

# CRITICAL ASSESSMENT OF THE LEGAL AND INSTITUTIONAL CHALLENGES FACING DRUG TRAFFICKING CONTROL IN MAINLAND TANZANIA

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## ABSTRACT

Drug trafficking is one of the crisis facing the world today. As an illicit business it benefits traffickers at the detriment of drug users who suffer irreparable losses. States, including Tanzania have adopted policies and punitive laws to curb the problem of drug trafficking. Yet, drug trafficking incidences are increasing day by day; hence requiring more proactive measures to eliminate the problem. This article assesses the existing international, regional, and national laws governing drug trafficking in Tanzania. It specifically points out legal and institutional challenges facing drug trafficking control in Tanzania, and offers solutions thereto.

## INTRODUCTION

Drug trafficking is one of the world's nightmare because it continues to affect the lives of the people especially the youth who are the most users. Traffickers continue to distribute and sell drugs to users using organized networks including online networks. Various states have enacted laws that prohibit manufacturing, growth, importation, distribution, sale and use of variety of drugs. However, drug trafficking appears to be increasing despite the existing international and national policies and laws. This article explores the legal and practical challenges facing the efforts of curbing drug trafficking in Tanzania and the remedial measures to eliminate the problem.

## LAWS GOVERNING DRUG TRAFFICKING IN MAINLAND TANZANIA

Tanzania has taken various measures to curb trafficking of drugs into and out of the country including enactment of legislation and ratification of international instruments. The international community has adopted several conventions which inter alia direct the member states to enact laws that will establish units for controlling the use of drugs and curbing drug trafficking. The first instrument is known as the Single Convention on Narcotic Drugs of 1961 (as amended in 1972), which deals with drugs primarily obtained from plant material such as cannabis, khat, opium and coca leaves. This Convention sought to replace existing multilateral treaties in the sector with a single instrument, reduce the number of international treaty organs concerned with the control of narcotic drugs, and make provisions for the control of the production of raw materials of narcotic drugs.<sup>i</sup> The guiding principle of the treaty is to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs<sup>ii</sup>. Thus, state parties are required to define actions which when committed intentionally would constitute punishable offences, including cultivation, production, manufacture, and offering, offering for sale, sale, import, transport, and exportation of drugs.<sup>iii</sup>

The second instrument is the Convention on Psychotropic Substances of 1971 which sought to bring psychotropic substances and many of their preparations under international control, and to reduce the incidence of abuse of and illicit traffic in them<sup>iv</sup>. This Convention imposes an

obligation on states to notify the World Health Organization in case of any new trend of drugs or in case the state wishes to classify drugs from one schedule to the other.<sup>v</sup> Meantime, states are required to take action to ensure that manufacturing, cultivation or distribution of non-scheduled drugs is prohibited pending determination by the appropriate organs.<sup>vi</sup> It also provides for a limitation in the use of substances for medical and scientific purposes.<sup>vii</sup>

This is done by adopting three measures: prohibiting use of drugs except for scientific and very limited medical purposes by duly authorized persons; requiring manufacturing, trading, distributing and possessing of drugs to be under a special licence; providing close supervision of the activities and acts involved in the use of drug substances. .<sup>viii</sup> Other conditions include providing medical prescriptions, warnings on packages and advertisement and record keeping of drugs manufactured or traded by the licensee. <sup>ix</sup>The last UN instrument is known as United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 which supplements the above two previous Conventions. This Convention was formed to strengthen national penal legislations and encourage international cooperation in fighting drug trafficking. It gives a broad definition of drug related offences which should be adopted by states in their laws, including intentional acts, aiding or abetting crimes. It also covers crimes committed by persons holding public offices.<sup>x</sup>

