³

While homicide may be caused by different factors, some countries have been able to establish specific statistics of offenders and victims of homicide who at the time of the murder were under the influence of drugs. Such countries include: Norway, Poland, Slovakia, Scotland, England and Wales.⁸⁴ As a way to discourage use of prohibited drugs, some countries have also enacted laws which punish anyone who directly or indirectly causes death due to use of drugs. For example, Louisiana and some other states in USA have a drug-induced homicide statute which imposes criminal liability on anyone who unlawfully distributes or dispenses a controlled dangerous substance leading to death of the drug recipient.⁸⁵

Generally, drug-induced homicide statutes intend to penalize drug “kingpins” by imposing strict punishments so as to deter the most culpable and dangerous drug dealers in a country.⁸⁶ Further, the same statutes punish friends, family, and partners of the deceased person in case it is proved that they directly or indirectly

Union, Luxembourg, 2018, p.2; also see UNODC World Drug Report 2024: Key Findings, p.23 (available at https://www.unodc.org/documents/data-and-analysis/WDR_2024/WDR24_Key_findings_and_conclusions.pdf, retrieved on 16th August 2024 at 12.10 pm.

⁸³ European Monitoring Centre for Drugs and Drug Addiction; Drug-related homicide in Europe: a First Review of the Data and Literature, EMCDDA Papers, Publications Office of the European Union, Luxembourg, 2018, pp.10-20

⁸⁴ Ibid., p.23

⁸⁵ Phillips, K.S., From Overdose to Crime Scene: The Incompatibility of Drug-Induced Homicide with Due Process, Duke Law Journal, Volume 70 of 2020, p.661.

⁸⁶ Phillips, K.S., From Overdose to Crime Scene: The Incompatibility of Drug-Induced Homicide with Due Process, Duke Law Journal, Volume 70 of 2020, pp.663-664.

administered the drugs to the deceased person.⁸⁷ By enlarge, drug-induced homicide does not require intention (or mens rea) on the part of the accused person; hence regarded as strict liability offences.⁸⁸ This may appear to be inconsistent to ordinary principles of criminal law which require proof of both actus reus and mens rea before one is convicted for a particular offence.

Despite critiques by some criminal jurists, the presence of penal sanctions to anyone who transports, distributes or injects drugs on a person leading to death, have highly facilitated in curbing the problem of drug trafficking in those specific countries. For this reason, this study has applied the drug related homicide concept to devise mechanisms for curbing the problem of drug trafficking in Tanzania.

(e) Illicit drugs

Illicit drugs refer to drugs that are unlawful to possess or use and they are prohibited by the laws of a particular country. Generally, illicit drugs are categorized into two: psychotropic substances and narcotic drugs. While the former refers to any chemical agent whose primary or significant effect are on the central nervous system affecting the mind or mental processes, the latter refers to opium and opiates derivatives that may cause dependence and addiction after continuous administration. They include substances that cause stupor, muscular relaxation and a reduction or elimination of sensitivity.

Illicit drugs in Tanzania can be divided into four categories. The first category refers to those illicit drugs that are locally cultivated or produced in Tanzania from natural

⁸⁷ Ibid., p.664.

⁸⁸ Ibid., p.665.

plants such as *cannabis* and *khat*. The second group consists of semi-synthetic drugs made outside of Tanzania from naturally occurring coca and opium poppy plants, which are used to make heroin, cocaine and morphine. Third, are those drugs which are synthesised.

Amphetamine is an example of an illicit drug that is generated synthetically. Fourth, there are psychoactive drugs that are diverted from licit applications or purposes and end up being used illicitly.⁸⁹ The present study is concerned primarily with the first and the second categories. This is because the third and fourth types are not problematic illicit drugs in Tanzania; hence their socio-economic impacts are not evidenced like these two categories of drugs.

2.2.2 Trans-nationality of Drug Trafficking

Drug trafficking is an issue that both developed and developing countries in the world must deal with. Around 200 million individuals reportedly smoked cannabis in 2019, according to the WDR of 2021. This corresponds to 4% of the world's population.⁹⁰ Similar to this, it is estimated that 20 million people, or 0.4% of the world's population, took cocaine in 2019. On the other side, 62 million people, or 1.2% of the world's population, are estimated to have used opioids for non-medical purposes in 2019.⁹¹ Due to bigger cargo sizes, increasing use of private aircraft and canal routes, and the employment of contactless ways to deliver drugs to end users, it is claimed that the COVID 19 epidemic has hastened the rise in drug users.⁹²

⁸⁹Rienner L. at el., (1994). Economic and Social Consequences of Drug Abuse and Illicit Trafficking, p.1

⁹⁰ UNODC, World Drug Report 2021, United Nations Publication, Sales No.E.21.XI.8, p.18

⁹¹ Opcit p.19

⁹² UNODC, World Drug Report 2021, United Nations Publication, Sales No.E.21.XI.8, p.13

According to statistics, drug users are becoming more prevalent on every continent. Around 60 million people in Africa between the ages of 15 and 64 were estimated to have taken drugs in 2018, and by 2030, that number is projected to increase by 40%.⁹³ Similar to this, during the 2018 reporting period, over 42 million persons in Europe aged 15 to 64 used drugs; this number is anticipated to drop to 39 million people by 2030.⁹⁴ Whereas in North America drug users reported in 2018 was 66 million people, it is estimated that by 2030 the number will increase to 68 million people. However, Asia reported 80 million drug users in 2018, and by 2030, that number is projected to increase to 83 million.⁹⁵

According to the data above, drug trafficking incidents are predicted to increase in Africa, Asia, and North America, while they may decline in Europe. This can be attributed to various factors, such as geographical factors. Africa, Asia, and North America are geographically positioned along major drug trafficking routes. These continents serve as transit points for drug smuggling from production areas to consumer markets. For example, Africa is a key transit hub for drugs destined to Europe and other parts of the world. Asia is known for its opium and methamphetamine production, while North America has a significant demand for drugs. These geographical factors make these regions vulnerable to drug trafficking activities.⁹⁶

Additionally, the projected population growth for 2030 corresponds into an increase of 11% in the worldwide population who use drugs, with a far bigger impact in low-

⁹³ Ibid., p.18

⁹⁴ Ibid.,

⁹⁵ Ibid.,

⁹⁶ UNODC, World Drug Report 2021, United Nations Publication, Sales No.E.21.XI.8, p.18

income nations than in high-income countries where by the youth are most affected.⁹⁷ The youth population are more easily exploited by drug trafficking networks for recruitment and involvement in the distribution and transportation of illicit substances. Young people facing economic hardships or lacking viable employment opportunities may be more vulnerable to engaging in drug trafficking as a means to earn money or seek alternative paths.⁹⁸

For instance, between the year 2018–2030, Africa is expected to have the highest population growth making it particularly vulnerable to a rise in the number of people who use drugs in the next decade, merely due to population growth.⁹⁹ Thus, the projected increase in drug use will occur in lower-income countries (such growth is expected to exceed 40% between 2018 and 2030), while countries in more developed regions, particularly Europe; will likely see a decrease in drug use by 2030.¹⁰⁰

Furthermore, given its relationship to opiate usage, injectable drug use, and HIV/AIDS, and drug-related criminality, drug trafficking is a major problem for Central Asia. Several significant transportation routes run through the area, taking advantage of the increased road and rail connections. To escape discovery, traffickers also exploit the complexity of paths across the highlands and across "green borders" to avoid detection. According to UNODC estimates, the scope of opiate trafficking in the region is both significantly greater than the volume seized (total seizures amount to less than 4% of estimated opiate flows in heroin

⁹⁷ Ibid., pp. 9 -11.

⁹⁸ Ibid., p. 3.

⁹⁹ Ibid., p. 12.

¹⁰⁰ Ibid.,

equivalence) and increasing annually (12% increase in 2006) due to abundant supply from Afghanistan.¹⁰¹

Drug trafficking is anticipated to grow as a business in most regions of the world, which would have an impact on the 2030 Sustainable Development Goals. The majority of the world's afflicted nations appear to be those in Africa, including EAC members. Cannabis consumption is projected to be 1.2% in Kenya and 10.8% in Nigeria, whilst opioid users in Africa have climbed from 2.2 million in 2006 to 6 million in 2017.¹⁰² A major threat in West, Central, and North Africa is the trafficking of tramadol for purposes other than medical treatment. As an illustration, tramadol seizures rose from 8 tonnes to 111 tonnes in Africa in 2017, making up 88 percent of all tramadol seizures globally that year.¹⁰³

The majority of drug trafficking incidents in Kenya, Tanzania, and Uganda have been reported in the major cities and in the coastal regions.¹⁰⁴ According to the 2017 Report, Nairobi, the Coast Province, and the Central Province all had a high incidence of drug trafficking events, totalling 101, 81, and 14 respectively.¹⁰⁵ Tanzania reported 63 instances in Dar es Salaam, 11 in Kilimanjaro, and 9 in Arusha over the same time period, while Uganda's records reveal 65 incidents in the Central Region, 10 in the Western Province, and 6 in the Northern Province.¹⁰⁶ In each of these incidents, drugs were discovered concealed inside of well-known products like

¹⁰¹ UNODC: The Paris Pact initiative (2008), *Illicit Drug Trends in Central Asia*, p. 3

¹⁰² Global Overview of drug demand and supply at <https://www.unidoc.org/PDF>

¹⁰³ <https://wdr.unidoc.org/wdr2020/>

¹⁰⁴ UNODC, *World drug report: Global overview of drug demand and supply (Book 2)*, 2017, https://www.unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf

¹⁰⁵ M Dimova, *A new agenda for policing: Understanding the Heroin Trade in Eastern Africa*, 4 <https://ecpr.eu/Filestore/PaperProposal/9e9dd3da-27fa-42cb-96c6-0bc8b5639c99.Pdf>.

¹⁰⁶ M Dimova, *A new agenda for policing: Understanding the Heroin Trade in Eastern Africa*, 4 <https://ecpr.eu/Filestore/PaperProposal/9e9dd3da-27fa-42cb-96c6-0bc8b5639c99.Pdf>.

sugar, wood furniture, cashew nuts, flour, fruit, and vegetables.

The Drug control authorities in Tanzania and Kenya have done a relatively good attempt to arrest traffickers in the last four to five years. For example, in June 2016 Kenyan authorities arrested British suspect carrying cocaine weighing 100kg which had been packed in transporting 10 shipping containers of sugar from Brazil to Uganda through Valencia, Oman, and Mombasa.¹⁰⁷ A Nigerian and two Tanzanian citizens were detained along with 268.50 kg of heroin in April 2020 in Dar es Salaam, Tanzania by DCEA.¹⁰⁸

As a result of many drug investigations, the DCEA also seized more than 13.23 tonnes of marijuana in August 2020.¹⁰⁹ Similar to this, the Tanzania Police detained eight people and detained 51 kilogrammes of heroin in September 2020.¹¹⁰ In April 2021, a dhow from Iran with total of 859.36 kilogram of drugs comprising 355 kilogram of Methamphetamine and 504.36 kilogram of heroin involving seven Iranians suspects were seized in Indian Ocean in Tanzania Water at Kilwa Masoko Lindi Region.¹¹¹ Prior to this, in 2019 DCEA detained a well-known businessman Abdul Nsembo and his wife Shamim Mwashwa for an alleged heroin trafficking network. Ali Khatib Haji Hassan, a global drug lord subject to US department of the Treasury sanctions, was also detained and extradited to the US.¹¹²

¹⁰⁷ Shock as accused aristocrat shown £4.5m drugs haul, The Express, 11 November 2016, <https://www.express.co.uk/news/world/731441/Shock-pictures-accused-British-aristocrat-Jack-Marrian-cocaine-haul-Kenya>.

¹⁰⁸ DCEA; Taarifa ya Dawa za Kulevya 2020, p. 22

¹⁰⁹ Ibid., p.16

¹¹⁰ https://www.google.com/url?sa=t&source=web&rct=j&url=https://allafrica.com/stories/202107020323.html%23%3DIn%2520April%25202020%2520C%2520Tanzania%27s%2520Drug.government%27s%2520commitment%2520to%2520the%2520operation.&ved=2ahUKEwjSuMqe-o_zAhXEgv0HHUMuCfwQFnoECAMQBQ&usg=AOvVaw0deMrFN1tS0MreMbue43uM

¹¹¹ DCEA., Taarifa ya Hali ya Dawa za Kulevya, 2021, p. 16

¹¹² <https://www.allafrica.com>

Thus, the statistics prove that drug trafficking is a global problem. As a result, UNODC calls upon states to implement integrated people-centred approaches to empower societies to develop sustainable solutions to drugs. Further states are called upon to develop intra-state and interstate strong partnerships in order to eradicate drug trafficking business.¹¹³ This means that drug trafficking will only be eradicated where all the states adopt measures to discourage drug business and punish traffickers; short of that the world will continue witnessing a steady increase of drug business. The reasons as to why states should control drug trafficking are explained hereunder.

2.2.3 Attributes of Drug Trafficking Business

Manufacturing, cultivation, importation, distribution, and sales of illegal narcotics are all part of drug trafficking. The movement of illegal narcotics from producers, cultivators, traffickers, distributors, or middlemen (retailers) to drug users is known as a system or chain (purchasers). In essence, drug trafficking functions like any other industry, with specific networks, goods, participants, and markets. In general, one must have information and abilities on how to engage in drug trafficking without being discovered by the state authorities.

Additionally, dealers need to establish a network of clients that regularly use and buy the goods as well as dependable connections and trustworthy associates.¹¹⁴ This indicates that drug trafficking occurs inside clearly defined social networks where

¹¹³ UNODC, World Drug Report 2021, United Nations Publication, Sales No.E.21.XI.8, p.12

¹¹⁴ Desroches, Frederick (2005) *The Crime that Pays: Drug Trafficking and Organized Crime in Canada*, Canadian scholar's Press Inc., Toronto, pp.1-2.

multiple people both natural and legal engage in the sale of drugs as a profitable business. Drug trafficking essentially entails high-level traffickers who buy illegal substances and then sell them to wholesalers, then retailers, for a profit. Additionally, the drug user is the one who ultimately pays for the item.

Due to its propensity to earn extremely huge income but also the possibility of being apprehended by the law enforcers, drug trafficking is frequently conducted in partnership with politicians, members of the security forces, judges, clergymen and traditional leaders.¹¹⁵ In some countries, formal security groups and high-level elected officials provide cover for traffickers. Since both high level and low-level traffickers are involved, this makes controlling drug trafficking more challenging.

Basically, the high-level traffickers, which include a number of merchants, political figures, and some honourable military officials, profit from the drug trade and thereby gain wealth and influence. Conversely, lower-level traffickers, such as street-level dealers, who face significant risks, get minimal money.¹¹⁶ By nature, drug trafficking is an organized crime with five key characteristics. First, it has definite group which engaged in illicit drug business over a defined period of time. Secondly, it has tendency to dominate through corrupting law enforcement agencies or ‘political clout.’ Thirdly, it has a centralized organization in the hands of one or few members of group. Fourth, such organization is capable of protecting the whole group and the activities by collaborating with political and administrative organs.

¹¹⁵ Aning K and Pokoo J (2014) Understanding the Nature and Threats of drug trafficking to national and regional security in West Africa Stability, International Journal of Security & Development, Volume 3(1) 8, p.3

¹¹⁶ Desroches, Frederick (2005) The Crime that Pays: Drug Trafficking and Organized Crime in Canada, Canadian scholar's Press Inc., Toronto, pp.5-8.

Finally, the leaders of criminal syndicates possess signs of respectability in society.¹¹⁷

This suggests that drug trafficking is organised into networks, with a powerful trafficking gang at the top. These networks have the power and resources to do whatever they want, including influencing the formulation of laws and regulations. Typically, they are structured and have processes in place for exchanging information. The independent nature of the intermediate group of shops results in less coordination between them. Street vendors that sell drugs to drug users (buyers) make up the bottom classes, which are not organised.

They are constantly battling to stay alive in the worst-case scenarios. This suggests that those who benefit from drug trafficking have no dangers, in contrast to the poor street vendors who face risks including being detained, found guilty, and even murdered by law enforcement. They typically have systems in place for communicating information and are structured. The independent nature of the intermediate group of shops results in less coordination between them. Street vendors that sell drugs to drug users (buyers) make up the lowermost classes, which are not organised.

Unfortunately, only the latter group is primarily targeted by law enforcement in the majority of states. In addition to the aforementioned characteristics, it is challenging to manage drug trafficking because drug-related crimes do not necessarily have a victim. There cannot be a complaint to report an incident to the authorities because

¹¹⁷ Qadri, S.M.A., (2005) *Criminology: Problems and Perspectives*, 5th Edition, Eastern Book Company Lucknow, India, pp.433-436; also see Paranjape, N.V., (2003) *Criminology and Penology*, Central Law Publications, India, pp.86-87.

the drug trade is carried out by willing customers and suppliers. Due to a lack of witnesses, this typically hinders the prosecution procedure. Therefore, any enforcement plan must be aware of the major participants in the drug trade, the social networks that were utilised to facilitate the transaction, and the financial motivations of each offender.

2.2.4 Impacts of Drug use and Trafficking

The use of drugs has a lot of negative impacts, including the deterioration of one's health, disruption of peace and stability, and disruption of the economy. Drug use is directly associated with poor physical and mental health, HIV infection, liver cancer, cirrhosis associated with hepatitis C, and eventually early mortality. Drugs like benzodiazepines, hallucinogens, and cannabis do not usually cause death directly, but they can be linked to tragic incidents. According to the 2017 Global Burden of Disease Study, drug use resulted in 585,000 deaths and the loss of 42 million years of healthy life in 2017.¹¹⁸ The number of deaths and years of life with a disability related to drug use are reported to have increased by 134% and 81%, respectively, over the same time period.¹¹⁹

On the other side, drug use has increased the frequency of crashes on the roads as a result of drunken driving regulations being broken. When using cannabis, cocaine, opioids, or other substances while driving, the risk of fatality is reportedly three times higher.¹²⁰ Similarly, use of drugs has increased the risk of hepatitis C infection. According to reports, hepatitis C affects 50% of all drug users worldwide who inject

¹¹⁸ UNODC, Global Overview of Drug Demand and Supply, World Drug Report 2019, pp.18-19

¹¹⁹ Ibid.,

¹²⁰ UNODC, Global Overview of Drug Demand and Supply, World Drug Report 2019., p.22

drugs.¹²¹ Furthermore, use of illicit drugs has led to sexual transmission of HIV. Basically, there is a direct link between use of stimulants (such as methamphetamine and amphetamine)¹²² and an increase in risk sexual behaviors such as great number of sexual partners, unprotected sex or inconsistent use of condoms and prostitution.¹²³

Therefore, drug use should be discouraged because of their adverse effect on the individual's life. Along with health problems, there are links between drug trafficking, violence, and extremism. High-ranking government officials and military officers are involved in drug trafficking networks, as was previously mentioned as a result, conflicts may arise as participants struggle for authority or as participants compete for entrance on trafficking routes and products, occasionally leading to political instability. For instance, it was asserted that conflicts over the control of drug trafficking were to blame for a succession of murders and detentions that took place in Guinea-Bissau between 2009 and 2010 and involved the president and the army chief of staff. In general, the region's well-established drug trafficking criminal networks are connected to the civil wars, insurgency campaigns, and military overthrows. For instance, in the nations of West Africa such wars have resulted in the loss of infrastructure, the death of people, and ultimately a negative impact on the economies.¹²⁴

¹²¹ Ibid., pp.27-28

¹²² These are drugs that are used to increase sexual desire and please, prolong sexual performance and facilitate sexual experimentation.

¹²³ UNODC, Global Overview of Drug Demand and Supply, World Drug Report 2019, p.26.

¹²⁴ Aning K and Pokoo J (2014) Understanding the Nature and Threats of drug trafficking to national and regional security in West Africa Stability, International Journal of Security & Development, Volume 3(1) 8, pp.4-5

Similarly, drug trafficking affects national, family, and individual levels of production. Drug addiction prevents a person from taking part in the developmental process because the body gets weakened, resulting in both physical and mental retardation. Such a person develops disease vulnerabilities and thus depends more on the family, which increases family poverty for obvious reasons. Additionally, because drug users frequently struggle to provide their children's basic requirements, such as food, shelter, clothes, education, and mental and psychological care, this results in child abuse and neglect.

On the other hand, whenever people are unable to produce due to drug-taking the economy of the country is also affected. This is due to the fact that funds that would have been allocated to development initiatives are now being spent to treat and care for drug abuse victims. This puts more strain on the state's ability to pay for health services, which hinders economic growth. Drug use also affects education since it causes school delinquency and dropout because it causes kids to become drug users or dealers, which interferes with their ability to learn.

Practically speaking, students who use drugs frequently experience temporary memory loss and other mental weakening, impaired tracking abilities in consciousness and emotional actions, nervousness associated to drug use, negative emotional and social development, and generally subpar academic performance. Poor academic achievement and a decline in self-esteem are caused by decreased cerebral efficiency. An individual may have identity instability as a result, which is likely to encourage them to use drugs even more, creating a vicious cycle.

Drug trafficking business also has adverse effect on environmental conservation. Apart from affecting human life as part of environment, drug plant cultivation entails the logging of forests, turning gathered plants into drugs, and using hazardous chemicals without taking the appropriate safety measures. Similar to how drug use affects individuals, it also has an impact on society's morals since it exposes young people to immoral practises like sodomising and prostitution, which are common among drug users. As a result, drug use and trafficking have a vast array of detrimental effects that have an impact on both an individual's and a nation's ability to develop sustainably. There is every reason to criminalize drug trafficking by each state despite on anticipated financial gain on part of traffickers. The following part explores various theories on why drug trafficking is still present in our societies despite criminalization by the law. It offers a thorough understanding on the motivations behind drug trafficking as well as potential countermeasures.