Apart from the above UN instruments, there are regional systems which also address drug trafficking problem. The first is the SADC Protocol on Combating Illicit Drugs Trafficking of 1992 which was adopted in order to reduce and eventually eliminate drug trafficking, money laundering, corruption and illicit use and abuse of drugs through enforcement cooperation in the region. It sought to eliminate production of illicit drugs and protect the region from being used as a conduit for drugs from international markets.<sup>xi</sup> Basically, it obliges states to adopt policies and laws which adhere to the international conventions by criminalizing drug abuse and trafficking; provide for destruction of drugs seized; deal with proceeds of illicit drugs by adopting provisions on freezing and seizure, confiscation and forfeiture of the said proceeds. It also requires states to adopt provisions on extradition of offenders, prevention, and detection of laundering of the proceeds of drug trafficking and controlled delivery in accordance with international practices.<sup>xii</sup>

The second regional instrument is the Protocol on Combating Drug Trafficking in East African Community which represents a commitment by members of East African Community to curb the problem of drug trafficking in the region. The Protocol encourages states that have not ratified the UN Conventions to do so as soon as possible in order to eliminate drug trafficking in the region.<sup>xiii</sup> Through the Protocol on Combating Drug Trafficking in East African Community, the countries of East Africa express their strong commitment to fight drug trafficking by eliminating the production of drugs and protecting the region from being used as the source country for drug trafficked for international markets. Basically, this Protocol is the replica of the SADC Protocol on Drug Trafficking as it adopts the provisions in verbatim.

Apart from the above international and regional instruments, the Government of Tanzania adopted a number of legislation which seek to curb the problem of drug trafficking. The first legislation is the Drug Control and Enforcement Act No.5 of 2015.<sup>xiv</sup> This Act repeals the Drugs and Prevention of Illicit Traffic in Drugs Act No. 9 of 1995. The Act prohibits trafficking of drugs by providing punishment for trafficking of narcotic drugs and psychotropic substances or dealing in any way with these drugs. Under Part III of the Act, various offences which amount to drug trafficking are provided such as: cultivation of prohibited plants, possession of drugs, possession of machines, equipment, and laboratory for the intention of manufacturing of narcotic drugs and psychotropic substances. The perpetrators of the above offences are punishable to life sentence.<sup>xv</sup>

Furthermore, the Act vests power to the Drugs Control and Enforcement Authority (DCEA) to make regulations governing cultivation of drug plants such as opium poppy, khat, cannabis, and coca leaves<sup>xvi</sup>. Similarly, it obliges arresting officers of the Authority and other enforcement organs to observe arresting legal procedures stipulated under the Drug Control and Enforcement Act and the Criminal Procedure Act (hereinafter known as CPA) during arrest in order to make a lawful arrest<sup>xvii</sup> Under the stipulated procedures, the arresting officer among other things has the power to use recording devices such as video, audio, digital, or other media equipment to record the interrogation of any offence committed under the Act<sup>xviii</sup>. This means that the Drugs Control and Enforcement Act must be applied by the enforcement organs together with other pieces of legislations which govern administration of criminal justice in Tanzania.

Secondly, the Criminal Procedure Act 1985 (CPA)<sup>xix</sup> provides for general procedures to be followed during arrest, investigation of crimes and in conducting of criminal trials. Essentially, the Act provides for procedures of conducting search including consent of the owner of premises.<sup>xx</sup> The law further provides that during search in the house or premises an independent person has to witness the search, failure of which renders the evidence collected illegal. On the other hand, this Act allows the properties suspected to be used or acquired in connection with the crime to be seized and subsequently be used as evidence in court.<sup>xxi</sup> On the other hand CPA provides for the procedure of examining witnesses and the manner of recording evidence in criminal trials, and provides for bail procedures both at police level and when the matter is in court.<sup>xxii</sup>

Thirdly, the Tanzania Evidence Act of 1967 is another important legislation when dealing with drug trafficking matters. It provides for rules governing admissions, confession, and admissibility of statements by persons who cannot be called as witnesses, admissibility of statements under special circumstances and admissibility of expert opinion. Accordingly, admissibility of oral evidence in drug trafficking cases must be direct; hence must be brought to court by a person who witnessed the particular matter. This means every testimony given to court concerning accused persons must be made by witnesses on oath, subject to cross examination by the accused person. However, proof of the content of documents may be done through primary and secondary evidence.

Fourth, the Electronic Transactions Act of 2015 which provides for recognition of electronic transactions; the use of information and communication technologies in collection of evidence, admissibility of electronic evidence and facilitation of the use of secure electronic signatures. This Act is important as it sets out criteria to be considered by the court when determining admissibility of electronic evidence, namely: reliability of the manner in which the data message was generated, stored or communicated; the reliability of the manner in which the integrity of the data message was maintained; and, the manner in which its originator was identified. It also lays down some factors to be taken into consideration in determining the authenticity of the electronic evidence for the purpose of admissibility. Generally, it describes how electronic evidence should be used in criminal and civil proceedings.



Fifth, Whistle Blowers and Witness Protection Act No.20 of 2015 which seeks to promote and facilitate reporting of organized crimes, corruption offences, unethical conduct, and abuse of office, illegal and dangerous activities such as drug trafficking. It also 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. Basically, this is an important piece of legislation in combating drug trafficking as it provides among other things for the protection of whistle-blowers and witnesses in terms of non-prosecution and confidentiality or anonymity.

The sixth legislation is the Anti-Money Laundering Act which was enacted to disclose information relating to money laundering; establishes Financial Intelligence Unit and the National Multi-Disciplinary Committee on Anti-Money Laundering. This Act specifically creates predicate offences which lead to money laundering, including illicit trafficking or dealing in human organs and tissues.<sup>xxiii</sup> The Financial Intelligence Unit is responsible for receiving, analyzing and disseminating suspicious transaction reports, currency transaction reports; electronic funds transfer reports and other information regarding potential money laundering or terrorist financing from within and outside the United Republic of Tanzania.<sup>xxiv</sup> Practically, perpetrator of drug trafficking in Tanzania is usually charged under drug trafficking legislation and other legislation governing anti-money laundering and economic crimes.

The last but one is the Economic and Organized Crime Control Act<sup>xxv</sup> which was enacted in order to control and eradicate certain crimes through prescription of modified investigation and trial procedures; new penal prohibition; enhanced sanctions and new remedies. The Act establishes the Corruption and Economic Crimes Division of the High Court with jurisdiction to try grand corruption and economic cases, including drug trafficking cases of above 200 grams.<sup>xxvi</sup> According to the 1<sup>st</sup> Schedule to the Act, offences related to drug trafficking are termed to be amongst the economic cases.<sup>xxvii</sup> Furthermore, the Act permits an accused person to make an application for bail or the court on its own motion before conviction is pronounced may admit the accused person to bail,<sup>xxviii</sup> except where DPP's certificate shows that for the safety of the accused person or interest of the public would be prejudiced if bail was granted.<sup>xxix</sup> The said certificate of the DPP is supposed to remain in effect until the proceedings are concluded or the DPP decides to withdraw it.<sup>xxx</sup>

On the other hand, the Economic and Organized Crime Control Rules GN.267/2016 provides for the power of District or Resident Magistrates Courts to hold committal proceedings for economic and organized offences, including drug trafficking.<sup>xxxii</sup> Basically, the court ought to read and explain or cause to be read and explained to the accused person the information brought against him as well as the statements or documents containing the substance of the evidence of witnesses whom DPP intends to call at the trial.<sup>xxxiii</sup> After hearing the substance of the evidence of prosecution, the accused is allowed by the law to reserve his defence or to say anything which he may wish to say relevant to the evidence submitted against him by the prosecution.<sup>xxxiii</sup>

Thus, it can be correctly argued that Tanzania has various pieces of legislation which seek to curb the problem of drug trafficking. However, the problem of drug trafficking appears to be increasing despite the existing laws and institutions to curb the same. A Report published in the year 2019 shows that about 503 cases of heroin and cocaine were pending in the courts of law,<sup>xxxiv</sup> whereas about 7,418 cases of cannabis and *khat* were reported and some were still pending in courts of law.<sup>xxxv</sup> This leaves a question as to why people still engage in drug trafficking despite of strict measures taken by the Government. The following section describes legal and institutional challenges faced in the course of implementation of drug trafficking laws in Tanzania.