2.3 Theories of Drug Trafficking

The theories that best explain the drug trafficking are discussed in this section, including social learning theory, network theory, strain/anomie theory and rational choice theory. Each of these theories describes the reasons for the persistence of drug trafficking in society. As a result, these theories were used in this study to suggest strategies that may be developed by the Tanzania government to successfully combat drug trafficking in the country.

2.3.1 Network Theory

The network theory examines how drug trafficking operates in illicit market. In general, illegal narcotics are sold and trafficked in both domestic and international

markets. Basically, drug trafficking networks operate under the cover of secrecy and are connected to other criminal organisations, friendships, racial groups, or business relationships.¹²⁵ This indicates that due to the secrecy surrounding the drug industry, market participants are difficult to comprehend. Drug dealing basically involves moving of drugs from top suppliers via middlemen to the customer.

No matter how big or complex a network gets, it will always consist of a collection of points connected in pairs by lines. It only captures the most fundamental relational patterns between the many parts of a system as a whole. This indicates that along the drug chain, there is a secure link between each individual. Drug trafficking has continued to thrive and prosper, much like human trafficking, because of the highest degree of allegiance and trust among diverse members in a network.

Since there is no direct interaction between the customer and seller, drug trafficking is now conducted on safer grounds thanks to advances in science and technology. Due to the guarantee of personal security for each participant, this lowers the legal risks and encourages active involvement by all parties. The network essentially restricts information flow and safeguards parties above and below in the distribution system. This explains why the drug trade is unaffected by the arrest of one of the participants, and the trade continues to flourish. On the other side, every participant in a network gains certain advantages from an illegal transaction, necessitating the necessity for mutual protection.

¹²⁵ Desroches, Frederick (2005) *The Crime that Pays: Drug Trafficking and Organized Crime in Canada*, Canadian scholar's Press Inc., Toronto, p.9

Therefore, before developing tools and strategies to combat the drug trade, a state would be required to research and comprehend the criminal networks that are present both domestically and internationally. Politicians, religious leaders, and officials in the legal system are some of the important participants in the drug network, as was previously stated. For two reasons, first, the network theory is crucial to this study's efforts to develop solutions to the drug trafficking issue on Tanzania's. In order to fully investigate and prosecute drug trafficking offenders, it is acknowledged that a robust, independent, multi-sectoral, and qualified law enforcement organisation is necessary.

Secondly, it emphasizes on the need for international cooperation and collaboration in control of drug trafficking due to its Trans nationality. Hence it raises the need for inter-state and intra-state joint efforts such as extradition, formation of international police agencies and mutual assistance in criminal matters in order to effectively control the problem of drug trafficking. Thus, on the above two reasons the theory is very useful when designing both legal and non-legal strategies to address the issue of trafficking of drugs as explained under chapter seven of this thesis.

2.3.2 Social Learning Theory

The social learning theory contends that social interaction is the primary means of acquiring skills, illegal associations and chances. This hypothesis, which was created by B.F. Skinner and Albert Bandura, stresses on the need of observing in understanding how the drug industry operates. Generally speaking, four stages through which behaviour develops are attention to the past event, bring the memory of a past event into the mind, replication, and ultimately inspire. This suggests that

there is a high likelihood of behaviour or trait sharing when people with similar interests get together, which increases the likelihood of character change. This hypothesis is consistent with a maxim from old England that reads, “Show me your pals, and I'll tell you what kind of person you are”.

The core assumptions underlying this theory are; (i) people learn by watching others; (ii) awards and imposition of a penalty have an indirect impact on person conduct; and (iii) acquiring knowledge does not necessarily lead to change.¹²⁶ It presumes that people acquire new things by observation or experience, but the change comes about as a result of one's educated decision following introspection and use of one's mental capabilities (judgment). The theory idealistically contends that aggression in the drug industry may be learned by paying attention to what their role models do and react appropriately.

This concept is applicable to illicit drug business in the sense that each individual involved in the business is expected to draw in additional individuals who take an interest in it. If a person observes how business is conducted and how it impacts participants, he or she may get interested in the drug industry. For instance, if a person involved in drug business generates a high income and provides for their households and other households members, there is a possibility that their families would show an interest in the business and eventually work for it.

Similar to this, someone who observes a close family member or relative being detained, assaulted, charged with, and found guilty of drug trafficking may decide to

¹²⁶ Raziah, Bandura's Social Learning Theory & Social Cognitive Learning Theory, (available on research gate), pp.1-24

avoid doing the same thing in the future. This indicates that enforcing laws and administering penalties could have an impact on behaviour. The aforementioned implies that depending on the challenges their role models confront in life; a person will replicate behaviours they observe. Albert Mandula referred to this as learning via modelling and learning through direct experience. Adler, Laufer, and Mueller's observations, which support the social learning theory's influence on behaviour, include the following:

“Children learn how to behave by fashioning their behavior after that of others. Behaviour is socially transmitted through examples, which come primarily from the family, the subculture and the mass media...Children who have seen others being rewarded for violent acts often believe that violence and aggression are acceptable behaviours.”¹²⁷ (Emphasis added)

When the social learning theory is applied to the current study, it is assumed that the drug trafficking industry would continue to grow from one generation to the next since skills and information are passed down from one trafficker to the other. Further, traffickers involved in the business continue to make investments which continue to benefit their family members; hence illicit drug business continue to grow from one generation to another. This best explains why some people from the wealthier families continue to grow economically despite passing away of the founder of the business. Similarly, it also explains why some people from wealthier drug traffickers continue to engage in drug trafficking despite criminalization of the acts.

The above facts make this theory relevant to this study on the reason that Tanzania still experiences drug trafficking incidences which benefits unidentified players.

¹²⁷ Adler, F. Laufer, W & Mueller, G., Criminology, 6th Edition, McGraw-Hill Companies Inc. Singapore, p.91

Hence, to eliminate the issue of drug trafficking, Tanzania needs to adopt and enforce penal sanctions enough to deter or discourage people from engaging in drug businesses. This could be done by imposing severe sentence including capital punishments and payment of highest fines which have been proven to be successful in procuring highest levels of deterrence in some countries. By so doing Tanzania would be able to prevent her members of the community from engaging in the illicit drug business; hence create drug free society in the near future. It is for this reasons that social learning theory has been applied in devising mechanism to counteract drug trafficking and its impact in Tanzania.

2.3.3 Anomie/Strain Theory

According to this theory, when under extreme circumstances, law-abiding individuals will turn to crime. This is due to the unequal distribution of prospects for success; as a result, very few people from the lower classes even manage to survive.¹²⁸ The disparity between goals and the means fosters frustration which leads to strain. This means that the lack of resources among the lower-class people makes it hard for them to achieve their goals legitimately; hence consider illegal acts as another means of earning income.¹²⁹

Ideally, drug trafficking is conducted by low-income individuals for financial gain that is difficult to get through legal means. Accordingly, it is asserted that every drug dealer from the lower class operates with such a high standard of morality to make

¹²⁸ Adler, F. Laufer, W & Mueller, G., *Criminology*, 6th Edition, McGraw-Hill Companies Inc. Singapore, pp.118-119.

¹²⁹ *Ibid.*, p.121

the most money possible.¹³⁰ Basically, this theory presupposes that people in the lower class engage in drug trafficking as the only means to acquire money in order to earn their living. This argues that in order to discourage such a group of persons from working in the drug trafficking business, economic facilities should be provided to allow them to engage in legal and legitimate sources of revenue.

Impliedly, it can be argued that states should not only apply penal sanctions as a way to deter lower-class people from engaging in drug trafficking because by so doing the community continues to isolate them. Nevertheless, this theory ignores crimes committed by traffickers from the middle- and upper-class people who generally have access to resources. Thus, it is not suitable for traffickers in the mid and upper levels of the drug network who appear to be economically well-off.¹³¹ However, it is very useful when addressing involvement of people from the lower class who are either involved as distributors or consumers of illicit drugs. Since this study seeks to devise mechanisms for curbing the problem of drug trafficking, this theory is very instrumental when discussing other non-legal measures for control of drugs in Tanzania among the lower-class people. This is fully covered under chapter seven of this thesis.

2.3.4 Rational Choice Theory

This theory is based on the notion that individuals make their own particular decisions based on their personal preferences. The opinions people have about the possible outcomes of their actions should be reflected in their preferences. The three

¹³⁰ Desroches, Frederick (2005) *The Crime that Pays: Drug Trafficking and Organized Crime in Canada*, Canadian scholar's Press Inc., Toronto, pp.9-10

¹³¹ Adler, F. Laufer, W & Mueller, G., *Criminology*, 6th Edition, McGraw-Hill Companies Inc. Singapore p.122

underlying assumptions that guide rational choice theory are as follows: Individuals maximise their own utility and behave independently based on all available knowledge. Individuals have selfish inclinations.¹³² It indicates that individuals make their decision to participate in illegal drug business only following the carefully weighing advantages and disadvantages of doing so.

If someone realises commercial opportunity in drug smuggling, he will make good use of the advantage of a business, invest his time and money, and hope to be rewarded.¹³³ Similar to this, one may decide against working in the drug industry after considering its drawbacks, such as the employment of criminal penalties.¹³⁴ This explains why there are fewer drug-related crimes in nations where trafficking narcotics carries a death sentence than they are in those with softer penalties. This indicates that in order to prevent drug business, the government may enforce harsher penalties to deter people from using narcotics. When deciding on legal actions to be taken against drug traffickers, especially those large drug dealers, this notion is pertinent to this study. Thus, in chapter seven of this thesis, the theory has been used to determine the most appropriate sanctions for traffickers who knowingly engage in the drug business.

2.4 Conclusion

The motive behind illicit business is to acquire a lot of money that could not easily be obtained through legitimate business. Despite being lucrative business, drug

¹³² Wittek, R., Rational Choice Theory, Sage Publication, 2013, pp.688-789 (available on research gate, accessed on 21st September 2021).

¹³³ Ibid., p.789.

¹³⁴ Lovett, F., Rational Choice Theory and Explanation, Sage Publications, Volume 18(2) of 2006, pp.237-272 (available online at <https://journals.sagepub.com/toc/rssa/18/2>, accessed on 20th September 2021 at 14:22 pm).

trafficking has adverse effects on health of drug users and it is likely to lead to political instabilities, corruption, terrorism, money laundering and disruption of economic structures. The discussed theories above press the need for states to adopt policy and legislative measures which cover all perpetrators including manufacturers, growers, transporters, distributors and finally consumers. The following chapter envisages to discussing various regional and international instruments adopted by the international community to prevent and control drug trafficking business.

CHAPTER THREE

INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

GOVERNING DRUG TRAFFICKING

3.1 Introduction

Since drug trafficking is an international issue, states must work together to tackle it. Under the supervision of the UN Assembly, numerous international and regional instruments have been approved. Tanzania is very keen when it comes to International and regional cooperation in the field of combating drug trafficking. Following the establishment of international and regional instruments that will be elaborated hereunder, through the National Assembly Tanzania has signed and ratified various drug control international and regional agreements. International and Regional Instruments are containing numerous obligations and provisions which have a binding effect on Member States.¹³⁵

This chapter envisages discussing existing international and regional instruments which clearly sanction use and trafficking of drugs. The chapter also focuses on the specific objective and research question of this Study which points out on the experience of international legal framework and practices in curbing drug trafficking. The conventions essentially explain general prohibitions on trafficking of drugs, conditions for cultivation of drugs and the duty on states to cooperate in order to eliminate drug trafficking for the benefit of the global community as a whole. They also address the mandates of states to enact, enforce and interpret laws relating to drug trafficking against drug traffickers, be it nationals or non-nationals.

¹³⁵ The Drug Control and Enforcement Act S.4(2) (a) and 4(4)

3.2 International Conventions Governing Drug Trafficking

Drug trafficking problem is mainly addressed under three distinct but related conventions. They seek to regulate production, transportation and distribution of narcotic and psychotropic substances in the global market. Specifically, these treaties contain basic principles, standards and institutions for control of narcotic substances in various countries. However, each specific convention contains its coverage and mandates as explained hereunder.

3.2.1 The Single Convention on Narcotic Drugs of 1961

The adoption of the Single Convention on Narcotic Drugs of 1961 (as amended in 1972), was regarded as a very significant stage in the history of international drug control. It mostly deals with substances that are derived from plants, such as cannabis, khat, heroin, and cocaine. The Convention provides that State parties or territory must endeavor to prohibit growth of the opium poppy, coca bush, or cannabis plant so as safeguard the public's health and welfare and preventing the diversion of drugs into illegal traffic.¹³⁶

The Convention focused on the threat that drug use brought to the health and wellbeing of humanity. Its guiding principle is to restrict the production, manufacture, export, import, distribution, sale, use, and possession of drugs solely for medical and scientific purposes.¹³⁷ Furthermore, the Convention requires states to provide to the Secretary General with any information that CND may request, including an annual report on the implementation of the Convention, the text of all

¹³⁶ Single Convention on narcotic Drugs, 1961, article 22(1).

¹³⁷ Ibid., article 4.

laws and regulations the state has passed over time, and the names and contact information for the government officials authorised to issue export and import certificates.¹³⁸

Additionally, the state is required to provide details regarding the quantities of drugs required for the addition to special stocks, the area (in hectares) and location of the land that will be used for the cultivation of the opium poppy, as well as an estimate of the amount of opium that will be produced. Finally, states must disclose the number of industrial facilities that will produce synthetic drugs as well as the total amount of synthetic drugs that will be produced.¹³⁹

3.2.2 The Convention on Psychotropic Substances of 1971

The availability of synthetic psychotropic chemicals like amphetamines, barbiturates, and lysergic acid since World War II contributed to the establishment of the Convention on Psychotropic Substances in 1971. The Convention created comprehensive rules governing transnational business in psychoactive substances, including controls for rigorous export and import monitoring. The Convention on Psychotropic Substances' main objectives were to reduce the prevalence of abuse and illicit drug trafficking of psychotropic substances and many of its preparations.¹⁴⁰

The main requirement is that states must inform WHO of any new drugs trends or any changes they desire to make to the schedules for different drugs.¹⁴¹ States must

¹³⁸ Single Convention on Narcotic Drugs, 1961 (as amended in 1972), article 18.

¹³⁹ Ibid., article 19

¹⁴⁰ S. K. Chatterjee (1981). An Examination of the Convention on Psychotropic Substances, 1971. In: Legal Aspects of International Drug Control.

¹⁴¹ Convention on Psychotropic Substances, of 1971, article 2.

take action to prevent the production, cultivation, or distribution of unscheduled drugs while the relevant authorities decide whether to do so.¹⁴²

The information so provided must be assessed by the WHO and CND from which a report would be prepared and circulated to the members for action. Additionally, it stipulates restrictions on the utilisation of substances for therapeutic and investigative reasons.¹⁴³ Six actions are taken to accomplish this. First, all usage should be outlawed, with the exception of use for scientific and extremely limited medicinal purposes by properly authorised individuals, in medical or scientific institutes that are specifically approved by state agencies or directly under the jurisdiction of the governments.

Secondly, a particular license is required for the production, distribution, dealing, and possession of narcotics. Thirdly, make provisions for close supervision of the actions and activities related to drug usage. Fourthly, only provide an authorised person with the amount necessary to fulfil his or her stated goals. Fifth, mandate the maintenance of records regarding the procurement of the substances and the specifics of their use by those performing medical or scientific functions. Such records must be preserved for at least two years after the last use recorded.

Finally, it prohibits export and import unless both the exporter and the importer are the competent authorities or agencies of the exporting and the importing country or region, respectively, or other people or enterprises that have been specifically

¹⁴² Ibid, article 3.

¹⁴³ Ibid., article 5.

approved for the purpose by the competent authorities of their country or region.¹⁴⁴

On the other hand, manufacturing, distribution or sale of scheduled drugs should be subjected to compulsory license subject to conditions, including control of premises used and security of the manufacturing and storage processes in order to prevent theft or diversion of drugs.¹⁴⁵

Other requirements include having a prescription, placing warnings on packaging and in advertising, and maintaining records of all drugs made or sold by the licensee.

¹⁴⁶ Furthermore, vessels (ships, aircraft or other means) that are involved in the carriage of goods may be allowed to carry scheduled drugs in the first aid kits for emergency purposes.¹⁴⁷ It also provides for measures to ensure the execution of the provisions of the Convention, and sanctions in the case of default by any Contracting Party, and the responsibility in this regard has been mainly given to the Board.¹⁴⁸

The Parties to the Convention have undertaken the obligation to take all practicable control measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation, and social integration of the persons abusing drugs.¹⁴⁹ This Convention was acceded by the United Republic of Tanzania on 7th December 2000;¹⁵⁰ hence forms part of the law of Tanzania.

¹⁴⁴ Opcit., article 7.

¹⁴⁵ Opcit., article 8 and 9.

¹⁴⁶ Opcit., articles 9, 10 and 11.

¹⁴⁷ Opcit., articles 14

¹⁴⁸ opcit., article 18 & 19

¹⁴⁹ Opcit Article 20

¹⁵⁰ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&clang=_en, accessed on 15th September 2021 at 10.02 am.

3.2.3 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

This Convention supplements the two preceding conventions. It was established to strengthen national criminal laws and promote cross-border cooperation in the fight against drug trafficking. This Convention, which was designed to harmonise national drug-crime laws, is a piece of international criminal law. According to the Convention, state parties are expected to implement measures that would, *inter alia*, eliminate the following:

- i. The manufacture, production, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or psychotropic substance in violation of the 1961 Convention, the 1961 Convention as amended, or the 1971 Convention.
- ii. The violation of the 1961 Convention and the 1961 Convention as amended is the cultivation of opium poppies, coca plants, or cannabis plants for the purpose of producing narcotic drugs;

The acquisition or possession of any narcotic drug or psychoactive substance

- iii. for any of the purposes listed (i) above;
- iv. The manufacturing, shipping, or distributing equipment, supplies, or illegal substances with the knowledge that they would be used in or for the illegal cultivation, production, or manufacturing of narcotics or psychoactive substances;
- v. The planning, coordination, or financial support of any of the offences listed

in clauses i), ii), iii), or iv) above;

- vi. The conversion or transfer of property with knowledge that the property is derived from one of the aforementioned offences, or from an act of participation in such an offence or offences, with the intent to hide or disguise the property's illicit origin or to help anyone involved in the commission of such an offence or offences avoid facing the legal repercussions of their actions;
- vii. Hiding or disguising the true nature, source, location, disposition, movement, rights with regard to, or ownership of property while knowing that such property is generated from an offence or offences relating to drugs.¹⁵¹

Generally, Article 3 of this Convention provides a comprehensive list of drug-related offences that states' legislation should embrace, including supporting criminal activity. It also includes offences committed by those who hold public office. Article 4 on the other hand gives governments' territorial jurisdiction over crimes committed inside their boundaries as well as those committed aboard moving ships or boats. Under this article states have the authority to prosecute their citizens who are implicated in drug-related offences outside the ordinary territorial limits. This indicates that nationals and non-nationals who violate drug laws within the limits of a state are subject to the state's sole criminal jurisdiction.

Article 5 also permits states' authority to pass legislation that allow for the confiscation of narcotics, psychotropic substances, and the proceeds of drug-related

¹⁵¹ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, article 3.

crimes. This also covers issues related to extradition of criminals and reciprocal cooperation in criminal situations, which are covered by articles 6 and 7, respectively, of the Convention. Basically, states are asked to work together to control drug trafficking by collecting evidence from people, serving legal papers, conducting searches and seizures, inspecting things and sites, supplying information and evidence, and providing original or certified copies of relevant documentation.

Furthermore, the Convention provides for procedures for requesting assistance in criminal matters and the reasons for refusal of such requests, including protection of individual's right to life and protection of sovereignty of states. Similarly, the Convention provides for areas of international cooperation such as undertaking trainings and capacity building programs.¹⁵² The Secretary General and the CND must receive information from states about their laws and specifics of cases of illegal drug use that are prevalent in those states.¹⁵³

The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 serves as the foundational convention for the global response to drug trafficking because it provides a comprehensive definition of the crime of drug trafficking, establishes court jurisdiction over offences committed both inside and outside of the country, and establishes provisions for extradition and reciprocal legal assistance. It also defines other forms of drugs not covered by the Single Convention and the Convention on Psychotropic Substances of 1971. This treaty was signed by the United Republic of Tanzania on 20th December 1988 and was officially ratified

¹⁵² United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, articles 9, 10 & 11.

¹⁵³ Ibid., article 20

on 17th April 1996;¹⁵⁴ hence it is part and parcel of the national law.

3.3 Regional Drug Trafficking Control Instruments

Efforts to combat the problem of drug trafficking have also been undertaken by various economic integrations of which Tanzania is a party to. This is because the problem of drugs is a cross-border issue in various African countries. Therefore, two instruments adopted by SADC and EAC are relevant for drug trafficking control as explained hereunder

3.3.1 SADC Protocol on Combating Illicit Drugs Trafficking 1992

This Protocol was established in August 1992 with the goal of reducing and ultimately eradicating drug trafficking and illicit drug usage in the SADC region. Additionally, it aimed to stop the production of illegal drugs and stop the area from being utilised as a hub for the importation of drugs.¹⁵⁵ Like the requirements of the above discussed UN Conventions, the SADC Protocol urges the member states to enact policies and laws that comply with the provisions of the international treaties. This involves criminalizing drug trafficking and drug abuse; destruction of drugs seized; dealing with the proceeds of illicit drug use, and adopting provisions for the freezing, seizure, confiscation, and forfeiture of such proceeds. Additionally, in accordance with international standards, States are obliged to enact laws governing the extradition of criminals, the prevention and detection of drug trafficking revenues being laundered, and restricted distribution.¹⁵⁶

¹⁵⁴ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en , accessed on 24th September 2021.

¹⁵⁵ SADC Protocol on Combating Illicit Drug Trafficking, article 2

¹⁵⁶ Ibid., article 4.

Specifically, the Protocol reiterates provisions on mutual assistance in criminal matters as provided by the 1988 UN Convention, and requires states to devise mechanisms in which there would be collaboration in the law enforcement and promotion of cooperation with international organisations such as INTERPOL, UNDCP. In addition, states are called upon to exchange information with each other, provide training and facilitate extradition of offenders.¹⁵⁷ Similarly, states are advised to set in place drug demand reduction measures, establish independent anti-corruption agencies, and establish a committee to oversee the implementation of the laws.¹⁵⁸ Thus, the SADC Protocol on Combating Illicit Drugs Trafficking 1992 is a very important instrument for this study because it sets parameters for cooperation in drug related matters, and accommodates the UN Conventions governing illicit drugs, of which Tanzania is a member by way of ratification or accession.

3.3.2 The Protocol on Combating Drug Trafficking in EAC of 2001

Members of the EAC have pledged to eliminate drug trafficking problem in the region.¹⁵⁹ With the Protocol, EAC were committed to enact Laws with provisions for curbing inter alia drug trafficking and diversion of precursor chemicals.¹⁶⁰ Members agreed that prevention and detection of money laundering, laundering of the proceeds of illicit drug trafficking, as well as measures for dealing with drug trafficking such as tracing, freezing and seizure, confiscation and forfeiture of the proceeds, including instrumentalities, shall be included in the enacted legislation.¹⁶¹

¹⁵⁷ SADC Protocol on Combating Illicit Drug Trafficking, article 6.

¹⁵⁸ Ibid., articles 7, 8, and 9.

¹⁵⁹ The Protocol on Combating Drug Trafficking in East African Community, article 2 and 3.

¹⁶⁰ Ibid, article 4

¹⁶¹ Ibid, article 4

3.4 Conclusion

Drug trafficking is one of the problems which substantially affects the world. Members of the United Nations, SADC and EAC have adopted various treaties or protocols which seek to emphasize on the need for states cooperation in eliminating drug problem. The instruments emphasize the need of governments passing legislation that criminalize drug trafficking and drug abuse, fostering international cooperation in combating drug trafficking, including extradition of criminals and training, and information sharing. To adhere with the requirements of the international instruments and regional protocols states are expected to enact laws and institutions to curb the problem of drug trafficking and related crimes in their countries. The next chapter envisages to explore on the practices from countries that have to a large extent been successful in curbing the problem of drug trafficking.

CHAPTER FOUR

THE PRACTICES ON DRUG TRAFFICKING CONTROL IN OTHER JURISDICTIONS

4.1 Introduction

This chapter aims to achieve specific objective of this study which is to conduct a survey on legislative development of other jurisdictions. The chapter seeks to extract practices from the selected countries, in terms of their legislations, policies and strategies to curb the problem of drug trafficking. The purpose is to gather evidence-based interventions adopted by other states in combating the problem of a transnational organized crime of drug trafficking.

As previously described, drug trafficking is a worldwide issue. It is affecting both developed and developing states. While the international community has adopted international standards on control and punishing of drug trafficking criminals, the practice in countries is not uniform. The evidence shows that the problem of drug trafficking has considerably reduced in those countries that regard drug trafficking as capital offence. Examples of those countries, include: Cuba, China and Singapore, which impose severe penalties ranging from life imprisonment to death penalty.

Thus, this chapter explains both legal and non-legal mechanisms adopted by the above three states on curbing the problem of drug trafficking. The discussion under this chapter underscores arguments by scholars on undesirability of death penalty, and gives credit to the fact that countries which have successfully reduced the problem of drug trafficking impose death penalty on traffickers convicted of drug trafficking offences.

4.2 Case Study of Cuba

Cuba, which has maintained a "zero tolerance policy" against drug trafficking, is a first example of how to control the drug trafficking. Cuba has maintained its anti-drug campaign that combines prevention, therapy, confrontation, and cooperation since the 1950s in its struggle for a drug-free world. In addition to signing forty (40) bilateral counter-narcotics agreements, Cuba has ratified various UN resolutions related to money laundering and drug control.¹⁶²

The availability of illegal drugs in the country remains very low and is not general social problem. ¹⁶³ Due to a "successful" prevention plan that has been in place for more than 50 years, the island has very low drug consumption, which is only 0.003 percent of the total population. There is neither frequent drug use nor trafficking in Cuba.¹⁶⁴ In addition, Cuban officials have officially committed to maintain the country free of illegal narcotics. By 2016 it was estimated that only 0.17% of population in Havana City were drug consumers.¹⁶⁵ Their commitment to drug control appears to have shown positive results, since the presence of illicit narcotics on national territory is quite restricted and does not constitute a significant societal problem. The government has the necessary means to rigorously control the production, manufacturing, and marketing of internationally regulated psychoactive substances for medicinal and scientific purposes in accordance with Cuba's zero

¹⁶² United States Department of State Bureau of International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report, Volume 1 March 2021, p.120.

¹⁶³ See the speech of ambassador of Cuba Loipa Sanchez during launch of the World Drug Report of 2020 (retrieved at https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_63/Statements63_02.03.2020/Special_Event_WDR/Segment_1_Cuba_INTERVENTION_OF_AMBASSADOR_LOIPA_SANCHEZ.pdf, accessed on 07th march, 2023).

¹⁶⁴ See the statement to the local media of William Perez, deputy chief of Cuba's customs bureau (AGR) retrieved at www.news.cn on 07/03/2023

¹⁶⁵ Maria Esther Reus, Cuban Minister of Justice at 2016 special session of UNGASS

tolerance policy for drug manufacturing, production, use, and trafficking.¹⁶⁶

Furthermore, by any standard, Cuban drug laws are strict. For instance, Cuba's 1987 Penal Code (R.E. 2022) under articles 190 (1), 191, 192(1), and 193 penalise the production, trafficking, demand, sale, distribution, and possession of illicit drugs, narcotics, psychotropic chemicals, and other substances with the same effects. If found guilty of international drug trafficking, perpetrators might receive a term of up to 30 years in prison or death penalty. By 2023, Cuba was reported to have convicted a total of 689 people for drug trafficking offences and imposing penalties ranging from 4 years to life imprisonment and death penalty.¹⁶⁷

Nevertheless, death sentence cannot be imposed to anyone under the age of 20 at the time the crime was committed, or to pregnant women at the time the crime was committed.¹⁶⁸ Similarly, any death sentence is subject to mandatory review by the Supreme Court and later the Council of State in order to ensure that death penalty is too imposed arbitrarily.¹⁶⁹ However, for domestic drug cultivation, manufacture, and transit are often penalised by three to twenty years in prison, depending on the amount.¹⁷⁰ Furthermore, possession of a small amount of cocaine for personal use carries a prison term of one to three years, while possession of cannabis carries a

¹⁶⁶ Intervention of Ambassador of Cuba Loipa Sanchez during the Launch of the World Drug Report 2020, available at https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_63/Statements63_02.03.2020/Special_Event_WDR/Segment_1_Cuba_INTERVENTION_OF_AMBASSADOR_LOIPA_SANCHEZ.pdf, retrieved on 7th March 2023.

¹⁶⁷ See the Reuters Report of 10th April 2024, available at <https://www.reuters.com/world/americas/cuba-says-drug-use-rise-especially-among-youth-2024-04-10/>, retrieved on 16th August 2024, at 12:28 pm.

¹⁶⁸ Cuba Solidarity Campaign, Justice and Criminal Law-A Cuba Solidarity Campaign Fact Sheet, 2017, pp.1-2 (available at <https://cuba-solidarity.org.uk/resources/criminallaw.pdf> retrieved on 16th August 2024 at 11.26 a.m.

¹⁶⁹ Ibid.

¹⁷⁰ Penal Code of Cuba, Law No.62, articles 190, 191 and 192.

penalty of between six months and two years.¹⁷¹ On the other hand, if one commits an offence under the influence of narcotics the court may consider that situation as among the aggravating factors when imposing sentence on offenders.¹⁷²

Cuba, on the other hand, is a member of CND, an organisation tasked with planning, coordinating, and enforcing worldwide drug control agreements. In addition, Cuba has a special division called LEAD whose objective is to lessen the harm brought on by drug use and drug-related incarceration by directing low-level, non-violent drug offenders away from the criminal justice system and toward community-based treatment and support services. Access to housing, healthcare, job training, drug addiction treatment, and mental health support are a few examples of these services (commonly known as therapeutic measures).¹⁷³ Similarly, the law provides for educational measures to drug addicts and convicts as reform mechanisms turn a criminal into a valuable member of society.¹⁷⁴

Cuba, on the other hand, has a successful system for preventing drug use that is in line with international standards. This approach presses the need of coordination across sectors by a strong leadership organisation that implements interventions that are supported by evidence and aim to populations exposed to risk in different settings. An interdisciplinary coordinating body for drug use prevention and treatment in Cuba was established in 1989 as the NDC. The General Prosecutor of the Republic, Ministry of Justice, and Ministry of Internal Affairs, General Customs

¹⁷¹ Ibid.,

¹⁷² Ibid., article 53.

¹⁷³ Ibid., article 79.

¹⁷⁴ Ibid., article 80.

of the Republic, Ministry of Education, Higher Education, and Public Health make up the majority of the NDC.

The National Integrated Drug Use Prevention Plan from 1999 is implemented under the direction of the NDC. This implies that all key players involved in drug prevention actively participate in putting the policies and strategies into practise, including offering treatment to all drug users. Due to this, drug traffickers find it extremely challenging to enter Cuba without being detained. For example, it is reported that in November 2019, the NDC confiscated more than 1,490 kg of drugs and arrested about 1,392 people for trafficking of drugs at the borders.¹⁷⁵ Similarly, in the same NDC is reported to have confiscated more than one and a half of drugs in the territorial waters.¹⁷⁶

Additionally, the Ministry of Health executes the National Substance Abuse Program in municipalities and provinces through its Operative Group of Mental Health and Addiction (GOSMA), which offers information, counselling, and psychosocial care to addicts and their relatives.¹⁷⁷ There are currently 113 treatment centres and other drug addiction treatment facilities in Cuba, and as a condition of receiving treatment, drug users must sign agreements requiring them to abstain from drugs. In general, community policing is widespread and public trust in police institutions is high,

¹⁷⁵ See the speech of ambassador of Cuba Loipa Sanchez during launch of the World Drug Report of 2020 (retrieved at https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_63/Statements63_02.03.2020/Special_Event_WDR/Segment_1_Cuba_INTERVENTION_OF_AMBASSADOR_LOIPA_SANCHEZ.pdf , accessed on 10th October 2022.

¹⁷⁶ Ibid.

¹⁷⁷ See World Health Organization Report of 2015) (available at <http://apps.who.int/medicinedocs/documents/s21938en/s21938en.pdf>)

which encourages cooperation between citizens and various state agencies.

Thus, Cuba can be termed as one of the successful countries in curbing the problem of drug trafficking. This is due to five factors as deduced from the above description. One, adoption of zero tolerance policy under the Cuba's communist policy; hence making Cuba a hostile and most dangerous place for drug traffickers in the world. Two, adoption of penal laws with stringent penal sanctions on international drug trafficking with life imprisonment and death as maximum penalties. Three, establishment of enforcement units which are multi-sectoral and engage members of the community; hence making a drug trafficking a national concern.

Fourth, recognition of drug use as a health issue which makes it possible to provide treatment to drug addicts while supplementing it with educational measures to victims (users) and members of the community. The last but not least, public confidence in the enforcement organs is high hence making it possible for public disclosure of offenders and criminal networks. However, recently Cuba is experiencing the increase of drug use among its citizens. By 2023 Cuba was classified as among the symbolic application states which have death penalty legislations but not carried execution for five years now, leading to increase of drug use among its youths.¹⁷⁸ The above abrupt increase of drug use in Cuba signifies that death penalty was the deterrent factor towards using or trafficking drugs into Cuba. Had Cuba executed the drug convicts such increase of drug use could not have been witnessed among the youths. Thus, Tanzania, being constituted as a socialist

¹⁷⁸ Girelli, G, et al., The Death Penalty for Drug Offences: Global Overview 2023, Harm Reduction International, pp.5-23. (available at <https://hri.global/wp-content/uploads/2024/03/HRI-GO2023-finalfinal-WEB.pdf> retrieved on 16th August 2024 at 12.00 pm.

state like Cuba, could apply the above five legal and non-legal mechanisms so as to strengthen the existing mechanisms to curb the problem of illicit drugs prevailing in the society.

4.3 Case Study of China

After the World War II China was the first country to implement the death penalty for drug offenders. According to the first-ever annual assessment of national drug control laws, which was produced for 1948 session of the UN CND, China had a number of capital drug crimes including, manufacturing, planting, transporting and selling drugs as well as using drugs.¹⁷⁹ The report singles out China as the sole member state that implemented death penalty to drug offenders. Notwithstanding the report's description of the legislation as "a temporary emergency solution" following the war, China continues to be the world's top executor of drug-related offences.¹⁸⁰

Generally, drug trafficking offence in China is punishable regardless of how much drugs one has used, trafficked, produced or possessed. This means that anyone who smuggles, transports, or manufactures illegal drugs in China will face criminal consequences, regardless of the volume involved.¹⁸¹ For instance a person who is found guilty of smuggling, trafficking, transporting or manufacturing of not less than 50 grams of heroin can receive a sentence of 15 years or life imprisonment, or execution by shooting, depending on the situation of the case.¹⁸²

¹⁷⁹ International Harm Reduction Association (2010). The Death Penalty for Drug Offences Global Overview, p.20

¹⁸⁰ Ibid.,

¹⁸¹ Criminal Code of the People's Republic of China, article 347.

¹⁸² Ibid.,

From practical point of view, courts usually execute anyone who commits drug trafficking offences in excess of one kilogram. This is because there are so many criminals who trade in narcotics; hence if the requirement of 50 grams were faithfully followed, the court would sentence many individuals to death. Depending on the circumstances, a person who commits any of the aforementioned crimes in an amount less than 10 grams will only receive a sentence of up to seven years. However, if found guilty of trafficking drugs in an amount greater than 10 grams but less than 50 grams, appropriate sentences would range from seven years up to fifteen years.¹⁸³

By the end of 2021, China is reported to have resolved a total number of 54,000 drug-related cases, 77,000 suspects arrested, 27 tons of drugs seized, and 326,000 people found to be drug users.¹⁸⁴ However, with the shared responsibilities throughout the year, the general drug condition in the county kept improving, reducing domestic drug production and supply.¹⁸⁵ By 2022, drug-related cases were successfully a total of 35,000 suspects. Furthermore, 21.9 tons of resolved, leading to the arrest of 53,000 individuals were identified as drug various drugs were seized, and 197,000 users.¹⁸⁶ By 2023, a total of 42,000 drug-related criminal cases were solved, 65,000 suspects were captured, and 25.9 tons of various drugs were seized.¹⁸⁷ China initiated targeted campaigns to dismantle the whole supply for

¹⁸³ Criminal Code of the People's Republic of China, article 347.

¹⁸⁴ China National Narcotics Control Commission- Drug Situation Report of 2021. retried at http://newyork.china-consulate.gov.cn/eng/xw/202209/t20220901_10759286.htm 11.03.2023

¹⁸⁵ Ibid

¹⁸⁶ See China Drug Situation Report 2022 (available at http://losangeles.china-consulate.gov.cn/eng/topnews/202306/t20230628_11104750.htm, retrieved on 16th August 2024, at 2:48 p.m.

¹⁸⁷ See China Drug Situation Report 2023, available at http://us.china-embassy.gov.cn/eng/zggs/202406/t20240620_11438701.htm, retrieved on 16th August 2024 at 3.00 pm.

drug production and trafficking, obstruct the entry of drugs from other nations into the domestic market; hence drug incidences has decreased on average annually by more than 20% during the past five years.¹⁸⁸

4.4 Case Study of Singapore

In principle, Singapore has laws that are somewhat comparable to those of China and Cuba, enforcing the death sentence for anyone found guilty of trafficking drugs in violation of the Misuse of Drugs Act of 1973.¹⁸⁹ Drug trafficking is a capital offence, just as crimes like murder, terrorism, and possessing unlicensed weapons, ammunition, or explosives.¹⁹⁰ Section 5 of the Misuse of Drugs Act (as revised in 2020) makes it an offence for a person within Singapore or outside Singapore to engage in drug trafficking. The provision covers three acts: trafficking in a controlled drug; offering to traffic in a controlled drug, or doing or offering to do any act preparatory to or for the purpose of trafficking in a controlled drug.

Similarly, section 6 of the Misuse of Drugs Act makes it an offence for unauthorized person to manufacture controlled drug. On the other hand, section 7 makes it an offence for a person to import into or export from Singapore a controlled drug. The law further imposes an obligation to third parties including owners of premises, tenants or occupiers of premises to be opened, kept or used for purpose of smoking or consumption of controlled drugs as per section 11 of the Misuse of Drugs Act.

¹⁸⁸ The Embassy of China-National-Office of China National Narcotics Control Commission. http://us.china-embassy.gov.cn/eng/zgyw/202209/t20220901_10758622.htm; also see China Drug Situation Report 2023, available at http://us.china-embassy.gov.cn/eng/zggs/202406/t20240620_11438701.htm , retrieved on 16th August 2024.

¹⁸⁹ Cap 185 R.E 2020

¹⁹⁰ Leechaianan, Y& Longmire, D.R., The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis (available online via *laws* 2013, 2, 115–149; doi:10.3390/laws2020115)

This obligation also extends to people who plan events or gatherings where controlled drugs are consumed or trafficked as per section 11A of the Misuse of Drugs Act.

Impliedly, it means consumers of drugs, owners of premises used for consumption of drugs and event planners may be held accountable for contravening the law. This is a good mechanism which captures various participants in a particular drug network. More importantly, section 8A of the Misuse of Drugs Act makes it an offence for a citizen of Singapore or a permanent resident of Singapore living outside or inside Singapore to consume controlled drug. This could be established as a result of urine test or other mechanisms defined under the law.

Generally, this kind of provision seeks to address drug trafficking cases involving nationals of Singapore, who live within and outside its territorial borders. It also captures non-nationals as long as they are living within Singapore or outside Singapore contrary to the provisions of the Misuse of Drugs Act. This is what is known as extraterritoriality of criminal provisions which complies with international law on Tran's boundary and organized crimes.

In general, anyone found guilty of knowingly committing a crime included in sections 5 or 7 of the Misuse of Drugs Act faces the death penalty. In general, the death sentence still serves as a mandatory punishment for producing certain restricted substances, specifically: illicit production of morphine, any salt of morphine, any ester of morphine, or any salt of ester of morphine; illicit production of diamorphine, any salt of diamorphine. Unauthorized production of cocaine or any

salt of cocaine is another instance. Unauthorized production of methamphetamine or any salt of methamphetamine is another instance.¹⁹¹

However, penalty for trafficking of drugs could be changed from death sentence to life imprisonment in the stipulated conditions when done unintentionally.¹⁹² This penalty would be supplemented by use of corporal punishment as the offender may be subjected to not less than 15 strokes. At first, drug trafficking offences would be committed though the perpetrator was unaware that he was abusing drugs. The amount of drugs an offender had in his possession determined whether he is required to get the death penalty; the more narcotics that were traded, the more responsible the perpetrator was and the more damage they had done to the community. ¹⁹³

After the death penalty became mandatory, a number of foreign organisations and human rights advocates filed petitions to change the law to provide offenders who did not intend to commit an offence a reduced sentence. Despite opposition, the death penalty plays a crucial role in ensuring that drug trafficking crimes are as severely deterred as possible.¹⁹⁴ However, the Misuse of Drugs Act was changed in 2012 to eliminate the death penalty requirement in some drug trafficking and murder

¹⁹¹ See the Second Schedule of the Misuse of Drugs Act, 1973 (revised in 2020)

¹⁹² This include trafficking of following drugs: Opium where the quantity is more than 1,200 grams and containing more than 30 grams of morphine; - Controlled drug (except opium) containing more than 30 grams of morphine; - Controlled drug containing more than 15 grams of diamorphine or more than 30 grams of cocaine; -and Cannabis where the quantity is more than 500 grams.

¹⁹³ Hor Michael., *The Death Penalty in Singapore and International Law*, Singapore Year Book of International Law and Contributors, Volume 8 of 2004, pp. 105-117; also see Girelli G., *The Death Penalty for Drug Offences: Global Overview 2018*, Harm Reduction International, London, p10; also see Larasati, A.& Girealli, G., *The Death Penalty for Drug Offences: Global Overview 2020*, pp. 17-40.

¹⁹⁴ Chan, W.C, et al., *How Strong is Public Support for the Death Penalty in Singapore?*, Asian Journal of Criminology, Volume 13, Issue No.2 of 2018, pp. 91-107

instances where there was no intent to conduct a crime¹⁹⁵ This requirement has been maintained in the revised version of the Misuse of Drugs Act of 2020.¹⁹⁶

Similar to this, Sections 17 and 18 of the Misuse of Drugs Act (updated in 2020) establish presumptions of trafficking, possession, and knowledge of banned substances that, if proven, may result in a court finding a defendant guilty. By entrenching presumption provisions, the law widens the scope of drug related incidences and tends to impose an obligation on every person to be aware of drug offences. It essentially imposes an obligation on every person to know the law; short of which one would need evidence to prove the contrary. Generally, the above provisions set standards or guide that can be used by the court to interpret drug related provisions.