## LEGAL AND INSTITUTIONAL CHALLENGES

As explained above, Tanzania has taken good steps towards elimination the problem of drug trafficking. However, there are some factors which appear to affect smooth realization of the laws. The first factor is related to discretionary powers of the court in sentencing. Section 15(1) of the Drug Control and Enforcement Act requires the court to impose life imprisonment on a person guilty for an offence of trafficking of narcotic drugs or psychotropic substances through use of the word 'shall'. However, there has been conflicting interpretations of the above provision by the court. In the Case of *Republic vs. Christian Ugbechi*<sup>xxxvi</sup> the accused person was found trafficking heroine of **957.57 kilograms**. The trial court sentenced the accused person to **30 years imprisonment** instead of life imprisonment. However, in the case of *Republic vs. Mwinyi Kitwana Rajabu and Ally Hamdan Haman*<sup>xxxvii</sup>, the accused were arrested on 7<sup>th</sup>

December 2017 in Mtwara Region trafficking Heroin weighing **63.155** kilograms. Each of these persons was found guilty and sentenced to **20 years** imprisonment.

Conversely, in the case of *Republic vs. Ayubu Mfaume Kiboko and another*<sup>xxxviii</sup>, the accused persons were convicted for trafficking of **251.25** grams of heroin and were sentenced to serve **20 years** imprisonment. Though **251.25** gram was less than **63.155** grams, both accused on the respective cases were sentenced to serve the same sentence. Moreover, in the case of *Republic vs. Remina Omary and others*,<sup>xxxix</sup> the accused were arrested in 2017 trafficking heroin weighing **201.38** grams. The court found them guilty and sentenced them to **life** imprisonment. Basically, the above cases show different court conclusions despite offenders being charged under the same section of the law. Further, traffickers of big amount of drugs appear to have received lesser sentence while those involved on trafficking of small amount receive heavy punishment. This signifies that there is no uniform interpretation of penal provisions which may not yield the expected deterrence effect; hence defeat the purpose of the law.

Secondly, there is no clear definition of key words in the law. For example, the word ‘drug’ is not clearly and comprehensively defined by the Drugs Control and Enforcement Act to cover other types of drugs like NPS which have the same effect like other types of drugs. Basically, the definition covers only Narcotic Drugs and Psychotropic Substances mentioned in schedules of the Act. Similarly, section 15 of the Act provides punishment (life imprisonment) to a person who commits offences of trafficking of drugs not specified in the schedules of the Act which have proved to have drug related effects. It should be noted that the world today is witnessing new types of drugs which have not been tested to have effects to the health of user. Thus, imposing penalty on drugs which have not been verified to constitute prohibited drugs may contravene criminal law principle on certainty. This area need to be addressed so as to punish trafficking of new types of prohibited drugs like NPS.

Thirdly, there is a challenge related to recording of drug trafficking related evidence. Generally, in interviews of accused person is recorded in writing. Moreover, s.40A of the Tanzania Evidence Act admits evidence which is electronically retrieved and stored in a way that does not affect its authenticity. However, there are no rules to ensure authenticity of testimonies adduced through electronic devices. Furthermore, there is contradiction between Tanzania Evidence Act and the Drug Control and Enforcement Act<sup>xl</sup>. The later Act allows the recording



officer to use recording devices or media equipment on recording of the interrogation of suspects which is done openly, but the former speaks of secret police operations.