More significantly, S.33B of the Misuse of Drugs Act gives the court discretion to suspend the death penalty in some cases, particularly when the offender's level of guilt is not particularly great. For instance, when the offender's involvement is limited to transport or supply a controlled drugs or offers to transport or supply a controlled substance; when the trafficker helps the Central Narcotics Bureau disrupt drug trafficking operations inside or out of the country of Singapore; or when the trafficker has got such mental problems.¹⁹⁷ If the foregoing elements are successfully proven on the balance of probabilities, the court may provide life imprisonment to the criminal and a minimum of 15 strokes.¹⁹⁸ This is a best experience that enables

¹⁹⁵ Girelli G., *The Death Penalty for Drug Offences: Global Overview 2018*, Harm Reduction International, London, p10.

¹⁹⁶ It came into operation on 2nd September 2022.

¹⁹⁷ Misuse of Drugs Act 1973 (revised in 2020), section 33B (2) and (3).

¹⁹⁸ Ibid., section 33B (1)(a) and (b).

the trial judge or magistrate to evaluate the offender's men's rea and mitigating circumstances during the sentencing procedure.

On the other hand, section 23 of the Misuse of Drugs Act 1973 (as revised in 2020) provides protection of informers in drug related cases. It provides immunity to the informer against prosecution and liability in criminal and civil matter arising from information given to the state authorities concerning offences under the Misuse of Drugs Act. It also guarantees confidentiality of information and anonymity of the information provider. However, where the provider of information gives evidence (oral or documentary) which appear to be not true or is tainted by circumstances such as fraud, malice or misrepresentation, then the information provider will not be entitled to any kind of protection.

For purposes of clarity, section 23 of the Misuse of Drugs Act reads as follows:

- (1) Except as provided in subsection (3) — (a) no information for an offence under this Act is to be admitted in evidence in any civil or criminal proceedings; and (b) no witness in any civil or criminal proceedings is obliged — (i) to disclose the name and address of any informer who has given information with respect to an offence under this Act; or (ii) to answer any question if the answer would lead, or would tend to lead, to the discovery of the name or address of the informer.
- (2) If any book, document or paper which is in evidence or liable to inspection in any civil or criminal proceedings contains any entry in which any informer is named or described or which may lead to his or her discovery, the court must

cause those entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

- (3) If (a) in any proceedings before a court for an offence under this Act, the court, after full inquiry into the case, is satisfied that an informer willfully made a material statement which he or she knew or believed to be false or did not believe to be true; or (b) in any other proceedings, the court is of the opinion that justice cannot be fully done between the parties to the proceedings without the disclosure of the name of an informer, the court may permit inquiry and require full disclosure concerning the informer.

Apart from the above legal measures, the Misuse of Drugs Act provides for mandatory treatment and rehabilitation of drug addicts. Section 34 of the Misuse of Drugs Act gives power to the Director of the Central Narcotics Bureau to make an order requiring suspected drug addict to be under supervision for a period not exceeding seven days, and or subject one to rehabilitation programme at approved institution or community rehabilitation center.

Similarly, the law under section 34A of the Misuse of Drugs Act imposes an obligation on parents or guardians of a supervisee to attend counseling sessions at the place and time approved by the Director; failure of which may lead to a fine not exceeding \$5,000.¹⁹⁹ Basically, the approved institutions and community rehabilitation centers are established by the Minister under section 35 of the Misuse of Drugs Act. Thus, Singapore still treats drug trafficking as one of the capital

¹⁹⁹ Misuse of Drugs Act 1973 (revised in 2020), s. 34A (2).

offences punishable by death penalty. All offences listed under the Second Schedule would generally attract death penalty. However, courts have been given discretion to impose life imprisonment provided the two conditions listed under section 33B of the Misuse of Drugs Act are observed. Such kind of harsh laws have been helpful in decreasing drug trafficking incidences in Singapore.

In 2019, MHA in Singapore conducted a survey of 2,000 residents, on their views of capital punishment. The greater number of respondents acknowledges or strongly acknowledged that the death sentence is more effective than life imprisonment as a deterrent against serious offences. The survey discovered that there was a 66% reduction in the average net weight of opium trafficked in the four-year window after the introduction of mandatory death sentence in 1990 for trafficking more than 1,200 grams of opium.²⁰⁰ Thus, tough laws and effective enforcement are a strong deterrent against drug sales and consumption.

Nevertheless, Singapore government uses balanced approach strategy by applying non-penal measures to fight drugs. It works jointly with the community, parents and teachers to educate youths and the public on the harm posed by drug use. Drug users receive compulsory treatment and rehabilitation services. Recovery addicts upon release from rehabilitation centers, receive help to reintegrate into the society. Singapore has one of the lowest rates of drug use in the world: 30 opiates abusers per 100,000 people. In the 1990s, Singapore arrested more than 6,000 drug abusers

²⁰⁰ MHA-Singapore- <https://www.mha.gov.sg/home-team-real-deal/detail/detail/the-death-penalty-in-singapore>

annually. By 2016, this number had gone down to about 3,000.²⁰¹ Furthermore, the number of drug abusers has remained low, falling from 208 users per 100,000 residents in the mid-1990s to 69 abusers in 2021. Recidivism rates for drug addicts who underwent programs in Singapore drug rehabilitation institutions have dropped.²⁰²

Singapore is one of the few countries in the world where the drug problem has been well addressed. The Government takes a comprehensive, holistic, and zero tolerance strategy in addressing drug problem by educating youngsters and parents using numerous platforms such as Facebook, mobile applications, conventional media, and social events. They also target and prevent narcotics from entering the nation through stringent anti-drug legislation and effective enforcement.²⁰³ In Singapore the death penalty for drug traffickers has been, and continues to be an effective deterrent as part of country's legal systems, when combined with effective enforcement based on the rule of law. This has practically eliminated drugs and crimes on the streets and caused the country to be drug- and crime-free. There is no uniform strategy in tackling drug problem since each country faces its own set of challenges. Some governments have developed special ways to address the challenges posed by drug use. However, Singapore's clear, thorough, and holistic zero-tolerance approach to the drug problem has worked successfully, allowing Singaporeans to prosper in a safe and secure country.²⁰⁴

²⁰¹The Washington Post https://www.washingtonpost.com/opinions/singapore-is-winning-the-war-on-drugs-heres-how/2018/03/11/b8c25278-22e9-11e8-946c-9420060cb7bd_story.html

²⁰² Singapore Drug Report, June 2022, available at https://www.sana.org.sg/wp-content/uploads/2023/09/ITQ-SANA-AR2022_FAvview_HR.pdf, retrieved on 16th August 2024 at 3:11 pm.

²⁰³ Implementation of HRC/28/L.22 in Singapore-input for High Commissioner for Human Rights Study retrieved from <https://www.google.com/search?q=singapore+over+the+years+on+fighting+illicit+drugs>

²⁰⁴ Implementation of HRC/28/L.22 in Singapore-input for High Commissioner for Human Rights May 2015. Study retrieved from <https://www.google.com/search?q=singapore+over+the+years+on+fighting+illicit+drugs>

4.5 Conclusion

The adoption of strict legislation governing drug trafficking which impose death penalties may have a direct link with disrupting drug trafficking network and reduction of drug trafficking incidences by creating some form of deterrence as it is reflected in network, social learning, strain/anomie and rational choice theories. Cuba, China and Singapore have shown that the use of harsh penalties is very significant in curbing the problem of drug trafficking.

However, these countries regard drug use as the health matter. They also use other alternative voluntary measures such as raising public awareness through advertising campaign, including daily advertising campaign on the harm caused by drug use and the stiffness of sentence for drug traffickers, counseling, and rehabilitation services for drug addicts. They have succeeded in curbing drugs by disrupting drug markets. This study therefore has fulfilled specific objective of conducting a survey on legislative development of other jurisdictions. The following chapter presents a discussion on legal and institutional framework governing drug trafficking control in Tanzania. The next chapter envisages to assessing control of narcotic drugs and other prohibited substances in Tanzania and the extent to which Tanzania has complied with international standards on control of drug trafficking.

CHAPTER FIVE

LEGAL AND INSTITUTIONAL FRAME WORK GOVERNING DRUG TRAFFICKING CONTROL IN MAINLAND TANZANIA

5.1 Introduction

This chapter elaborates legal and institutional framework in Tanzania with the intention of creating understanding on the existing laws and institutions dealing with the drug control in the country. Generally, drug trafficking is addressed by two kinds of legislations, namely: specific legislation relating to anti-drugs and general laws which partly cover drug trafficking as one of the economic crimes including other matters such as investigation, admissibility of evidence and witness protection.

The selection of the laws under this Chapter has been influenced by the desire to understand the challenges encountered in the administration of anti-drug laws from criminalization of drug trafficking offences, prosecution, custody and admissibility of evidence, witness protection and sentencing of offenders. All these aspects are very crucial when discussing administration of criminal justice in drug trafficking offences in Tanzania. The chapter begins by exploring on the legal framework governing drug trafficking. It finally describes various institutions responsible for drug trafficking control in Tanzania.

5.2 Legal Framework Governing Drug Trafficking in Tanzania

Combating crimes in general has to be done within the ambit of the law. If this is not done then one may not be able to distinguish the criminals and the law enforcement agencies. Before 2015 Tanzania prohibited drug trafficking offences using the Drugs

and Prevention of Illicit Traffic in Drugs Act, 1995.²⁰⁵ Given time and developments at global level and due to chameleonic nature of drug trafficking, various legal gaps were identified on the aforementioned which necessitated for a more stringent law to fight trafficking of drugs. The following section presents a discussion of various laws essential in the administration of justice in drug related crimes in Mainland Tanzania.

5.2.1 The Drug Control and Enforcement Act, No.5 of 2015

This is the main Act providing for drug trafficking offences. It was passed in order to provide robust legislative rules for efficient and effective control of narcotic drugs and psychotropic substances and provide for the establishment of DCEA. Part III of the Act defines a number of offences that constitute drug trafficking, including the cultivating of illegal plants, owning drugs, and possession of machinery, apparatus, and a laboratory intending to produce narcotics and psychoactive substances. The above offences carry punishment of a life sentence.²⁰⁶

Furthermore, the Act makes it an offence for any person who knowingly directly or indirectly finances prohibited activities or harboring any person involved in commission of prohibited activities. The penalty for contravention of this section is a fine not less than one billion shillings in addition to life imprisonment.²⁰⁷ On the other hand, the Act criminalizes aiding, inciting or abetting in the commission of prohibited activities and perpetrator may be charged as the principal offender.²⁰⁸

²⁰⁵ Act No. 9 of 1995 (repealed)

²⁰⁶ Act No 5 Of 2015, Section 15.

²⁰⁷ Ibid., s.23

²⁰⁸ Ibid., s.24

This means that anyone who attempts or otherwise influences the commission of an offence would be charged as the principal offender and sentenced accordingly.

It is important to note that the Act creates corporate criminal responsibility in drug related offences. Any holder of the office in a company (director, secretary or manager) who if proved that he or she was aware of the commission of prohibited activities, will be presumed to have committed the offence and punished accordingly.²⁰⁹ Consequently, the company would be deregistered or confiscated in accordance with the law. This provision is very well crafted to address both individual and corporate criminal responsibility of holders of office and the company as well. As a matter of principle, once criminal responsibility of a company is established, the court would order payment of fine since a company cannot be subject to imprisonment orders.²¹⁰ Corporate criminal responsibility is very useful in curbing the problem of drug trafficking as it tends to prevent crime by influencing the corporation's representatives of all degrees to abstain from conducting its business in unlawful ways.²¹¹

Furthermore, the Drug Control and Enforcement Act establish drug related offences as non bailable offences and impose a burden of proof to perpetrators of drug related offences.²¹² This seeks to prevent perpetrators from interfering with investigation of drug trafficking cases, and allows the accused person to make counterpoints before a

²⁰⁹ Cap 95 R.E 2019, s.30

²¹⁰ Edgerton, H.W., Corporate Criminal Responsibility, Yale Law Journal (available at https://openyls.law.yale.edu/bitstream/handle/20.500.13051/12028/55_36YaleLJ827_1926_1927_.pdf;jsessionid=EA8ACD25914D6C8E7C5F16800955943C?sequence=2), pp.827-834.

²¹¹ Ibid., pp.835-836

²¹² Cap 95, R.E 2019, ss.28 and 29.

court makes a final determination. Furthermore, the Act entrenches what is regarded as presumption of possession of illicit articles.²¹³ As a matter of principle, such presumptions may be rebutted by the accused persons by providing set of facts (evidence) to disprove the allegations.

Additionally, the Law gives DCEA power to establish rules governing the cultivation of illegal drugs such coca leaves, *khat*, cannabis, and poppy plants.²¹⁴ On the other hand, the Act gives power to court to order forfeiture and confiscation of properties where accused person is convicted of charged offence.²¹⁵ However, the court is required to comply with principle of due process, including issuance of notice, right to be heard and right to appeal against confiscation order.²¹⁶

For effective enforcement, the Act mandates DCEA officers to make lawful arrest and search subject to legal procedures outlined under the Criminal Procedure Act (hereinafter referred to as CPA) and the Drug Control and Enforcement Act, unless it is unreasonable or impracticable to do so.²¹⁷ Generally, DCEA officers are vested with powers to arrest, search and record interrogation using recorders or other media equipment.²¹⁸ This is meant to prevent the arresting officer from making ethical mistakes that can undermine the prosecution's case. Failure to observe the principles governing arrest, search and investigation by DCEA officers may affect validity of evidence as explained under chapter six of this dissertation. This was held in the

²¹³ Opcit., s.38.

²¹⁴ Opcit., Part II.

²¹⁵ Opcit., ss.49 and 49A.

²¹⁶ Opcit., s.49A (3), (4) and (5).

²¹⁷ Opcit., s.48.

²¹⁸ Opcit., s. 48(2)(a)(xi)

case of *Amada Hamadi Tindwa vs. the Republic*²¹⁹ whereby Pomo, J., set aside the conviction of the appellant based on trafficking in narcotic drugs charges, because of two irregularities. One, conducting search in the appellant's house without a warrant of arrest or lawful instructions from authorized officer and failure to justify the same under emergency provisions. Two, failure by investigation officers to record caution statement within the prescribed period of time. Thus, the accused person was set free on the above defects which were held to be incurable.

Similarly, in the case of *Remima Omary Abdul vs. Republic*²²⁰ the appellant and two others were arrested and house searched in discovery of narcotic drugs which were hidden in the bedroom of the appellant. However, the search was done without proper warrant. The Court of Appeal observed that 'Possession of search warrants where search is not an emergence one, observance of time of conducting search and need for permission from magistrate when search is conducted beyond prescribed time as stipulated by the two legislations and the PGO are matters which cannot be dispensed with. These provisions are there for lending credence to not only the manner search and seizure is conducted but also to the property seized.'

The above signifies that search and arrest of suspects must be done in accordance with the requirements of the Drug Control and Enforcement Act, failure of which may vitiate validity of the judgment. Finally, the Drug Control and Enforcement Act provides for jurisdiction of courts by defining the word 'court' under section two to

²¹⁹ Criminal Appeal No.171 of 2022, High Court of the United Republic of Tanzania (in the District Registry of Dar es Salaam) at Dar es Salaam (Unreported)

²²⁰ Criminal Appeal No.189 of 2020, Court of Appeal of Tanzania at Dar es Salaam (Unreported), p.37.

include the High Court of Tanzania (Corruption and Economic Crimes Division) and other subordinate Courts.

Each of these two courts has jurisdiction to determine specified offences depending on the nature of the offence and the weight of drugs trafficked. Thus, the Drug Control and Enforcement Act is a very detailed instrument which creates drug trafficking offences; establishes penal sanctions, enforcement organ and courts. It also entails provisions on arrest, search and investigation of drug related cases. Last but not least, it accommodates drug offences prescribed by various international instruments.²²¹

However, for effective administration of criminal justice, this Act must be read together with other legislations. This is because it does not cover all aspects of criminal investigation, prosecution and sentencing. This means it must be applied together with other laws relevant to criminal law and procedure. These legislations include: Criminal Procedure Act of 1984;²²² Evidence Act;²²³ Mutual Legal Assistance in Criminal Matters Act;²²⁴ Proceeds of Crime Act;²²⁵ and Extradition Act.²²⁶ Other Laws include: Economic and Organised Crime Control Act²²⁷ and the Anti-Money Laundering Act of 2006²²⁸ and the Parole Boards Act of 1994.²²⁹ Some of these legislations which are relevant to the study are explained hereunder.

²²¹ Cap 95 R.E 2019. S.14(1) read together with First Schedule to the Act.

²²² Cap 20 R.E 2022

²²³ Cap 6 R.E 2019

²²⁴ Cap 254 R.E 2019

²²⁵ Cap 256 R.E 2010

²²⁶ Cap 368 R.E 2010

²²⁷ Cap 200 R.E 2019

²²⁸ Cap 423 R.E 2019

²²⁹ Cap 400 R.E 2010

5.2.2 The Criminal Procedure Act ²³⁰

This is the principal legislation providing for criminal procedure in Tanzania. It was passed in 1985 to provide general guidelines that must be followed while making an arrest, looking into a crime, and holding a criminal trial. For instance, Part II of the Act outlines the processes for arrest, escape, and recapture as well as search warrants and seizures. The Act basically outlines processes for conducting searches in order to ensure that legality is reached and one's constitutional rights, particularly the right to privacy, are safeguarded.

The issue of search order and search warrant during search can also be discussed by referring to case laws. For instance, in the case of *Salum Alfani Kindamba vs Republic*²³¹ the appellants were convicted of burglary contrary to section 258 (1) of the Penal Code and Illegal Possession of Goods alleged to have been stolen or illegally obtained contrary to Section 311 of the Penal Code. They were both sentenced to serve two years in jail. On appeal it was not a position of the court that the witnesses for the prosecution who conducted the search in appellant's house were in charge of the Police Station nor had a search warrant.

The court rendered the search to be illegal as it was contradicting section 38(1) of Criminal Procedure Act. Thus, the conviction and sentence were quashed and appeal allowed. Similarly, in the case of *Ayubu Mfaume Kiboko vs Republic*²³² the appellants were both convicted and sentenced to twenty years imprisonment for

²³⁰ Cap 20 R.E 2022

²³¹ Criminal Appeal No. 24 of 2022 (originating from Criminal Case No.150 of 2022 of Dodoma District Court), High Court of the United Republic of Tanzania at Dodoma, by Masaju, J (Unreported)

²³² Criminal Appeal No.694 of 2020, Court of Appeal of Tanzania at Dar es Salaam (Unreported)

trafficking in narcotic drugs contrary to section 15(1) (a) of the Drug Control and Enforcement Act 2015. On appeal, the Court of Appeal of Tanzania held that the search was illegal because it was conducted in the absence of the search order and search warrant contrary to section 42(1) of the CPA. Thus, the appeal was allowed and conviction quashed. Likewise, in the case of *DPP vs. Chumu Said Hussein*,²³³

Hassan, J., set aside the conviction and sentence on the basis that search on the house of the accused person was conducted by the police officer contrary to the law since no warrant had been issued by the court and there was no any emergence situation. Furthermore, the Criminal Procedure Act requires search process to be done in the presence of independent witness, who must sign on respective receipt to be issued to the suspect(s).²³⁴ The purpose of this provision was articulated in the case of *Falfan*²³⁵ where the court observed that general meaning of providing receipt of the seized properties and procuring a signature of the independent witnesses is to make sure that the items obtained from the suspect (s) originated from nowhere except from him.

If the process is observed, the complaints normally stated by the suspect that the evidence obtained from such search is not true will to a great extent be reduced. Where the above requirement is not met, the evidence gathered may be regarded as illegal by the court. This phenomenon was observed in the case of *Zena Omary Rashid vs. Republic*,²³⁶ where it was held that the alleged drugs (khat) were not

²³³ Criminal Appeal No.120 of 2022, High Court of Zanzibar at Tunguu (Unreported)

²³⁴ Cap 20 R.E 2022, s.38(3).

²³⁵ Criminal Appeal No. 384 of 2008, Court of Appeal of Tanzania. (unreported)

²³⁶ Criminal Appeal No.33 of 2020, High Court of Tanzania at Moshi (Unreported)

found in possession of the accused. The court held that the absence of an independent witness (the bus conductor) who had the knowledge about the owner of the luggage to testify, created uncertainties whether the police officers really searched the bus and seized the alleged drugs.

Therefore, the investigator and prosecutor of drug trafficking related offences must observe laid down procedures under the CPA failure of which makes the evidence obtained illegal. Furthermore, the Act provides for summons of witnesses, examination and cross examination of witnesses during criminal proceedings.²³⁷ It also provides for matters relating to contents of the charge.²³⁸ As a matter of law, a charge must specifically indicate offence committed, relevant sections contravened and specific particulars of an offence.

Any deviation from the above requirements could make a charge to be incurably defective. This was observed in the case of Hamis Mohamed Mtou vs. the Republic²³⁹ whereby the court set aside the conviction and sentence on the ground that the charge was defective for lack of specific particulars of the offence. It was held that charging a person of trafficking in narcotic drugs weighing 811.54 grams of heroin hydrochloride valued at Tshs.24,346,200/ without indicating the mode such as transporting or harbouring as indicated under s.2 of Drug Control and Enforcement Act, vitiated the proceedings and occasioned injustice. Thus, on the basis of the above stipulated provisions and case law it could be correctly argued that the

²³⁷ Cap 20 R.E 2022, ss.195 to 222.

²³⁸ *ibid.*, ss.131 to 135.

²³⁹ Criminal Appeal No.228 of 2019, Court of Appeal of Tanzania at Dar es Salaam (Unreported)

Criminal Procedure Act is an important tool when discussing matters of fighting drug trafficking in Tanzania; hence binding to all investigators, prosecutors and court officers. Unless strictly complied, courts will always set free the accused or convicted persons on several grounds, such as interference of chain of custody, illegality of search, and defectiveness of charge. These issues will further be expressed in the subsequent chapters of this thesis.

5.2.3 The Evidence Act (hereinafter known as TEA)²⁴⁰

TEA is a replica of the Indian Evidence Act of 1872. It was enacted in 1967 to become the framework law governing evidence in both criminal and civil proceedings in Tanzania. TEA has a total of 180 sections which provide for admissibility of evidence. The relevance of this piece of legislation in relation to drug trafficking is that it governs admissibility of evidence in courts. Confession statements are admissible under Part III of the Act rather than Part II of the Act, which only addresses admissibility of admission statements.

Parts IV and V of the Act address the permitting of evidence from people who are not able to testify in court and the permitting remarks in certain situations. On the other hand, Part VI of TEA provides for the extent to which statements are to be proved with regard to their admissibility while part VII contains provisions about the relevance of Judgments in a trial and how previous judgments are relevant to bar a second suit or trial²⁴¹ Part VIII also addresses the admissibility of expert evidence. As a result, spoken evidence in drug cases must be given in court by a person who

²⁴⁰ Cap 6 R.E 2010

²⁴¹ Opcit., section 42.

witnessed the incident.²⁴² This means that all witness proving evidence in court regarding an accused person must be under oath and be open to the accused person's cross-examination. However, primary and secondary evidence must be used to prove the substance of documents. TEA also stipulates precise guidelines for proving banker's books and public records and specific rules governing admissibility of electronic evidence in Tanzania

The obligation to comply with provisions of TEA has been elaborated in number of case laws. For instance, in *Abas Kondo Gede vs. Republic*,²⁴³ the learned State Attorney urged the court to neglect or remove Pw7's testimony from the record. The court's argument was in favour of the appellant. The court removed from the record of appeal the evidence of PW7 as well as the exhibit P6 (The Observation Form) tendered by him. It was the position of the court that any witness called to testify on behalf of either party shall take an oath or affirmation, as the case may be; if this is not done the documented and confessed evidence lose its value for going contrary to the Provisions of section 198(1) of the CPA.

On admission of document without objection, it is the position of the case law that if a document is admitted into evidence without objection, it becomes admissible in evidence unless the writer thereof is examined. When addressing the issue of admissibility of expert opinion, the Supreme Court of India in the case of *Malanga Kumar Ganguly vs. Sukumar Mukherjee*,²⁴⁴ observed that a party to an action who

²⁴² Rweshabura C., (2021) Critical assessment of the legal and Institutional Challenges facing drug Trafficking in Tanzania Mainland, p.7

²⁴³ Criminal Appeal Case No. 472 of 2017, Court of Appeal of Tanzania (unreported)

²⁴⁴ AIR (2010) SC. 1162 at paragraph 19.

does not oppose to a document being recorded and marked as an exhibit is estopped and prohibited from later contesting the admission of a document.

Similarly, in the case of *Said Ally Mnzava vs. Republic*,²⁴⁵ the appellant Said Ally Mnzava was charged in Mwanga District Court at Mwanga of trafficking in narcotics contrary to section 15A (1) and (2) (c) of the Drugs Control and Enforcement Act (Cap 95 R.E. 2019). He was found guilty as charged and sentenced to serve 20 years imprisonment in jail. On his appeal, he raised one of the grounds of appeal that the trial court erred in law by admitting the certificate of seizure into evidence. Based on the records, the appellant objected the tendering of the certificate of seizure which he claimed to have not signed as required by law. However, the trial court found the objection to be baseless, so the same was admitted.

The appellate court observed that the appeal had no merit since the appellant did not cross-examine the witness when the exhibit was admitted in connection to his signature on the exhibit. He just objected by rejecting to have signed it. In that regard the court found the ground to be not of value. Furthermore, TEA provides for the principle of adverse inference which states that no specific number of witnesses shall in any case be required for the evidence of any act.²⁴⁶ This principle was applied by the court in the case of *Azizi Abdallah vs. Republic*²⁴⁷ whereby the court held that the prosecution is not required to call a certain number of witnesses and it has discretion in determining which witnesses to call. It was further observed that a Court may be asked to draw an adverse inference against the prosecution case if a

²⁴⁵ High Court of Tanzania (Moshi District Registry) Moshi, Criminal Appeal No. 61/2021 at page 9

²⁴⁶ Section 143 of TEA Cap.6 R.E 2019

²⁴⁷ [1991] T.L.R. 71

key witness who can be accessible and might have testified against a significant component of the prosecution's case is suppressed without sufficient reason.

This principle was further discussed in the case of *Zena Omary Rashid vs. Republic*²⁴⁸ whereby the appellant was arraigned with and convicted of the offence of trafficking in narcotic drugs contrary to section 15 A (1) and (2) (c) of the Drugs Control and Enforcement (Amendment) Act No. 15 of 2017. It was alleged that, on 14th February, 2020, at Kia Junction within Hai District in Kilimanjaro Region, the appellant was found trafficking 12.30 kilograms of narcotic drugs -Khat commonly known as Mirungi. The court convicted the appellant by relying on the testimony of the police officer who made search and prepared a certificate of seizure.

However, the prosecution did not call the conductor of the bus to testify nor was certificate of seizure produced in court. It was held that where it was observed that the court may draw a negative inference against the prosecution for omitting to bring specific witnesses without presenting adequate justifications. In particular Masabo, J., commented as follows:

*'While it is true that in terms of section 143 of the Evidence Act, Cap 6 R.E. 2019, a party is not compelled to parade a certain number of witnesses to support his case, it is a settled principle that, failure to summon key witnesses during trial entitles the court to draw an inference adverse to the party who ought to have summoned the said witness as set out in Section 122 of the same Act which states that the court may draw adverse inference in certain circumstances against the prosecution for not calling certain witnesses without showing any sufficient reasons... As no reason for the absence of this witness was advanced, I am persuaded that this is a fit case to infer an adverse inference against the prosecution for the failure to call the bus conductor to testify.'*²⁴⁹

²⁴⁸ Criminal Appeal No.33 of 2020, High Court of Tanzania -Moshi District Registry at Moshi (Unreported)

²⁴⁹ *Zena Omary Rashid vs Republic*, Criminal Appeal No.33 of 2020, High Court of Tanzania -Moshi District Registry at Moshi (Unreported), at pp.8-9.

All the above precedents show that Tanzania Evidence Act is an important piece of legislation which lays down all procedural requirements for admissibility of oral and documentary evidence in the courts of Tanzania. It is a fundamental legislation which must be complied by investigators, prosecutors and courts since it is likely to affect validity of judgment.

5.2.4 The Electronic Transactions Act 250

An important source of Tanzanian legislation governing electronic evidence is the Electronic Transactions Act (ETA). On April 1, 2015, Parliament approved the Act. It received assent on April 25, 2015, and went into effect on September 1, 2015.²⁵¹ This Act was enacted to provide for recognition of electronic transactions, e-Government services, and the use of information and communication technologies in collection of evidence, admissibility of electronic evidence and facilitation of the use of secure electronic signatures. The Act is relevant as far as a drug case is concerned as it provides for evidential aspects dealing with admissibility of electronic evidence in criminal proceedings.

Specifically, section 3 of the Act recognizes electronic evidence and makes it valid and admissible in any trial. Likewise, Section 18 of the Act specifies factors the court must consider while deciding whether to admit electronic evidence. These include the reliability of how the data message was created, stored, or transmitted; the reliability of how the integrity of the data message was maintained; and the reliability of how its creator was identified. Similarly, the Act outlines some

²⁵⁰ Cap. 442 R.E 2022

²⁵¹ Makulio A., (2016) the Admissibility of Electronic Evidence in Tanzania: New Rules and Case Law, at p. 132.

additional factors that must be considered when judging the validity of electronic evidence for purposes of admission.²⁵²

The question of admissibility of electronic evidence is also disclosed in case Law in the case of Trust Bank Tanzania Ltd Versus Le-Marsha Enterprises Ltd and two others (2000).²⁵³ In this case, it was elaborated that the court must consider the effect of technology changes in doing the business. The court departed from the best evidence rule and recognised that electronic evidence carries the same weight as physical evidence based on original documents; the court admitted electronic evidence by ruling out that electronic evidence is admissible in courts of law of Tanzania. This was a departure from the strict best evidence rule that only primary evidence (original documents) is admissible.

5.2.5 Whistle Blowers and Witness Protection²⁵⁴

This Act was enacted in 2015 to promote and facilitate reporting of organised crimes, corruption offences, unethical conduct and abuse of office, illegal and dangerous activities. The Act provides for the protection of whistle-blowers and witnesses against potential retaliation and provide for a legal mechanism to reward and compensate whistle-blowers and witnesses. Ideally, drug traffickers are very dangerous as they are ready to do anything to protect their income from drug business, including killing of potential witnesses or threatening them and their families.

²⁵² Cap. 442 R.E 2022, section 18(3).

²⁵³ Commercial Case No. 4/2000, High Court of Tanzania (Commercial Division) at Dar es Salaam.

²⁵⁴ Cap 446 R.E 2022

Basically, this Act protects whistleblowers and witnesses in various aspects. The nature of information protected under this Act is the one regarded to be of public interest, hence public interest disclosure. Essentially, the duty arises if the information so disclosed deals with crimes, health and safety issues, environmental conservation and protection of resources or natural wealth.²⁵⁵

This Act provides for different aspects relating to protection of witnesses in number of ways. First, it provides for procedure of disclosing relevant information and the manner of recording the information, including information received through oral testimony.²⁵⁶ Secondly, it protects witnesses and whistle-blowers against criminal and civil liability.²⁵⁷ Thirdly, it protects disclosure of information made in good faith or where the person disclosing the information believes it to be true.²⁵⁸ Forth, it allows the Authority to provide protection to a whistle blower in case of information concerning possibility of action adverse to the witness such as dismissal, suspension, harassment, discrimination or intimidation.²⁵⁹ Furthermore, the Act permits the authority power to provide shelter to the witness in case of any fear for one's life resulting from information disclosed by such person.²⁶⁰

On the other hand, the Act provides for reward and compensation to whistle-blowers and witnesses depending on the budget set in respective institutions, subject to procedures laid down by the Minister.²⁶¹ Similarly, the Act illegalizes any kind of

²⁵⁵ Opcit., Section 4.

²⁵⁶ Opcit., ss.5 and 7

²⁵⁷ Opcit., s.9(2)

²⁵⁸ Opcit., s.9(1)

²⁵⁹ Opcit., s.10

²⁶⁰ Opcit., ss.11 and 12

²⁶¹ Cap 446 R.E 2022, s.13.

arrangement or contract where the employee is prohibited or precluded from disclosing relevant information or otherwise taking an action in court to claim relief in respect of retaliation or victimization.²⁶²

Likewise, the Act criminalizes any act of disclosure of identity of witnesses or whistle blowers by officers of any competent authority, whom upon conviction may be liable for imprisonment period of not less than five years, or fine of not less than fifteen (15) million shillings or to both.²⁶³ However, the Act prevents disclosure of certain privileged information for lawful cause, including matters which may prejudice sovereignty of the state, national security, international relations, public order, decency and other lawful causes.²⁶⁴

The relevance of protection of witnesses has been emphasized by the courts in Tanzania on various parameters. For example, in the case of *Director of Public Prosecutions vs. Yahya Twahiru Mpemba & 12 Others*²⁶⁵ the applicant applied to the court seeking for the order of non-disclosure of identity and whereabouts of the witnesses, and non-disclosure of statements and documents likely to lead to identification of witnesses during committal and trial proceedings.

The basis of the application was to protect security of potential witnesses. Further, the applicant applied for a court order to prohibit dissemination of any documentary evidence and any other testimony bearing identity of prosecution witnesses without

²⁶² Ibid., s.14.

²⁶³ Ibid., s.16

²⁶⁴ Ibid., s.6.

²⁶⁵ Miscellaneous Criminal Application No.22 of 2022, High Court of Tanzania (District Registry of Arusha) at Arusha (Unreported)

leave of the court All the respondents were charged for eight counts, including: attempted murder, participating in terrorism meeting, funding terrorism acts and failure to disclose information relating to offences of terrorism.

It was submitted on behalf of the applicant that processes for identification of other offenders were still ongoing and that some respondents had threatened to harm or otherwise cause injuries to whoever happened to testify against them; hence a need for protection of witnesses prior the trial proceedings. On the other hand, it was submitted for respondents that the need to disclose evidence at the committal proceedings was mandatory, unless the court issues protection orders, as per requirements of section 34 (3) of the Prevention of Terrorism Act No. 21 of 2002 (as amended by the Written Laws (Miscellaneous Amendments Act No.2 of 2018), read together with section 188 (1)(a), (b), (c) and (d) and (2) of the Criminal Procedure Act. While expressing the need for fair trial and need for protection of witnesses the court observed the following:

‘It becomes important therefore that, while observing the right to fair trial, it must be ensured that witnesses and their families are protected to enable them testify freely in court. The evidence supporting the case is expected to come from witnesses whom, if not well protected, they may fail to testify due to fear or intimidation. The purpose of the law is to ensure that all witnesses testify without fear so that justice can be done to both parties...’²⁶⁶

Thus, the Court successfully granted the application for protection of witnesses basing on the nature of the charges and the need to protect witnesses and their families. Kamuzora, J., observed inter alia as follows:

‘Considering the submission by the Senior State Attorney and the

²⁶⁶ Refer to the *Director of Public Prosecutions vs. Yahya Twahiru Mpemba & 12 Others (supra)*, p.12.

affidavits in support of application it is clear that *the nature of the offence which are; attempted murder, participating in terrorism meetings, funding terrorism acts and failure to disclose information relating offences of terrorism and terrorism acts are serious offences which require protection of witnesses. I find the present application fit for issuing protection order of the witnesses... I therefore grant the application and order for non-disclosure of identity and whereabouts of the witnesses for security reasons during committal and trial proceedings. I also order for non-disclosure of statement and documents likely to lead to the identification of witnesses for their security reasons during committal and trial proceedings'* (emphasis mine)²⁶⁷

The similar decision was observed by the court in the cases of the AG Vs. Mugeshi Antony & Others,²⁶⁸ DPP vs. Said Adam Said & 10 others,²⁶⁹ DPP Vs. Abdi Sharif Hassan @ Mosmal & Another; ²⁷⁰ DPP Vs. Farid Ahmed and 35 others²⁷¹ and DPP Vs Majaliwa Mohamed Ngarama and 20 others. ²⁷² Furthermore, Kamuzora, J., granted the order basing on the reasoning of foreign courts on matters of witness protection as envisaged in the cases of Mwahender Chawla & Others Vs. Union of India & Others,²⁷³ and Republic Vs. Doyo Galgalo²⁷⁴ where it was held that concealment of the identity of a witness is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, and therefore, not a violation to a fair trial.

Likewise, in the case of *Director of Public Prosecution vs. Abashari Hassan Omary & 9 Others*²⁷⁵ the applicant requested for the order of the court regarding non-disclosure of identity, statement and documents likely to lead to the identification of

²⁶⁷ Ibid., pp.14-16.

²⁶⁸ Criminal Appeal No. 220 of 2011, Court of Appeal of Tanzania

²⁶⁹ Misc. Criminal Application No. 94/2019, High Court of Tanzania (Unreported)

²⁷⁰ Misc. Criminal Application No. 19/2020, High Court of Tanzania (unreported)

²⁷¹ Misc. Criminal Application No. 145/2020, High Court of Tanzania (Unreported)

²⁷² Misc. Criminal Application No 9 of 2022, High Court of Tanzania (Unreported)

²⁷³ Writ Petition (Criminal) No. 156 of 2016, Supreme Court of India,

²⁷⁴ Criminal Case No. 16/2019, High Court of Kenya at Meru, p. 6, para 5

²⁷⁵ Miscellaneous Criminal Application No.24 of 2022, High Court of Tanzania (District Registry of Arusha) at Arusha (Unreported)

witnesses for their security reasons during committal proceedings and during trial. Furthermore, it was the applicant's prayer that the court order trial of the matter in Camera and through video conference, and make any other orders as the court may deem fit so as to guarantee security of the witness in three charges facing the respondents, namely: murder, attempted murder and terrorism. This case emanated from throwing the hand grenade bomb towards the center of the crowd at St. Joseph Mfanyakazi Church, Olasiti area within the city of Arusha 5th day of May 2013, resulting into the deaths of three 3 worshippers, namely, Regina Loning'o, James Gabriel Kessy and Patricia Joachim.

On granting the protection orders, except the one on video conferencing, the court emphasized on the need to protect witnesses against disclosure requirements of witnesses, statements and documents as safeguarded under the doctrine of fair trial.

The trial judge, Tiganga, J., observed as follows:

'The openness in judicial proceedings depicts the right to a fair trial which enables the accused persons to know their case against them, prepare and present their defence, and test the prosecution case by cross-examination. However, in some cases, where the accused and their allies may not want the witness to testify, disclosure of the evidence and the witness may lead to the identity of the witness and thus cause danger to them. In the premises disclosure may result into threat to the witnesses thus discouraging them to come forward fearing to risk their lives and those of their family members.'

*That can sometimes act as a bar to successful prosecutions, particularly in homicides, organized crimes and other serious crimes as witnesses fear that if their identity is revealed to the accused persons, their associates, relatives or the public generally, they or their friends and family members will be at risk of serious harm. Such serious cases should be treated as exceptional cases to the general rule of openness and disclosure of criminal trials.*²⁷⁶ (emphasis added)

²⁷⁶ Ibid., pp.14-15.

From the above precedent, it appears that the court while giving orders for witness's protection, must seek to balance between diverging interests, namely: safety of the witnesses, the right of the accused person to fair hearing and the interest of the public. This policy objective is very well articulated by the court in the case of *Director of Public Prosecution vs. Abashari Hassan Omary & 9 Others*²⁷⁷ where the court held *inter alia* that 'While the accused's rights needs (*sic*) to be protected, the right of the victim must also be, it is only where witnesses are protected, themselves and their family members that, they can freely testify in court. The conventional or orthodox mode of administration of criminal justice put much emphasis on protecting the right of the accused person while neglecting the right of the victim and witnesses.'²⁷⁸

Thus, from practical point of view, the Whistleblowers and Witness Protection Act is very crucial in the fight against illicit drug business because it ensures witnesses' and informants' safety during investigation and prosecution of offences. This is because most of the successful operations against drug traffickers are based on the information obtained from whistle blowers; hence this Act is very relevant under this study.

5.2.6 The Anti-Money Laundering Act²⁷⁹

The essence of discussing the above-mentioned Act is because drug trafficking is commonly associated with other criminal activities such as money laundering. Drug

²⁷⁷ Miscellaneous Criminal Application No.24 of 2022, High Court of Tanzania (District Registry of Arusha) at Arusha (Unreported)

²⁷⁸ Ibid., p.14

²⁷⁹ Cap. 423 R.E 2022.

trafficking is an illegal transaction which gives rise to illegal money likely to be invested into the lawful transaction. Drug traffickers want to move money all along the supply chain – from buyers to sellers and back to the drug producers. This movement of dirty money requires being under secret as genuine businesses in order to appear valid and thereby avoid detection by the authorities. This is known as money laundering as far as drug trafficking is concern.

The Anti-Money Laundering Act was enacted to make better provisions for prevention and prohibition of money laundering; provide for the disclosure of information on money laundering; establish a Financial Intelligence Unit and the National Multi-Disciplinary Committee on Anti-Money Laundering and provide for matters connected thereto. In contrast to earlier laws, Part II of this Act which deals with the Financial Intelligence Unit and the National Multidisciplinary Committee on Anti-Money Laundering applies to Tanzania and Zanzibar.²⁸⁰ This statute establishes predicate offences that include illegal trafficking in human beings or the sale of their organs and tissues, both of which might result in money laundering.²⁸¹

Specifically, section 12 of the Act creates the offence of money laundering which includes among others, engaging, directly or indirectly, in a transaction that involves property that is proceeds of a predicate offence while knowing or ought to have known that the property is the proceeds of a predicate offence. Other elements of money laundering include: converting, transferring, transporting, or transmitting

²⁸⁰ Cap. 423 R.E 2022, section 2(2).

²⁸¹ Ibid., section 3(t).

property which is the proceeds of a predicate offence.²⁸²

As discussed earlier on, the law establishes the Financial Intelligence Unit charged with the responsibility of receiving, analyzing and disseminating suspicious transaction reports, currency transaction reports, cross border currency reports, electronic funds transfer reports and other information regarding potential money laundering or terrorist financing received from the reporting persons and other sources from within and outside the United Republic.²⁸³

From practical point of view, money laundering offences are typically charged with other offences committed under other penal laws, such as economic crimes laws, corruption laws and natural resources laws. Further, money laundering offences are always non-bailable. A good example can be deduced from the case of *Adam Said Kawambwa vs. Republic*²⁸⁴ where the applicant was charged at the Resident Magistrate's Court of Dar es Salaam at Kisutu for unlawful possession of government trophies (forty-seven (47) elephant tusks) worth Tshs.1, 081,357,500/=, contrary to 86(1), (2) (ii) and (3) (b) of the Wildlife Conservation Act No. 5 of 2009 as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2016 read together with paragraph 14 of the First schedule to the Act and the offence Money laundering pursuant to section 57(1) and 60 (2) of the Economic and Organized Crime Control Act as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

²⁸² Ibid., section 12(2).

²⁸³ Opcit., section 4.