Further, the Drug Control and Enforcement Act as amended in December 2017 permits the use of audio, video, and digital recording of suspect interviews. However, none of the above laws consider recording evidence of the witnesses at the scene of the crime. This is likely to affect prosecution case if the witness/witnesses turn hostile or refuse their statements before the court. This is best illustrated by the case of *Republic vs. Kiamba Mtama Mchungu*<sup>xli</sup> whereby the accused person was charged with trafficking of Narcotic Drugs contrary to section 15(1)(a) of the Drug Control and Enforcement Act, No.5 of 2015 as amended by the Drug Control and Enforcement (Amendment) Act, No. 15 of 2017. The prosecution brought in court the independent witness who was around at the area of the scene during search and arrest of the accused.

Contrary to prosecution expectations, the independent witness denied her statement and the signature thereto. Instead she testified in favour of the defense side by arguing that search was improperly conducted in her absence and the accused person. This raised doubts in the prosecution statement which was finally resolved in favour of the accused person. The court found the accused not guilty and acquitted him<sup>xlii</sup>. This is because the prosecution witness retracted statements which could have been mitigated if the statement of the witness could have been recorded using recording devices such as video, audio, digital, or other media during the search stage. This means that it could not have been possible for the independent witness to deny her statement since the prosecution could have tendered voice note or video to discredit independent witness retraction.

Fourth, there is a challenge related to chain of custody. Essentially, chain of custody means chronological documentation and or paper trail, showing the seizure, custody, transfer, analysis, and disposition of both physical and electronic evidence.<sup>xliii</sup> Its purpose is to establish that the alleged evidence is related to the alleged crime rather than being secretly planted in order to make the accused appear guilty. This was held in the case of *Chacha Jeremiah Murimi vs. Republic*<sup>xliv</sup> where the court opined that chain of custody helps to dispel the possibility of alteration, substitution, or change of condition. Similarly, in the case of *Paul Maduka and Others vs. Republic*,<sup>xlv</sup> the trial judge observed that chain of custody requires that

from the moment evidence is collected, its transfer from one person to another must be documented and that it should be provable that nobody else could have accessed it.

This principle is likely to be compromised in drug related cases whereby drugs usually change hand easily and may be tempered with, destroyed or polluted. At times courts have refused to admit certain evidence because of missing link in handling of drug samples from the crime scene to police department and government chemist. A good example is the case of *Abuhi Omary Abdallah and Three Others vs. Republic*<sup>xlvi</sup>, whereby the High Court of Tanzania quashed the conviction of life imprisonment because some of the persons including a police officer, one Kenyela, who was the custodian of the drugs after it had been seized and the person who submitted the drugs to the Government Chemist for examination, one Linus, were not called to testify in court.

The issue raised by the court was whether Linus did keep those drugs and/or to whom did he give those drugs for safe custody? The courts view was that such question could only have been answered by Kenyela and/or Linus or both. Thus the absence of the evidence of these two potential prosecution witnesses totally destroyed the essential chain of custody of the drugs. Unfortunately, the Tanzania Evidence Act and the Drug Control and Enforcement Act do not stipulate procedures on chain of custody. Prosecutors and defence lawyers depend on the prudence and discretion of the trial judges or magistrates; hence there is need for an amendment to cure this gap.

Fifth, there are challenges related to investigation and prosecution of drug trafficking cases. Basically, the Drug Control and Enforcement Act<sup>xlvii</sup> require the suspect to be interviewed within 24 hours or such *other reasonable time* as it may be extended. However, there is no provision which binds the arresting officer or prosecution to send the arrested person in court. The use of phrase ‘reasonable time’ gives the prosecution and investigation department such discretionary powers which tend to cause delays in arraigning the accused person to court. The 2019 report shows inter alia that about 1378 cases are still pending in court because the investigation is still in progress.<sup>xlviii</sup> This is partly caused by lack of sufficient coordination between the investigation department and the office of DPP who is the head of operations in the prosecution department. Further, the law does not provide time limit for investigative organs to complete investigation process which affects effective promotion of criminal justice in the country.