²⁸⁴ Miscellaneous Criminal Application No.106 of 2019, High Court of Tanzania (Dar es Salaam Registry) at Dar es Salaam (Unreported)

Masabo, J., observed *inter alia*, that ‘while it is true that article 13(6) (b) and 15 (1) and (2) of the Constitution are of great importance because they enshrine the fundamental right to individual liberty our statute books contain unbailable offences, the offence of money laundering being among them...hence the denial of bail to persons facing charged over these offences is sanctioned.’²⁸⁵ This decision was also emphasized by the Court of Appeal of Tanzania in the case of *James Burchard Rugemalira vs. Republic*²⁸⁶ where the court held that money laundering is non bailable offence in Tanzania.

Thus, one cannot discuss drug trafficking in isolation of Anti-Money Laundering Act which seeks to prevent introduction of money acquired through illegal transactions into the national economy. This is a reason why the Director of Public Prosecutions has been charging perpetrators of drug trafficking under three legislations, namely: Drug Control and Enforcement Act, Anti-Money Laundering Act and Economic and Organized Crimes Control Act. The latter piece of legislation is discussed below because drug trafficking is among the organized crimes in the world at large.

5.2.7 The Economic and Organized Crime Control Act²⁸⁷

The Law was passed to control and eliminate some crimes and culpable non-criminal misconduct through improved investigation and case hearing processes; new penal prohibition; enhanced sanctions and new remedies. Principally, the Act establishes the Corruption and Economic Crimes Division of the High Court with jurisdiction to

²⁸⁵ Miscellaneous Criminal Application No.106 of 2019, High Court of Tanzania (Dar es Salaam Registry) at Dar es Salaam (Unreported), p.4.

²⁸⁶ Criminal Appeal No.391 of 2017, Court of Appeal of Tanzania at Dar es Salaam (Unreported)

²⁸⁷ Cap 200 R.E 2022

try all economic cases.²⁸⁸ Drug related offences are categorized as economic matters in the First Schedule of the Act. Other economic offences include: hoarding commodities; leading organized crime, fraudulent schemes, games, artifices; theft of public property; conveying or having possession of goods suspected of having been stolen or unlawfully acquired.

Also, economic offences include: unlawful sale of designated goods, authorization of unlawful supply of designated authority goods, occasioning loss to a specified authority, offences against wildlife, or diamonds, possession of arms or ammunition and some offences relating to drug trafficking.²⁸⁹ On the other hand, the Act allows an accused person to apply for bail or the court may do it on its own accord before a verdict of guilt is announced.²⁹⁰ However, the law has put the conditions in granting bail to the offender by giving the mandate to DPP to certify that it is likely the security of the accused person or interest of the public to be prejudiced before the bail is granted.²⁹¹ The aforementioned DPP certificate is expected to be valid until the end of the proceedings or until the DPP decides to revoke it.²⁹²

Nevertheless, the Act provides for conditions to be met before the court grants bail to the accused person, including execution of a bond to pay such sum of money as is commensurate to the monetary value and the gravity of the offence.²⁹³ For property whose value is ten million shillings or more, the court is required to direct the accused person to cash deposit equal to half of the value paid and the rest be secured

²⁸⁸ *ibid.*, section 3.

²⁸⁹ See the First Schedule of the Economic and Organized Control Ac, Cap 200.

²⁹⁰ Cap 200, R.E 2022 section 36 (1).

²⁹¹ *Ibid.* Section 36 (2)

²⁹² *Ibid.*, Section 36(3).

²⁹³ *Ibid.*, Section 36 (5) (a).

by the execution of a bond. Apart from the above conditions, the accused person is required to appear before Court on a specified date and place, surrender to the police a passport or any other travelling documents.²⁹⁴ Further, the Court is supposed to restrict the accused person of his movement to the area of town, village or other area of his residence.²⁹⁵ This Act must be read together with the Economic and Organized Crime Control Rules, GN.267/2016 as explained here bellow.

5.2.8 Economic and Organized Crime Control Rules GN.267/2016

The rules provide for the procedures of trying the economic cases. They provide the power to the District or Resident Magistrates Courts to retain committal proceedings within fourteen days upon receiving copy of information.²⁹⁶ Likewise, CPA insists that in order for the accused to be able to prepare his defense, it is imperative to be aware of the case against him in court.²⁹⁷ Additionally, those courts must read and clarify to the suspect the accusations filed against him as well as any statements or documents that contain the crucial facts of the evidence of any witnesses the DPP intends to call at a trial.²⁹⁸

This position was also observed by the Court of Appeal in the case of *Remina Omary versus Republic*²⁹⁹ whereby the appellant and two others were charged of trafficking in narcotic drugs contrary to section 15(1) (b) of the Drugs Control and Enforcement Act, No. 5 read together with paragraph 23 of the First Schedule to the Economic and Organized Crime Control Act (as amended by Written Laws (Miscellaneous

²⁹⁴ Ibid., R.E 2022, s. 36 (5) (b) and (c)

²⁹⁵ Opcit., s.36 (5) d).

²⁹⁶ Economic and Organized Crime Control Rules GN 267 of 2016, rule 8 (1).

²⁹⁷ Cap 200, R.E 2022, s.246(2)

²⁹⁸ Economic and Organized Crime Control Rules GN 267 of 2016, rule 8 (2).

²⁹⁹ Criminal Appeal No.189/2020, Court of Appeal of Tanzania at Dar es Salaam (Unreported), p.30

Amendment) Act No. 3 of 2016). However, the prosecution did not bring one witness (police officer in charge) who basically gave orders as to search and arrest of the appellant at Kinondoni area. Moreover, his statement was produced before the High Court of Tanzania but not produced during committal proceedings. The appellant was convicted and sentenced to life imprisonment while the rest were discharged, hence this appeal.

On appeal the admission of witness statement by the court which was not produced during committal proceedings was said to have occasioned injustice to the appellant as she did not have time to prepare her defense. Similarly, search was done by three different persons contrary to the law which require exercise to be done by specific officer. It was held *inter alia*, that ‘no witness whose statement or a document the contents of which is not made known to the accused during committal will be allowed to testify or be received in evidence during trial.’ Hence, the conviction and sentence of the appellant were set aside.

Similarly, in the case of *Republic versus Raymond Adolf Louis and 6 Others*,³⁰⁰ it was maintained that when one wisely reads rule 8(2) of the Economic and Organized Crime Control Rules, it means that during committal process, the evidence is read to the accused in order to make them aware of the fundamental evidence of the case against them and to give them a chance to properly build a defense. Furthermore, Rule 8(3) of the Economic and Organized Crime Control Rules allows the accused not to speak anything or speak whatever he may desire in relation to the evidence

³⁰⁰ Economic case No. 1 of 2017, High Court of Tanzania (Unreported)

presented by the prosecution against him after hearing the substance of the prosecution's case. However, in such situation the accused's statement will be taken and may be used as evidence in his trial. Thus, the Economic and Organized Crime Control Rules are crucial in terms of laying down procedures for investigation and prosecution of economic crimes. Since, drug trafficking is also regarded as organized and economic crime, there arises an obligation on the part of the enforcement officers to comply with these Rules.

5.2.9 National Prosecution Service Act³⁰¹

This Act provides for powers of the DPP to control criminal prosecution.³⁰² According to the Act, the DPP has the power to decide to prosecute or not prosecute in relation to the offence including the drug related offences.³⁰³ It further, empowers the DPP to takeover and continues with prosecution of any criminal case instituted by other person or authority.³⁰⁴ The DPP may by instrument delegate these powers to a member of the service or to a public prosecutor.³⁰⁵ This suggests that drug trafficking cases are prosecuted by the office of the DPP in collaboration with the Police Department which is vested with powers to arrest and detain accused person in prison, on conditions stated by the court.

5.3 Institutions for Control of Drug Trafficking in Tanzania

Drug trafficking control is a multidisciplinary issue in Tanzania. There are about six state institutions that directly or indirectly deal with control of drugs in Tanzania.

³⁰¹ Cap 430 R.E 2022

³⁰² Ibid., section 9 (1).

³⁰³ Ibid., section 9 (1) (a) .

³⁰⁴ Ibid., section 9 (1) (c).

³⁰⁵ Ibid., section 23(1).

Each institution plays a vital role in combating drug trafficking, these institutions and their performance are explained hereunder.

5.3.1 The Drugs Control and Enforcement Authority (DCEA)

This is established under S.3 of the Drugs Control and Enforcement Act No. 5 of instruments on control of narcotic drugs and psychotropic substances; develop and implement a national action plan; and develop guidelines for addressing drug problem. It is also responsible to update drug control laws and regulations; promote the prevention of drug abuse and trafficking, and take appropriate measures to combat drug trafficking including arrest, search, and seizure and investigate on drug related matters.³⁰⁶ Similarly, DCEA has the mandate to establish viable data collection and analysis system on drug abuse and drug trafficking; undertake, support and coordinate research on drug related issues; coordinate and support stakeholders on control of drugs, and perform other duties as prescribed by the law.³⁰⁷ Generally, the DCEA has obligation to ensure that Tanzania complies with international and regional agreements governing drug trafficking and promote international cooperation.³⁰⁸ Initially, drug control functions were discharged by the Inter-Ministerial Commission for the Coordination of Drugs Control which was repealed and replaced in 2015.

Administratively, DCEA is managed by the Commissioner General who is appointed by the President under s.6 (1) of Drugs Control and Enforcement Act No.5 of 2015 to be the Chief Executive Officer of the Authority. His or her roles include:

³⁰⁶ The Drug Control and Enforcement Act, No.5 of 2015, R.E 2019 s.4 (1) and (2).

³⁰⁷ *ibid*

³⁰⁸ *Ibid.*, s.4(3) & (4)

representing DCEA within the international authorities on matters of drugs, encourage and coordinate drug control activities, liaise with international organisations on matters relating to drugs control and facilitate transmission of information to competent international bodies as per the signed international treaties.³⁰⁹

Basically, the Commissioner General is responsible to the National Drug Control Council which is composed of ministers from eleven key ministries, including ministries of legal affairs, home affairs, foreign affairs, health, community development, finance, youth, and so forth.³¹⁰ The legal mandate of the Council is to oversee the implementation of the national drug control policy under the Chairmanship of the Prime Minister and on his absence the minister of legal affairs or home affairs or minister for health.

On the other hand, the Commissioner General is advised by the Advisory Committee established under s.9 (1) of the Drugs Control and Enforcement Act, No.5 of 2015. This Committee consists of not more than nine members with experience and knowledge on drug abuse drawn from government departments, ministries, Non-Governmental Organisations, law enforcement agencies and other stakeholders.³¹¹ Therefore, DCEA is an organisation with mandate to coordinate all other government agencies and other stakeholders in the fight against domestic and international drug trafficking. Stakeholders and government agencies in Tanzania are explained here below.

³⁰⁹ Opcit., s.6(1) and (2).

³¹⁰ Opcit., s.5(1) & (2)

³¹¹ Opcit., s.9(3) & (4).

5.3.2 Counter Narcotic (CN) Unit of the Tanzania Intelligence and Security Services (TISS)

TISS is a secretive state organ that is established under S.4 of the Tanzania Intelligence and Security Services Act 1996. It is headed by the Director General appointed by the President under S.6 of the Act whose mandates include: commanding, controlling, directing and managing services of TISS.³¹² Basically, the primary duty of TISS is to collect, analyse and retain information, investigate various incidences and report the same to only approved personnel.³¹³ TISS basically supports functions of all other government departments. Thus, information relating to drugs can be investigated by TISS officers and then submit the investigation report to appropriate agencies for implementation purposes.

5.3.3 Tanzania Revenue Authority (TRA)

TRA is generally responsible for collection of revenue. Having officers responsible for control of illegal entry of goods, TRA always conducts surveillance on various parts of the country including porous borders. When conducting operations to capture illegal or prohibited products, TRA usually arrests people who are found in possession of drugs and report the matter to the Police Force (ADU) or to DCEA. Once the matter is reported to the investigating organs, TRA would surrender the prohibited items to the responsible agencies for appropriate legal measures.

5.3.4 Government Chemist Laboratory Authority (GCLA)

This is established under S.4 of the Government Chemist Laboratory Authority

³¹² Tanzania Intelligence and Security Services Act, 1996, ss.6 and 10.

³¹³ Ibid., ss.5, 14, 15, 16 and 17.

Services Act 2016. Its main functions include inter alia: making laboratory analysis of any sample of illicit drug referred to it by the appropriate authority or agency; regulate chemicals laboratories to ensure compliance with standards; condemn and order destruction of articles, chemicals and chemical products.³¹⁴ The CGC is the CEO of the Authority who is supervised by the Board. The Board is responsible for management of the affairs of GCLA. CGC is assisted by two technical committees: forensic science service committee and poison control technical committee.³¹⁵ Legally speaking, the report issued by the Government Chemist concerning analysis of the samples is admissible and shall be sufficient evidence of what is contained therein. However, the GCLA officer may be called to testify on the veracity of what is contained in the report.³¹⁶

5.3.5 Anti-Drug Unit (ADU) of the Tanzania Police Force

This is one of the departments of the Tanzania Police Force established for purposes of fighting drug trafficking. Generally, the Police Force is established under S.5 (1) of the Police Force and Auxiliary Services Act³¹⁷ with six core mandates: preservation of peace, the maintenance of law and order, the prevention and detection of crimes, the apprehension and guarding of offenders and the protection of property, and for the performance of all such duties and shall be entitled to carry arms. It is responsible for investigation of crimes including drug trafficking and other organised crimes. Basically, ADU officers who are dispersed in various parts of the country report to DCI within the Ministry of Home Affairs. The rationale for

³¹⁴ Government Chemist Laboratory Authority Act 2016, S.5 (2).

³¹⁵ Ibid., ss.7,8,9 and 10.

³¹⁶ Ibid., ss.18 and 19.

³¹⁷ Cap.322 R.E 2010

this department is to complement functions of the DCEA which appears to have limited staff and only centered in Dar es Salaam.

5.3.6 Public Prosecution Unit

This is headed by DPP who is appointed by the President of the United Republic of Tanzania under article 59B of the Constitution of the United Republic of Tanzania 1977.³¹⁸ The powers of DPP include instituting, prosecuting and supervising criminal prosecutions in the country.³¹⁹ These powers can be exercised by any other authorised officer within the prosecution department who must ensure that justice is upheld, prevent misuse of procedures for dispensing justice and protect public interest.³²⁰

As explained earlier on, the DPP prosecutes all criminal cases including drug trafficking and Corruption cases in collaboration with other authorised offices such as the TPF, PCCB or DCEA. For this matter, the public prosecution unit includes other public officers which have been given mandate by law or DPP to prosecute criminal cases as per s.23 of the National Prosecution Services Act.³²¹

5.3.7 The Judiciary

This involves District Courts, Resident Magistrate's Courts, the Economic Crimes Division of the High Court of Tanzania and the Court of Appeal of Tanzania. Generally, subordinate courts have jurisdiction to hear and determine drug offences under section 7 (corporate criminal liability). Other offences to be determined by the

³¹⁸ Cap 2 R.E 2010

³¹⁹ Ibid., article 59B (2).

³²⁰ Ibid., article 59B (3) and (4)

³²¹ Cap 430 R.E 2010

respective courts include offences under section 11 (cultivation of prohibited plants and substances) section 15A (trafficking of narcotic drugs or psychotropic substances); and section 17 (possession or use of small quantity of narcotic drugs or psychotropic substances)³²².

Other offences triable by subordinate courts include offence under section 18 (smoking, inhaling or sniffing or using narcotic drugs or psychotropic substances), section 19 (offence related to premises used in commission of crimes) and other offences under sections 20, 21, 22, 25, 34, 39, 42, 47, 51A, 54 or 65 of the Drugs Control and Enforcement Act.³²³ On the other hand, the High Court of Tanzania has jurisdiction to try offences contravening sections 15, 16 or 23 of the Drugs Control and Enforcement Act.

Basically, section 15 deals with possession, trafficking, purchasing or manufacturing of narcotic drugs of more than 200 hundred grams or chemicals or substances with drug related effect weighing more than 100 liters in liquid form or 100 kilogram in solid form or cannabis or khat weighing more than 100 kilograms. Similarly, section 16 provides for offences relating to possession of equipment, machines and laboratory for preparation or making of narcotic drugs or psychotropic substances. On the other hand, section 23 provides for offence relating to financing activities under s.15 or harboring any person engaged in such activities. These offences are tried by the High Court, Economic Crimes Division because the penalty involved is life imprisonment which is within the jurisdiction of the High Court of Tanzania.

³²² Cap 95 R.E 2019

³²³ Ibid.

Finally, the Court of Appeal of Tanzania can only be approached where the accused person or the prosecutor is not satisfied with the decision of the High Court of Tanzania. But as a principle an appeal to the Court of Appeal of Tanzania should be on matters of law. Essentially, the judiciary has overall duty to ensure that justice should not only be done but should manifestly and undoubtedly be seen to be done. This means a person accused of drug trafficking must be convicted and sentenced depending on the evidence tendered in court and upon proof of the commission of an offence beyond reasonable doubt.

5.4 Conclusion

Drug trafficking is a multi-dimensional issue which faces the world community at large. Various legal initiatives have been undertaken by the government of Tanzania so as to curb the drug trafficking problem. This chapter has explained specific and general legislations which directly or indirectly create offences and regulate all matters related to investigation, prosecution and sentencing of drug related offenders.

CHAPTER SIX

LEGAL AND INSTITUTIONAL CHALLENGES FACING IMPLEMENTATION OF THE DRUG TRAFFICKING LAWS IN MAINLAND TANZANIA

6.1 Introduction

This chapter presents findings on the legal impediments in fighting drug trafficking in Mainland Tanzania. It also covers aspects related to institutional challenges encountered in the course of investigation, prosecution and sentencing of offenders. These two aspects are covered under the first and the second specific objectives of this study. The chapter seeks to answer two research questions namely: (i) what are the legal gaps in the existing laws addressing drug trafficking problems in Mainland Tanzania? and (ii) what are challenges encountered in the course of prosecution, conviction and sentencing of drug related offences in Mainland Tanzania? The information so presented were collected using doctrinal methodology by reading relevant statutes, case laws and various reports.

6.2 Legal gaps on Drug Trafficking Prevention and Control in Tanzania

The study has revealed various legal impediments which tend to affect the initiatives taken in curbing drug trafficking in the country to include; - inadequacy of sanctions, lack of clarity of legal terms, committal proceedings procedures, Bail conditions, procedural difficulties in recording caution statements, non-adherence to international conventions, Plea Bargaining issues and issues pertaining to chain of Custody. Each of these factors affects realization of the drug trafficking legislations in Tanzania as explained hereunder.

6.2.1 Gaps on Discretionary Powers of the Court on sentencing of Offenders

The law gives power to the court to impose maximum sentence for certain trafficking offences including life imprisonment orders. Despite clear wording of section 15 of the Drug Control and Enforcement Act which dictates life imprisonment as mandatory sanction by the use of the word 'shall', there has been inconsistency decisions arising from discretionary powers of the court.

Literally, section 15 (1) (a) of the Drug Control and Enforcement Act provides that any person who is convicted of an offence of drug trafficking shall *be liable to life imprisonment*. While section 15(1)(b) provides that a person who is found guilty of an offence of diversion or illegally dealing in any way with precursor chemicals and directly or indirectly facilitates or causes any other person to be used as bondage for the purposes of drug trafficking *shall be sentenced to life imprisonment*.

The study has established that courts in Tanzania have not been uniform in interpreting the above provisions basing on discretion of the court on sentencing. The following cases illustrate better this point. In the case of *Republic vs. Christian Ugbechi*³²⁴ the accused was arrested while possessing heroine weighing 957.57 grams. It was found that the phrase 'shall be liable' in subsection 15(1) (a) and shall be sentenced in the foot of subsection 15(1) (b), the legislature intended to create two sentence regimes. Finally, the defendant was imprisoned for 30 years.

Conversely, in the case of *Mwinyi Kitwana Rajabu and Ally Hamdan* were arrested on December 7, 2017, in Mtwara Region with 63.155 kilograms of heroin. All of

³²⁴ Economic Case No.2 of 2019, High Court of Tanzania-Economic Crimes Division (Unreported)

these defendants were found guilty and sentenced to 20 years in prison. Whereas in the case of *Ayubu Mfaume Kiboko and another vs Republic*³²⁵, were imprisoned for 20 years after being found with 251.25 grams of heroin in their house. Despite the fact that 251.25 grams is less than 63.155 kilograms, accused in the respective cases also received the same penalty of 20 years.

Moreover, the above conviction and sentence were quashed and set aside by the Court of Appeal of Tanzania in *Ayubu Mfaume Kiboko and Pilly Mohamed Kiboko vs. Republic*³²⁶ on grounds that search at the appellants' house was done in contravention of the law since no warrant of search had been given by the officer in charge and no emergency situation was proven. Likewise, in the case of *Republic vs Islem Shebe Islem*³²⁷ the defendant was charged and convicted of trafficking in narcotic drugs contrary to s.15(1)(a) of Drug Control and Enforcement Act read together with paragraph 23 of the First Schedule to the Economic and Organized Crime Control Act (also known as EOCA.) The accused person was convicted and sentence to thirty (30) years imprisonment instead of life sentence.

On appeal to the Court of Appeal in *Islem Shebe Islem vs Republic*³²⁸ the appellant challenged the conviction and sentence on the grounds that search into the home was done contrary to the law, charge was defective and chain of custody was broken, hence substances illegally procured. After thoughtful consideration of the relevance, materiality and competence of evidence and testimony given, the Court of Appeal of

³²⁵ Economic Case No 13 of 2019, High Court of Tanzania-Economic Crimes Division (Unreported)

³²⁶ Criminal Appeal No.694 of 2020, Court of Appeal of Tanzania, Court of Appeal of Tanzania at Dar es Salaam (Unreported)

³²⁷ Economic Case No.11 of 2019, High Court of Tanzania-Economic Crimes Division at Dar es Salaam (unreported)

³²⁸ Criminal Appeal No.187 of 2020, Court of Appeal of Tanzania at Dar es Salaam (unreported)

Tanzania set aside the sentence of thirty (30) years imprisonment and ordered life imprisonment as required by the provisions of EOCA. Had there not been an appeal, the trial judge's sentence of 30 years could have been the sentence period to the accused person.

Similarly, in the case of *Republic vs Simon Andrew Boaa*³²⁹ the accused was charged of trafficking *catha edulis* (khat) weighing 116.16kgms contrary to s.15(1)(a) of Drug Control and Enforcement Act. The trial judge convicted the accused and sentenced him to twenty-four (24) years imprisonment. This conviction and appeal is likely to be reversed or sustained if the defendant's appeal is allowed following permission by the Court of Appeal of Tanzania through a ruling in *Simon Andrew Boaa vs Republic*³³⁰ whereby Simon was allowed to lodge notice of appeal. On the other hand, in the case of *Remina Omary and others vs Republic*,³³¹ the accused persons were arrested in 2017 transporting 201.38 grams of heroin. They were found guilty and sentenced to life imprisonment.

The above five cases provide evidence of conflicting approaches in sentencing drug related offenders at the High Court of Tanzania. This is caused by discretionary powers vested in the court when determining appropriate sentence for drug offenders, with much preference to lenient sentence. There is a need for harmonised interpretation of the law in order to achieve uniformity and consistency of the law. Moreover, the study commends judges of the Court of Appeal on imposing

³²⁹ Economic Case No.06 of 2021 High Court of Tanzania-Economic Crimes Division at Moshi Sub-Registry (Unreported)

³³⁰ Miscellaneous Criminal Application No.36 of 2022, Court of Appeal of Tanzania (Moshi District Registry) at Moshi (Unreported)

³³¹ Economic Case No. 52 of 2017, High Court of Tanzania-Economic Crimes Division (Unreported)

maximum sentence.

However, the study is cautiously at the alarming practise of the Court of Appeal where it quashes convictions basing on technical issues surrounding search and custody of evidence, which seemingly appears to be increasing day by day. This adversely affects the government efforts to curb the problem of drug trafficking in the country. For example, in the case of *Hamis Mohamed Mtou vs Republic*³³² where the appellant had been convicted of trafficking narcotic drugs weighing 811.54gms of heroin hydrochloride valued at Tshs.24, 346,200/=. However, the Court of Appeal quashed the conviction and set aside the sentence on the grounds that the charge was defective for failure of indicating particulars as to the mode of trafficking, such as transporting, harbouring as defined under s.2 of Drug Control and Enforcement Act.

It was the reasoning of the court that lack of specific particulars of the offence of trafficking vitiated the proceedings, hence incurably defective. However, looking at the evidence presented there was no doubt that the appellant had committed the act of drug trafficking and he was aware of the charges. Furthermore, looking at the charges in the other cases determined by the same court, one cannot establish any difference in the wording of the charges. Examples of those cases include: The Matter of Yahaya Zumo Makame and 3 Others vs United Republic of Tanzania³³³ where the same issues were raised by the appellants but dismissed by the Court of Appeal of Tanzania.

³³² Criminal Appeal No.228 of 2019, Court of Appeal of Tanzania at Dar es Salaam (Unreported)

³³³ Application No.023 of 2016, African Court on Human and Peoples Rights (judgment of 25th June 2021)

Another case is *Vuyo Jack vs Director of Public Prosecutions*³³⁴ where the particulars of the charge were general by referring to ‘trafficking in narcotic drugs contrary to s, 16(b)(i) of the Drugs and Prevention of Illicit traffic in Drugs Act.’ In this case, the Court of Appeal sustained the conviction and sentence of the trial court. Similarly, in *Mirzai Pirbakshi and 3 Others vs Republic*³³⁵ the appellant challenged the conviction by the court on the ground that the information or charge against them was defective as it did not indicate the manner in which trafficking took place, hence it was omnibus. However, the Court of Appeal of Tanzania observed inter alia that ‘that the information is evidently in compliance to the mandatory provisions of sections 132 and 135 of the CPA as it contains the statement of the offence charged under section 16 (1) (b) (i) of the Act. The information further provides particulars of the offence which are necessary for giving reasonable information on the nature of the offence charged as required by the law and nothing more.’³³⁶

While the conclusion by the Court of Appeal in the above case is appreciated for taking into account the evidence submitted by both parties without due regard to the wording of the charge or information, hence maintaining conviction of the accused drug traffickers, the study notes the departure of the same court in the preceding cases cited above. It is recommended that courts look at the offence committed as reflected in the charging provision without reference to definition section, so long as evidence provided prove the offence.

³³⁴ Criminal Appeal No.334 of 2016, Court of Appeal of Tanzania at Mbeya (Unreported)

³³⁵ Criminal Appeal No. 490 of 2022, Court of Appeal of Tanzania at Dar es Salaam (Unreported)

³³⁶ Ibid, p..10.

6.2.2 Gaps on provisions governing Search and Arrest

Drug trafficking cases begin with arrest of offenders, search of the premises for collection of evidence, preparation of statements and finally admission of the evidence in court. This exercise appears to be governed by two legislations, namely: Drug Control and Enforcement Act and the Criminal Procedure Act. The former provides for specific framework under which DCEA officers could conduct the search and arrest. Similarly, the latter provides for general framework governing aspects of search and arrest in criminal matters. The apparent conflict between these two legislations arises as to which officers conduct the search and arrest of offenders: DCEA officers or ordinary police officers.

The discrepancy in the procedures applied by the two enforcement organs has formed grounds of appeals before the Court of Appeal of Tanzania. For example, in the case of *Shebe Islem vs Republic*³³⁷ the respondent's attorney argued that 'search and arrest in drug cases is effected in accordance with the DCEA and under that Act, section 48 does not require an officer from DCEA to have a search warrant before effecting search.' Because search in this case was done by DCEA's officers she then submitted that there was no need to have search warrant which was applicable to police officers who conduct search in accordance with the provisions of the CPA.'³³⁸ Conversely, it was argued by the applicant's counsel that under s.38 (1) and (2) and s.40 of the CPA it was mandatory that search must be done after proper instruction (written authority) by the officer -in-charge (search warrant), unless emergency

³³⁷ Criminal Appeal No.187 of 2020, Court of Appeal of Tanzania at Dar es Salaam (unreported)

³³⁸ Ibid., p.14.

situation was duly established.³³⁹ After scrutiny of s.48 of Drug Control and Enforcement Act, the court held inter alia that the law was complied with during the arrest, search and seizure of what was retrieved from the appellant's house. Impliedly, the Court meant that the law applicable on issues of arrest and search by DCEA officers is s.48 of the said Act and not CPA.

On the other hand, in the case of *Ayubu Mfaume Kiboko and Pilly Mohamed Kiboko vs. Republic*,³⁴⁰ the Court of Appeal set aside the conviction and sentence on the ground that search of the appellants' house leading to discovery of drugs during the night without a search order and search warrant was contrary to the requirements of section 38 of CPA, PGO No. 226 and section 7(2) of the Police Force Auxiliary Service Act.³⁴¹ Impliedly, the Court of Appeal signified that the applicable law on search and arrest of drug trafficking cases is the CPA and not otherwise.

Similarly, in the case of *Remina Omari Abdul and 2 Others vs. Republic*³⁴² the appellant were charged of trafficking 201.38 grams of heroin and sentenced to life imprisonment. Aggrieved by the decision of the High Court, the appellants challenged the conviction and sentence for contravention of the requirements on search and arrest. The appellate set aside the conviction and sentence on the reason that arresting officer conducted the search during the night hours without search warrant as required by section 38 of CPA and there were no emergency

³³⁹ Opcit., pp.12-13.

³⁴⁰ Criminal appeal No.694 of 2020, Criminal Appeal No.189 of 2020, Court of Appeal of Tanzania at Dar es Salaam (Unreported).

³⁴¹ Cap. 322, R.E. 2002

³⁴² Criminal Appeal No.189 of 2020, Criminal Appeal No.189 of 2020, Court of Appeal of Tanzania at Dar es Salaam (Unreported).

circumstances proven as required under section 40 of CPA. Furthermore, a mandatory requirement of listing of exhibit drugs, which was the substance of the case during committal proceeding was not complied as per s.246 of CPA.

The above conflicting approaches by the highest court of the land clearly indicate a gap in terms of the law applicable by the enforcement organs dealing with drug prevention and control in Tanzania. It is high time that s.38 of Drug Control and Enforcement Act be amended so as to include a requirement for search warrant. This would remove the above discrepancies which have highly affected the prosecution and sentencing of the drug traffickers in Mainland Tanzania.

6.2.3 Gap on Definition of Key Legal Terms

Definition of key terms used in the enactment of legislations is very crucial so as to ascertain the intention of the Parliament. Usually, meanings of key terms in any particular law are contained in the interpretation section of a legislation. As a matter of statutory interpretation, courts are enjoined to construe the words as prescribed under the interpretation section, unless it appears to be ambiguous. This study has found that the term drug is not effectively translated under the Drug Control and Enforcement Act.

Only Narcotic Drugs and Psychotropic Substances stated in schedules under the Act would complement the interpretation section. By reading the two items, the law excludes other categories that cause harm to human beings such as NPS. Similarly, Section 15 of the Act imposes life sentence to an accused person convicted for an offence of trafficking drugs which are not listed in the Law's schedules but proven to

have drug related effects. This legal study has revealed that some substances are so new to the field that, at least initially, there is very limited evidence as to their effects to the health of the user which is the primary justification for punitive control measures. Thus, the trafficker involved in trafficking of NPS and other substances with drug related effects would be subject to penal sanction without express provision establishing the elements of the crime (both actus reus and mens rea). It is a general principle of criminal law that no one must be punished unless a crime has been clearly established with certainty.

Thus, there is a need for provision which vest powers to prescribe other drugs not necessarily included in the Schedule through specific legislation. This would keep abreast with the development in the area of illicit drugs manufacturing globally. Alternatively, the law may vest powers to the court to impose penalty in case one is found in possession of drugs not prescribed by the law, provided the law clearly stipulates factors to be considered by the court.

6.2.4 Gaps related to Chain of Custody Provisions

The term "chain of custody" means the chronological documentation and or paper trail, showing the seizure, custody, transfer, analysis, and disposition of evidence, be it physical or electronic.³⁴³ The essence of recording chain of custody is to establish that the alleged evidence is in fact related to the alleged crime rather than being covertly planted to give the impression that the accused is guilty. This was court's

³⁴³ *Republic vs. Abuhi Omari Abdallah and 3 others*, Criminal. Appeal No. 28 of 2010, Court of Appeal of Tanzania. (Unreported)

view in the case of *Chacha Jeremiah Murimi vs. Republic*³⁴⁴ where it was observed that the chain of custody reduces the likelihood of replacement, alteration, or condition change. This is in harmony with the principle that exhibits must be identified as being substantially in the same condition as they were at the time the evidence was seized, and that the exhibit has remained in that condition through an unbroken chain of custody.

Furthermore, in *Paul Maduka and Others vs. Republic*,³⁴⁵ the court stated that the chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it should be provable that nobody else could have accessed it. Failure to observe that may lead to lack of linkage between the alleged evidence and alleged offence. The same principle was reiterated in the case of *Issa Hassan Uki vs. Republic*³⁴⁶ where the court observed that there are items which cannot change hands easily and therefore not easy to temper with. Where the circumstance indicates the absence of such dangers, the court can safely receive such evidence despite the fact that the chain of custody may have been broken.

This study has revealed a number of gaps in the application of the principle on chain of custody which poses great challenges on successful prosecution and sentencing of drug related cases. These gaps are associated with the nature of drug cases whereby drugs can change hand easily; can be tempered with and can easily be destroyed or

³⁴⁴ Criminal Appeal No. 551 of 2015, The Court of Appeal of Tanzania at Mwanza (Unreported)

³⁴⁵ Criminal Appeal No. 110 of 2007, Court of Appeal of Tanzania (unreported)

³⁴⁶ Criminal Appeal No 129 of 2017, High Court of Tanzania (retrieved on unreported)

polluted. Unfortunately, courts in Tanzania have strictly applied ordinary rules on chain of custody to reject admission of relevant drugs produced before it as evidence. Basically, real evidence in drug cases has to be authenticated by establishing a chain of custody. Various cases determined by the High Court of Tanzania and Court of Appeal of Tanzania have witnessed acquittals of convicted persons following failure by prosecution to show the link in handling of drug samples from the time of arrest and search to time, chemical analysis to presentation to court. The following case laws present the critical issues which have caused acquittals of persons who actually trafficked drugs in Tanzania.

In the case of *Abuhi Omary Abdallah and Three Others vs. Republic*³⁴⁷, the conviction of the appellant was quashed because of lack of testimony by the individuals who participated in the investigation of the case. During the trial by the High Court of Tanzania the police officers Kenyela who stored drugs and Linus who delivered the drugs to the Government Chemist for analysis, were not called to provide evidence in court. But the trial court convicted the appellant basing on the certificate of search and testimony by the arresting officers and independent witness. During determination of an appeal the Court of Appeal of Tanzania raised fundamental question on Whether Linus kept drugs or to whom did he give them for safe custody?

According to the court, this question could have been answered by Kenyela, Linus, or both. Thus, the crucial chain of custody for the drug exhibit was completely

³⁴⁷ Criminal Appeal No.28 of 2010, Court of appeal Tanzania (Unreported)

disrupted as a result of the absence of evidence from these two important prosecution witnesses, hence the appellant was set free. Despite setting aside the conviction order, it does not mean that the appellant was not involved in the drug trafficking business, but owing to lack of testimony by officers who were in charge of custody of drugs he was set free.

On the contrary, in the case of *Vuyo Jack vs Director of Public Prosecutions*,³⁴⁸ the applicant challenged the conviction on the ground that the trial judge erred in law by convicting of drug trafficking when he had casted doubt on the chain of custody. In particular, the trial judge had observed three things which prima facie would have affected integrity of the evidence. First, discrepancy of drugs seized at Tunduma post and drugs transmitted to the chief government chemist at Dar es Salaam. Secondly, repackaging of the drugs by the officer. Thirdly, lacking chronological documentation or paper trail of how drugs were dealt with from time they were handled over to PW5 up to the time they were transmitted to the government chemist. However, the trial judge convicted the appellant basing on the consistency of testimony by officers who arrested him, and those who had custody of drugs between Tunduma and Dar es Salaam.

The Court of Appeal of Tanzania agreed with the findings of the trial judge at the High Court of Tanzania. The court actually affirmed the findings of the trial judge which based its conviction on the testimony by officers who were at the scene of the crime. The court observed the following:

³⁴⁸ Criminal Appeal No.334 of 2016, Court of Appeal of Tanzania at Mbeya (Unreported)

‘Having carefully considered the arguments for and against the appeal and the evidence on record we are alive to the fact that, the conviction of the appellant basically hinges on the credibility of PW2, PW3, PW7 and PW10. *These witnesses were present at the scene of crime and to be particular when the appellant was apprehended. The cumulative testimonial account of those witnesses is that, narcotic drugs were retrieved from the appellant's motor vehicle following a search which was conducted by PW3 in the presence of the appellant himself.*’ (emphasis added).

The above two cases show different approach on issues of chain of custody. While in the former case the court demanded testimony by officers who had custody of drugs, in the latter case the court considered testimony by officers who were at the scene of the crime regardless of variations in the weight of searched drugs. This signifies that matters of chain of custody depends on the nature of the case and the prudence of the trial judge. This means, there is possibility for inconsistency in the decisions of the court since the Drug Control and Enforcement Act and the Tanzania Evidence Act do not specify chain of custody rules. As observed above, the current practice is based on precedents developed by the courts which varies depending on the nature of the case; hence specific rules are needed on the aspect of chain of custody so as to ensure smooth administration of criminal justice in drug related cases in Tanzania.

6.2.5 Gaps regarding Rules on Cultivation of Prohibited Plants

As explained earlier on, the Drug Control and Enforcement Act gives powers to the Authority to permit, control, and regulate cultivation, production, or sale of opium or coca leaves.³⁴⁹ Further, it gives powers to DCEA to prohibit, prevent, control, and regulate production of certain plants and substances which would result in drugs.

³⁴⁹ Drug Control and Enforcement Act, s.12.

The study has revealed that there are no regulations in place to stipulate the conditions on granting the permits for cultivation of the prohibited plants.

This partially contradicts requirements defined under article 4 of the Single Convention on Narcotic Drugs, 1961 whereby planting and cultivation of prohibited drug plants is allowed where a license is issued for medical and scientific purposes, subject to prescribed conditions. This must be addressed as soon as possible in order to limit the continued growth of prohibited drugs in various parts of Tanzania and to ensure their availability for treatment and scientific purposes.

6.2.6 Gaps related to Investigation and Prosecution of Drug Cases

Generally, the Criminal Procedure Act provides that the basic period available for interviewing a person who is under restraint in respect of an offence is four hours commencing at the time of arrest.³⁵⁰ On the other hand, the Drug Control and Enforcement Act³⁵¹ requires the suspect to be interviewed in writing within 24 hours from the time of arrest or such other reasonable time as it may be extended. Unfortunately, there is no definition or any guide in the law to substantiate as to what constitutes reasonable time within the meaning of the law. This presents a clear conflict of laws with regard to the period for interviewing suspects before proper arraignment in court. This gap has brought a lot of challenges in the prosecution and conviction of drug perpetrators, including delays in the administration of criminal justice.

³⁵⁰ Cap 20, R.E 2019, s.50.

³⁵¹ Cap 95, R.E 2019, s.48(2) (v).

Data collected from government reports shows that in the year 2017 about 243 persons were arrested with cocaine and 1005 persons were arrested with heroin. Similarly, in the year 2018, about 148 perpetrators were arrested with cocaine and 463 with heroin. The number appeared to have decreased in the year 2019 whereby 31 incidences of cocaine and 318 incidences of heroin were reported. Furthermore, the report showed that about 343 perpetrators were convicted by the subordinate courts and sentenced to imprisonment, while 65 perpetrators were discharged by the court. Approximately 1,378 drug cases have not yet been determined by any court.³⁵²

Similarly, by 2019, twenty cases had been determined by the High Court of Tanzania, in which 90% of these cases were held in favour of the Republic and perpetrators sentenced to imprisonment for either 30 years or less and life imprisonment.³⁵³ Unfortunately, most of these convictions were reversed by the Court of Appeal of Tanzania due to inconsistencies in arrest, search and chain of custody. One of the grounds that have been applied to challenge validity of judgments is the issue of time used by the prosecution to arrest, interview and file the matter to appropriate courts. Notwithstanding the conflict on period for interview and investigation, delays in prosecuting the case has also been caused by inadequate provisions on coordination between the investigation departments and the office of the DPP caused by discretionary powers of the DPP. Basically, DPP has power of coordinating criminal investigation,³⁵⁴ and power to issue directives in writing to any authority for the

³⁵² Mamlaka ya Kudhibiti na Kupambana na Dawa za Kulevya (2019): Taarifa ya Hali ya Dawa za Kulevya ya Mwaka 2019, Ofisi ya Waziri Mkuu, Jamhuri ya Muungano wa Tanzania, pp.20-24.

³⁵³ Ibid., 2020.

³⁵⁴ National Prosecution Act No.27 of 2008, ss.9,16,17 and 18.

purposes of obtaining information relevant to the investigation or prosecution of an offence.

The findings of this study have found that the law does not provide a deadline for investigative bodies to finish investigation. During recent years, various stakeholders have shown dissatisfaction with how powers of DPP have been exercised with regard to economic crime, money laundering and drug trafficking. There is need for clear stipulation as to the maximum number of periods the matter could stay under investigation so as to effectively promote criminal justice in the country.

Similarly, delays in prosecuting offenders have partly been caused by magistrates who refrain from trying drug cases on reason of lack of jurisdiction. As a matter of law, subordinate courts determine committal proceedings until there is a sufficient ground to remit the case to the High Court for determination. Unfortunately, the law does not stipulate time within which matter could be under committal proceedings, leading to unreasonable expenses on the part of the government and the accused person. The reports by Tanzania Prison Service shows the problem of overcrowding whereby in 2020 there were about 31,000 inmates in prison, out of which 17,632 were undergoing trial in the courts.³⁵⁵ Therefore, there must be specific stipulation of time for investigation and prosecution of drug related cases so as to do justice to the accused persons, as it is a principle of law that ‘justice delayed is justice denied.’

³⁵⁵ <https://www.thecitizen.co.tz/tanzania/news/-> 17 November 2020- The speech of President Magufuli as Guest of Honor during the Law Day on 07 February 2020

6.2.7 Gaps on Nolle Prosequi Provisions

Nolle prosequi is a Latin maxim which means, ‘We shall no longer prosecute a trial.’³⁵⁶ This is an entry made upon the record by the prosecutor in a criminal case stating that he will no longer pursue the matter. An entry of nolle prosequi may be made at any time after charges are brought before the court and before verdict is entered. Sometimes it occurs during the trial when materiality of witness’ testimony is questioned as observed in the case of by *DPP vs. Mehboob Amer Haji and another*.³⁵⁷ Essentially, nolle prosequi is an admission on the lack of the evidence to prosecute the perpetrator.

Basically, the DPP may state in court or by way of writing on behalf of the Republic that proceedings should not continue. Once an order for nolle prosequi has been entered subject to the offence which the accused person is charged with, the law requires that, the accused person be discharged. However, that discharge of the accused person upon entering nolle prosequi does not preclude further legal action being taken against him based on the same facts.