On the other hand, DPP powers to enter Nolle Prosequi also affect prosecution of drug trafficking offenders. Legally speaking, an entry of nolle prosequi may be made at any time after charges are brought before the court and before verdict is entered. The main purpose of nolle prosequi is to enable the prosecution to control the proceedings, although in most cases nolle is entered on reason of lack of adequate or enough evidence to prove the case. Sometimes, revelation of new facts from the opposite side of the case may prompt the DPP to enter nolle prosequi. A good example is the case of *DPP Vs Mehboob Amer Haji and another*<sup>xlix</sup> when the credibility of the material witness was impeached. Basically, the DPP may state in court or by way of writing on behalf of the Republic that proceedings should not continue. Moreover, discharge of the accused person on nolle prosequi does not operate as a bar to any other subsequent proceedings against him on account of the same facts.

Despite good intentions, DPP's power to enter nolle prosequi has brought up some negative effect in the administration of criminal justice. Sometimes nolle may be entered on the date fixed for judgment as the law empowers the DPP to enter nolle at any stage of the case before judgment. One of the instances was witnessed in the case of *Republic vs. Hariri Mohamed Hariri*<sup>1</sup> whereby the accused was arrested on 2<sup>nd</sup> March 2018 with 214 Grams of heroin. The case was investigated by subordinate court of Kisumu and the accused person was committed for trial to the High Court. During preliminary hearing stage, the DPP entered Nolle prosequi and the suspect was re-arrested. Committal proceedings started afresh in respect of the suspect at the same subordinate court for the same offence on the same facts. Unfortunately, the suspect has been committed to the High Court for trial for the second time under Economic case Number 86/2019. This matter is still pending in court although it appears to have contravened the rule on double jeopardy. This area needs a special attention of the Parliament in order to align with international criminal standards.

Sixth, there is challenge in the Whistle Blowers and Witness Protection Act whereby the law does not establish specific fund from which witnesses' social and economic needs could be provided. This exposes them to financial dependence over drug traffickers who appear to be economically well off compared to the witnesses' and or their family members. On the other hand, there is a security issue which apparently faces witnesses of drug trafficking and other related crimes. The law does not require or demand the Government to provide security to witnesses; hence forcing them to continue living with traffickers who appear to be economically well off and most of the times keep armed. Similarly, there is a possibility of

threats to the witnesses and their relatives including family members because traffickers are also members of the society with the possibility of influencing potential witnesses in order to testify in their favour or otherwise reject to appear in court for personal reasons. These issues need to be addressed in order to protect whistle blowers and witnesses for effective investigation and prosecution of traffickers in Tanzania.

The last but one is the existence of varying laws governing drug trafficking in the neighbouring EAC countries. Basically, the Charter for Establishment of the East African Community of 1999 envisages forging cooperation among states in addressing various economic and political challenges for development of the people. This includes adopting laws which penalize or otherwise restrict cultivation of prohibited drugs in the EAC region. However, it appears that the laws governing drug control in the EAC region are not harmonized. For example, the law of Kenya allows or legalizes cultivation of kaht as one of the cash crops while the law of Tanzania criminalizes the same. This has continued to influence Tanzanian citizens living near Kenyan borders to secretly cultivate prohibited drugs and illegally exporting them to Kenya; hence there is a great need for harmonization of laws governing drug trafficking in EAC region.