It is a requirement of the law that the DPP should be independent when exercising powers to enter *nolle prosequi*. Unfortunately, the law does not set guidelines or limits on how the DPP should exercise such powers, provided the request is made before judgment. This has at times subjected the DPP to political influences leading to injustice on the part of accused persons. For example, in the case of *Republic v.*

³⁵⁶ Garner, B., (Ed), Black Law Dictionary, (Third Edition), 2006, p.486.

³⁵⁷ Criminal Appeal No.28 of 1992, Court of Appeal of Tanzania at Dar Es Salaam, [Unreported], p..9.

*Hariri Mohamed Hariri and Another*³⁵⁸ the accused was taken into custody on March 2, 2018, along with 214 grams of heroin. He was later arraigned before the High Court after completion of committal proceedings by Kisumu Resident Magistrate court.

During preliminary hearing stage, the DPP entered *Nolle prosequi* and the suspect was subsequently re-arrested and subjected to new committal proceedings before the same court for the same offence based on the same facts. He was later committed to the High Court for trial *vides* Economic Case Number 86/2019. This kind of practice apparently violates the double jeopardy rule and embarrasses the accused person. Hence, there is need for the law to stipulate limitations and safeguards on the exercise of powers by DPP with regard to *nolle prosequi* so as to protect rights of the accused persons in criminal matters.

6.2.8 Gaps on Whistle Blowers and Witness Protection

Tanzania is one of the few countries in Africa that have legislations providing for protection of witnesses and whistleblowers. However, there are various legal challenges which face witnesses of drug trafficking cases in Tanzania. Despite provisions on payment of reward or compensation to witnesses, there is no special fund that may be used to meet the social and financial needs of witnesses. This puts them at risk of financial dependence on drug traffickers, who seem to be in better financial position than the witnesses or their families.

³⁵⁸ Economic Case No.2 of 2020, High Court of Tanzania -Corruption and Economic Crimes Division (Unreported)

Secondly, witnesses to drug trafficking and other connected crimes face a security risk. Although the law requires authorities to make arrangements for shelter of witnesses in case of any danger to their life, however the legislation does not compel or demand that the government provide security to witnesses, forcing them to continue living in environment likely to be exposed to traffickers. Similarly, relatives and family members of witness may also face similar threats. With increasing number of drug traffickers, it is important for the government to ensure financial sustainability of the witnesses in drug related offences and guarantee security to witnesses and their families.

6.2.9 Gaps Related to Plea -Bargaining Provisions

In 2019, Tanzania Parliament amended several Criminal Laws, among others to introduce the Concept of Plea-bargaining. This Legal update highlights the amendments done in particular to the Criminal Procedure Act by inserting section 194A-194H in the respective Law. This celebrated amendment of the law has led to potential conflict of laws governing drug trafficking. There are some conflicts between Criminal Procedure Act and the Drug Control and Enforcement Act. While Criminal Procedure Act³⁵⁹ permits plea bargaining³⁶⁰ to be entered by the accused in criminal cases for some of the offences including possession or trafficking in narcotic drugs whose market value is above 20 million shillings,³⁶¹ the Drug Control and Enforcement Act, does not provide for such avenue as it does not require statement of the value of drugs.

³⁵⁹ Cap.20 R.E 2022

³⁶⁰ Plea Bargaining means a negotiation in Criminal case between a prosecutor and the accused as per Section 3 of Cap 20 as amended by amendments (No.4) Act, 2019

³⁶¹ Cap 20 R.E 2019, section 194F.

Initially, the repealed law required valuation of drugs by the government department and publication of such information was justified. For instance, under the Narcotic Drugs and Psychotropic Substances (Control) Act No.4 of 1994 of Kenya provides the punishment and bail basing on the value of drugs; hence making it easier for Plea- agreement negotiations to be made on drug cases in the country. Basically, valuation of drugs facilitates the negotiation process between prosecutors and the accused's advocates or other personal representatives as it would provide the margin for plea-bargaining exercise. Failure to stipulate value of drugs is likely to jeopardize the plea-bargaining exercise which includes drug trafficking cases. There is need to amend the existing law so as to define mechanisms for valuation and publication of value of drugs for plea-bargaining purposes.

6.2.10 Lack of harmonized Anti-Drug trafficking Legislations in the East Africa Community Region

According to the 1999 Charter for the Establishment of the East African Community, member states must work together to address a range of economic and political issues for the benefit of the people. Adopting legislation that criminalizes or otherwise restricts the growing of illegal drugs in the EAC region would be necessary for this. Unfortunately, some narcotic drugs are not incriminated throughout the EAC region. For instance, cultivation of narcotic drugs known as khat is permitted in Kenya as one of the cash crops, whereas it is illegal in Tanzania.

Therefore, it appears that those who live close to Kenyan borders are growing khat and smuggling them into Kenya. This brings difficulties in addressing the problem of trafficking of Khat in Tanzania. It is clear gap that Khat is being trafficked across

borders in Tanzania, particularly in Arusha, Tanga, and Mara, which are close to Kenya. Despite of police operations, some people in Tanzania still cultivate illicit drugs in secret locations and export them to other countries, particularly Kenya and Uganda. There is a need for common understanding among stakeholders in EAC countries so that the EAC region is not a market for the prohibited drugs. There is a need for joint meetings and operations to completely eradicate the problem of drug trafficking among the EAC partners.

6.3 Institutional Challenges Related to Drug Trafficking Prevention and Control

Apart from the above legal related challenges, there are a number of institutional challenges which hinder effective implementation of the legislation and policies. The first factor has to do with this country's geography. Tanzania is surrounded by six countries whose people migrate from one place to another in search of jobs, goods and services. While some of them enter the country through official border posts, some people enter and exit the country through unofficial sites without being detected by security officers. Hence, making it difficult to control such porous borders. Unfortunately, the DCEA's offices are located in only three regions: Mtwara, Dar es Salaam and Dodoma. Impliedly, it can be argued that the remaining parts of the country are not properly coordinated. This exposes the country at a danger of entrance of unauthorized and illegal goods including drugs. The first element has to do with this country's geography.

Nevertheless, it was observed that DCEA in collaboration with other state organs conduct regular inspections of the borders in order to control the inflow of drugs from neighboring countries. However, being periodically conducted, such measures

leave a lot to be desired since some participants in the drug trafficking networks may get prior information of such operations. This challenge could be addressed by opening up more offices in every region and district so as to effectively coordinate drug related activities in all parts of Tanzania.

Secondly, drug trafficking control efforts are highly affected by the autonomous nature of each state organ involved in the drug trafficking control. As earlier observed, there are various institutions responsible for drug control, namely: TISS, TRA, DCEA, and ADU. Each of these units has a distinct and independent management whereby officers account to its corresponding top senior leaders. For example, the Head of the Tanzania Police Force (ADU) reports to DCI; and the Head of DCEA, the Commissioner General, reports to the Permanent Secretary-Prime Minister's Office.

Similarly, the TRA Unit dealing with combating prohibited goods including illicit drugs falls within the mandate of the Commissioner of Customs who reports to the Commissioner General of TRA, and the head of CN Unit reports to the TISS Director General. This means that each unit is accountable to an independent senior government officer who is a presidential appointee; hence making operations of the DCEA to be difficult as each unit operates on its own policies, plans and procedures. The difference of reporting hierarchy of drug control institutions makes the coordination function of DCEA to be not fully realized.

Third challenge facing the institution is inadequate funds which has always had negative impact on activities of DCEA. It has not been given adequate financial

resources comparable to its demand. Over the previous five years, the funds budgeted to the Authority is as follows; Tshs. 4,015,912,991/= in the year 2017/2018;³⁶² Tshs.5,755,101,000/= in the year 2018/2019;³⁶³ and Tshs.7,592,818,000/= in the year 2019/2020.³⁶⁴

Similarly, the budget for the year 2020/2021 was about Tshs.6, 167,415,000/= ³⁶⁵and that of year 2021/2022 was Tshs.8, 529,797,000/=. ³⁶⁶Moreover, in the year 2022/2023 the budget of the DCEA increased to Tshs.11, 974,701,000/-, ³⁶⁷ an increase of almost Tshs.3 billion. However, the study established that DCEA needs a budget of at least Tshs.20 billion so as to effectively control drug related activities in the country.³⁶⁸ This indicates a deficit of around Tanzania Shillings 8.1 billion, which needs to be allocated by the Government as soon as possible. Fourth, institutions are faced with lack of technological equipment for identifying narcotics and other illegal drugs which has a significant impact on the investigative process. Since new techniques are being developed due to the global expansion of ICT, it is imperative the government to provide adequate facilities to make the investigative process easier. Last but not least is increased insecurity to investigators and other officers of the Authority. This matter needs to be addressed to ensure that perpetrators are investigated, prosecuted and finally sentenced without subjecting officers of DCEA to life risks.

³⁶² The United Republic of Tanzania; Drug Control and Enforcement Authority Medium Term Expenditure Framework, 2017/2018.

³⁶³ Ibid., 2018/2019.

³⁶⁴ Ibid., 2019/2020.

³⁶⁵ The United Republic of Tanzania; Drug Control and Enforcement Authority Medium Term Expenditure Framework, 2020/2021.

³⁶⁶ Ibid.,2021/2022.

³⁶⁷ Ibid.,2022/2023.

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On the other hand, DCEA has a limited number of staff which makes it difficult to coordinate drug control activities throughout the country. The study has established that the Authority has a total number of 120 staffs who execute the daily activities of the DCEA. Looking at the entry and exit points around the country; such a number is too minimal to curb the problem of drugs. From the official records, DCEA needs to recruit approximately a total number of 1,720 staffs for effectively combating drug trafficking in the country.³⁶⁹ Hence, it can be correctly argued that DCEA is currently understaffed; hence a need for engagement of more qualified and competent officers to control drug problem in the country. Last but not least relates with availability of arable land for cultivation of drugs. In comparison to Kenya and Uganda, Tanzania has a very favorable climate that encourages the cultivation of cannabis.

Since Tanzania has a big area of land either reserved or uninhabited for reasons of safety, some crooked persons strive to live in those hidden places and cultivate prohibited drugs, especially cannabis. Thus, there is need to ensure the available land in Tanzania is used for cultivation of both food and cash crops and not otherwise. Similarly, citizens and the leaders at the local government levels should be encouraged to report whenever they discover inappropriate land use.

6.4 Conclusion

The control of drug trafficking has never been easy. This chapter has expounded on legal and institutional challenges encountered in the course of investigation,

³⁶⁹ This was revealed by the DCEA Officer (anonymous) who had access to the institutional documents, including the DCEA Strategic Plan for the year 2021/2022 to 2025/2026.

prosecution and sentencing of offenders. Thus, there is need for the government of Tanzania to make necessary legal reforms so as to effectively curb the problem of drug trafficking; hence be able to protect the present and future generation. The next chapter presents summary of main findings, conclusion and recommendations.

CHAPTER SEVEN

SUMMARY OF FINDINGS, CONCLUSION AND RECOMENDATIONS

7.1 Summary of the Key Findings

The study sought to assess the institutional challenges and the adequacy of the law governing drug trafficking in Tanzania. Four specific objectives were adopted, namely: (i) To examine legal gaps in the existing laws on curbing drug trafficking problem in Mainland Tanzania; (ii) To assess various institutional challenges which hinder effective prosecution and sentencing of drug-related offences in Mainland Tanzania; (iii) To explore on standards and practices related to drug trafficking control from foreign countries and various regional and international instruments, and (iv) To propose measures and mechanisms to be taken to curb the problem of drug trafficking in Mainland Tanzania.

On the first and second objectives, the study has established several legal gaps and institutional challenges which hinder effective implementation of the law. The most notable legal gaps include: discretionary power provisions on sentencing of offenders by the court; conflicting provisions governing search and arrest of drug traffickers; lack of clear definition of some drugs; and lack of clear rules for determination of chain of custody.

Furthermore, the study has established gaps in the provisions governing nolle prosequere; provisions on investigation and prosecution of drug cases; absence of clear guidelines on cultivation of illegal drugs; contradicting provisions of the plea-bargaining and drug trafficking control; and lack of harmonized ant-drug trafficking legislations in the EAC region, particularly Tanzania and Kenya. These comprise of

legal impediments on enforcement of drug trafficking in Tanzania.

On the second objective, the study has established various institutional challenges which hinder smooth operation of the laws, including limited financial resources allocated to DCEA; the autonomous nature of the existing drug institutions; the presence of a favorable environment in Tanzania that encourages cultivation of illegal drugs; the porous nature of the borders; and the inadequate human capital given the size of Tanzania's region. All these institutional challenges must be addressed by the government in order to completely eradicate trafficking of drugs in the country.

On the third and fourth objectives, the study has established that there are various regional and international instruments which control trafficking of illicit drugs. The instruments impose an obligation on states to adopt policies and laws that prohibit importation and exportation of prohibited drugs, except under permissible circumstances and subject to control by states. Similarly, the study has also established that China, Singapore and Cuba have been successful in reducing drug trafficking incidences because of laws which impose harsh sanctions on perpetrators, particularly use of death penalty and life imprisonment, subject to due process.

Nevertheless, the study has also shown that some states apply non-prosecutorial mechanisms to curb the problem of trafficking and use of illicit drugs, especially counseling, rehabilitation and public awareness. Such use of legal and non-legal measures has been instrumental towards reduction of drug trafficking incidences in those countries. Thus, it is important for Tanzania to take legal and administrative

measures to ensure that trafficking of illicit drugs is eradicated. The following part covers the discussion of the fifth objective of the study as it presents set of legal and administrative measures that can be taken by the government to curb the problem of drug trafficking in Tanzania.

7.2 Conclusion

Drug trafficking is a global issue which affects individuals and the nation at large. To curb the problem of drug trafficking, laws and policies should be adopted which regard drug trafficking as not only a national issue but also health crisis. As shown in this study, there are various legal gaps and institutional challenges which need to be resolved in order to effectively curb the problem of drug trafficking in Mainland Tanzania. This would be made possible where relevant laws are amended to meet the international requirements and practices from countries that adopted and implemented a zero-drug trafficking policy. The following part presents a wide range of legal and policy recommendations to improve the existing efforts to curb the problem of drug trafficking in Mainland Tanzania

7.3 Recommendations

7.3.1 Amendment of the Laws Governing Drug Trafficking Control

The study suggests that the legislation should be improved to impose capital punishment on intentional drug trafficking done by perpetrators in the higher levels, particularly the manufacturers, growers and distributors of illicit drugs. It is recommended that death penalty for such drug related crimes should only be imposed depending on the category, severity and weight of drugs. Generally, the adverse effects of manufactured drugs such as cocaine are more harmful than effects

of locally cultivated drugs such as cannabis. Thus, the appropriate punishment for trafficking of more than one kilogram of manufactured drugs such as cocaine, heroin and methamphetamine should be death penalty. However, trafficking of less than one kilogram of manufactured drugs should attract life imprisonment. The study also recommends that trafficking of more than 100 kilogram of traditional drugs should attract death penalty and less than 100 kilograms of the same drugs should attract life imprisonment sentence.

Similarly, the laws must be aligned to establish consistency in sentencing for offences committed in accordance with the same section 15 of the Drug Control and Enforcement Act; in order to establish consistency in sentencing for offenders, this could solve the issue of judges' or magistrates' discretion. Alternatively, the legislation should clearly stipulate factors that would assist the court to pronounce judgment that is relevant to the offence committed.

Secondly, the legislation should be strengthened to include provisions for witness protection including provisions for financial assistance of witnesses and assurance of their personal and family security. To accomplish this, a Witness and Whistleblowers Protection Fund might be established to handle all issues relating to witness protection. Thirdly, the study urges the establishment of particular chain of custody regulations. The study recommends to the Chief Justice to adopt rules which reflect or otherwise implement the existing precedent on the matter of chain of custody in Tanzania. By doing this, the judicial system's integrity would be preserved, and it would be made sure that court rulings weren't supported by tainted, doubtful, or compromised evidence.

The respective laws ought to provide chain of custody procedures. The study at hand suggests amending the Criminal Procedure Act to give the Minister in charge of Legal Affairs the mandate to issue regulations outlining broad principles regarding the chain of custody of exhibits. The procedures of chain of custody should be incorporated in the Drug Control and Enforcement Act so that exhibits can be moved from one person to another with the utmost care, eliminating any chance of exhibit tampering that could lead to the prosecution losing the case.

Fifth, the Drug Control and Enforcement Act should be amended to allow prosecutors and DPP to make negotiations exercise basing on drug value rather than just weight. Special procedures should be adopted to allow the DPP and other responsible authorities to seek out and get the value of drugs for a successful negotiating exercise. Sixth, the DPP's authority to enter a nolle prosequi during the prosecution of drug trafficking cases should be limited by amending section 91 of the CPA. The study suggests using these powers early on, before the accused individual has had a chance to defend himself.

On the other hand, the study urges that the law governing drug-related committal processes be changed to specifically require that such cases be filed to the High Court of Tanzania. This is due to an increase in the number of judges in Tanzania and the establishment of High Court District registries in most districts. In particular, the study suggests amending sections 178, 243, 244, 245 and 246 of the Criminal Procedure Act to the extent of disregarding committal proceedings with regard to drug trafficking cases.

The control of drug trafficking has never been easy. This is because techniques and methods used by traffickers are ever changing to suit the environment. Since drug trafficking business is a profitable business and since traffickers are capable of financing other crimes, it is recommended that drug trafficking laws must be amended from time to time to punish offenders and their agents and to suit with the drug situation in the country

Finally, the study recommends that the Drug Control and Enforcement Act be amended to include terms and conditions for issuance of license or permit to cultivate illegal drugs. By clearly stating the important circumstances for which a license could be granted or cancelled and any potential implications, could ease DCEA on making follow-up. To ensure that specialized forces are present in all crucial areas of the country, the law should specifically name district and regional offices of DCEA. This might guarantee efficient administration and enforcement of anti-drug trafficking laws. Likewise, the composition of DCEA should be improved by including non-state actors such as Civil Society Organisations, professional associations, social welfare officers and health officers, religious institutions and other development partners including the private sectors. Such non-state actors may be involved through committees at the regional and district levels in order to address health related concerns of drug trafficking offenders.

7.3.2 Capacity Building and Recruitment of Staff

For the drug trafficking laws to be effectively implemented, the issue of human resources is highly important. The DCEA appears to be understaffed in comparison to the areas of the nation. As shown area, Tanzania has quite number of porous

borders which would require constant operations for identification of offenders and trafficking incidences. It appears that the Authority only has 105 staff in total and it needs 210 staff to eliminate the problem of drug trafficking over the entire nation. The Study suggests hiring more skilled personnel to fill this gap and take on this challenging enforcement task.

On the other hand, the study suggests that DCEA officers and prosecutors undergo frequent training to keep them update with the laws and procedures. As shown earlier, drug traffickers are highly organised and professionally skilled; as a result, it needs a qualified individual to identify them. Such training should also include special training on ICT and investigation so as to equip staff with skills and knowledge related to drug trafficking techniques. Also, officers of the DCEA should be made aware of the role of members of the community and civil society organisations (CSOs) in advocating for behaviour change so as to discourage users from consuming prohibited drugs and other trafficked drugs.

7.3.3 Allocation of Adequate Budget to the DCEA

As shown under Chapter Six of this thesis the government has not been allocating the DCEA sufficient funds to discharge its functions. For the past five years, the government has allocated the average of Tanzania Shillings. 6.4 billion which is 32% of the total amount required of Tanzania Shillings 20 billion. The study recommends that the government should allocate more funds to the DCEA so as to successfully carry out the national plans and objectives linked to the country's control of drug trafficking.

7.3.4 Establishment of the Fund for Raising Awareness, Rehabilitation and Counseling

Effective use of awareness raising programs has been adjudged to be instrumental towards promotion of good behavior and attitude change among the community members. As discussed under Chapter Four of this Study, several countries have succeeded in reducing drug trafficking and use through provision of public education. Provision of education to the people through various groups such as clubs and public meetings has a high chance of influencing positive change among the youths and adults. Similarly, the availability of counseling and rehabilitation services to both drug users and non-drug users are likely to prevent the dangers associated with drug use and influence them to participate in legitimate activities.

Similarly, drug users including addicts should receive detoxification services in the hospital or an institution maintained or recognized by the Government instead of sentencing them to imprisonment, upon their consent. They may receive lesser punishment such as sentencing them to community services or probation services, subject to attendance medical treatment, education and proper counseling. As rightly argued by Paranjape, probation is a treatment reaction to law-breaking and an attempt to mitigate the rigours of the offender rather than making him suffer incarceration in the prison institution.³⁷⁰ The above measures would only be possible where there is established special fund for management of related activities. The source of such fund may include proceeds of crime as a result of confiscation and fines paid as a result of conviction.

³⁷⁰ Paranjape, N.V., (2003) *Criminology and Penology*, Central Law Publications, India, p.341

With a well-funded and coordinated program, it is expected that people of Tanzania including perpetrators of drug trafficking would be encouraged to engage in anti-drug campaigns and collaborate with law enforcement agencies in eliminating the problem of drug trafficking in the society. Furthermore, the fund would be very instrumental towards financing small development projects established by the groups of former drug users.

7.3.5 Continued International Cooperation in Criminal Matters

As previously explained, trafficking of illicit drugs is one of the organised trans-national crimes which involves careful planning and sometimes a group of professional people including lawyers, doctors, policemen, judges, politicians and government officials. Thus, it is mandatory for the DCEA and other security organs to conclude as many collaboration agreements with international security organs in order to cooperate in information sharing, criminal investigations and prosecution of perpetrators regardless of state frontiers. The government must try as much as possible to conclude extradition agreements with other foreign states, especially states that have significant number of traffickers from Tanzania. This would ensure that every Tanzanian national is brought to justice for contravening drug trafficking laws regardless of place of commission of an offence.

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