The last but not least is administrative challenge. This includes geographical factors whereby Tanzania is surrounded by six countries which make it difficult to control all the borders, some of which are very porous and exposed to illegal entry of various commodities including drugs and illegal immigrants. Similarly, Tanzania has a very good climate and a large part of arable land (reserved or unoccupied) which tend to support growth of prohibited drugs especially cannabis compared to Kenya and Uganda. On the other hand, limited financial resources have always adversely affected activities of the Drug Control and Enforcement Authority (DCEA). Like Anti-Drug Unit a department of Tanzania Police Force under the Ministry of Home Affairs entrusted to combat drug trafficking, DCEA has not been allocated with the budget equivalent to the demands. For the past three years, the budget allocated to DCEA was as follows; Tshs.4,015,912,991/=(2017/2018), Ths.5,755,101,000/=(2018/2019) and Tshs.7,592,818,000/=(2019/2020). However, the estimated budget of the entire DCEA's activities is about Tshs.13,000,000,000/=. This means there is deficit of about Tshs.6 billion, which obviously affects activities of DCEA.

Finally, lack of devices to be used for inspection and other technological equipment for identification of narcotic drugs and other prohibited drugs also cause a challenge to

investigators. The development of ICT globally facilitates commission of offences since new techniques are being invented; hence there is a great need on the part of the Government to provide sufficient facilities to ease the investigation process. Thus, the Government of Tanzania is advised to devise mechanisms to address the above challenges so as to effectively curb the problem of drug trafficking which is growing rapidly. The following section identifies legal and administrative remedies to address the above challenges.

## **CONCLUSION AND RECOMMENDATIONS**

This article has explored on legal and institutional aspects that tend to affect smooth implementation of the laws governing drug trafficking in Tanzania. The most notable legal factors include: discretionary powers of judges and discretionary powers of the DPP; lack of clear rules on prohibited drugs; unrestricted powers of DPP over investigation and prosecution of drug related cases; lack of adequate rules on authenticity of electronic evidence and other related records; lack of harmonized laws in the EAC region. Furthermore, limited financial resources allocated to DCEA and ADU, the existence of good climate in Tanzania which promotes cultivation of prohibited drugs, porous nature of the borders, and limited human resources given the big nature of the territory of Tanzania, hinder smooth operation of the law.

Therefore, we recommend to the Government of Tanzania and other non-state actors to take on board the following strategies in order to curb the problem of drug trafficking. First, the laws should be amended in order to provide uniform punishment for crimes committed under section 15 of the Drug Control and Enforcement Act. This could limit unreasonable exercise of discretionary powers by the judges or magistrate; and ensure uniformity and predictability in sentencing of perpetrators. Secondly, the law should be amended by providing provisions on witness protection especially provisions of financial assistance to the witnesses and guaranteeing personal security and security of his or her family. This could be done by setting in place Witness and Whistle blowers Protection Fund to cater for all matters related to witness protection.

Thirdly, the study recommends for adoption of specific rules on admissibility of electronic evidence and other video taken in the course of investigation, especially during search. The law should allow prosecutors to bring in court any other evidence (recorded video) to



counteract retraction of statements or confessions. Fourth, in order to uphold the integrity of the legal system, there is a need for ensuring that court judgments are not based on tainted, unreliable, or compromised evidence. This can be enhanced by elaborative procedure on chain of custody.

Basically, the procedure for the chain of custody should be provided in the respective laws. The study recommends that the Criminal Procedure Act should be amended to empower Minister responsible for Legal Affairs to make regulations providing general guidelines on the chain of custody of exhibits. Alternatively, the Drug Control and Enforcement Act would be amended to enable the movement of exhibit from one person to another to be handled with great care to eliminate any possibility of exhibits tempering that may result to the prosecution losing the case.

Fifth, the Drug Control and Enforcement Act should be amended to permit the prosecutors and DPP to conduct plea-bargaining exercise basing on weight of the drugs and not merely on value of drugs in order to be consistence with the Drug Control and Enforcement Act which is based on weight for jurisdiction of drug cases, sentencing and on providing bail. Special procedures should be adopted to allow the DPP and other responsible officers to seek and obtain weight of drugs to be subject to plea-bargaining for effective bargaining exercise. Sixth, section 91 of CPA should be amended to restrict the powers of the DPP to enter nolle prosequi during prosecution of drug trafficking cases. The study recommends that such powers should be exercised at early stages before the accused persons have defended himself.

On the other hand, this study recommends for amendment of the law governing committal proceedings related to drug trafficking by expressly requiring such cases to be filled to the High Court of Tanzania. This is because number of Judges in Tanzania has increased and the High Court District registries are established in most regions. On the other hand, the study recommends for amendment of the Drug Control and Enforcement Act by defining terms and conditions for grant of licence or permits for cultivation of prohibited drugs. This could ease the monitoring role of the Authority by clearly identifying material conditions for which licence could be revoked and possible consequences.

Apart from amendment of the law, the study recommends for conducting intensive capacity building programs and recruitment of more staffs. The issue of human resource is very crucial for effective implementation of the drug trafficking legislations. Just like any other police

department, DCEA appears to be understaffed compared to the regions within the country. Apparently the Authority has a total number of about 105 employees who are not sufficient enough to curb the problem of drug trafficking throughout the country. Thus, the study recommends for recruitment of more qualified personnel to fill in this gap and take up this challenging enforcement task.

On the other hand, the study recommends for regular trainings of the Authority officers in order to keep them abreast with the laws and practices. Drug traffickers are very much organized and professionally trained; hence it takes up a trained person to identify them. The need to integrate ICT in investigation process is another factor to be included in the training sessions. Finally, there is need for allocation of more budgets to DCEA so as to effectively implement the national plans and targets relating to curbing drug trafficking in the country. On this note, this article calls participation of local and international financial institutions to provide technical and financial support to the Government of Tanzania in order to curb the problem of drug trafficking effectively.

## ENDNOTES

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- <sup>i</sup> Taylor B and Jelsma M (2011) Series on Legislative Reform of Drug Policies:Fifty Years of the 1961 Single Convention on Narcotic Drugs: A Reinterpretation, p.1.  
<sup>ii</sup>Article 4 of the Single Convention on Narcotic Drugs, 1961  
<sup>iii</sup> Article 36 of the Single Convention on Narcotic Drugs,1961  
<sup>iv</sup> S. K. Chatterjee (1981) An Examination of the Convention on Psychotropic Substances, 1971. In: Legal Aspects of International Drug Control.  
<sup>v</sup>Convention on Psychotropic Substances, of 1971, article2.  
<sup>vi</sup> Ibid., article 3  
<sup>vii</sup> Ibid. article 5.  
<sup>viii</sup>Ibid., articles 8 and 9.  
<sup>ix</sup>Ibid., articles 9,10 and 11.  
<sup>x</sup>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, articles 3, 4, 5 and 6.  
<sup>xi</sup> SADC Protocol on Combating Illicit Drug Trafficking , article 2  
<sup>xii</sup> SADC Protocol on Combating Drug Trafficking, article 4.  
<sup>xiii</sup> The Protocol on Combating Drug Trafficking in East African Community, article 2 and 3.  
<sup>xiv</sup> Cap 95 R.E 2019  
<sup>xv</sup>Ibid., section 15.  
<sup>xvi</sup>Ibid., Part II.  
<sup>xvii</sup>ibid., s.48.  
<sup>xviii</sup> Cap 95, s. 48(2)(a)(xi)  
<sup>xix</sup> Cap 20 R.E 2010  
<sup>xx</sup> Ibid., s.43  
<sup>xxi</sup> Cap 20 R.E 2019, section 38(1).  
<sup>xxii</sup>Ibid., ss.195-222.

- xxiii *ibid*, section 3(t).
- xxiv *Ibid*, section 4.
- xxv Cap 200 R.E 2019
- xxvi *ibid.*, section 3.
- xxvii *Ibid.* item 23 to the 1<sup>st</sup> Schedule of the Act.
- xxviii *ibid.*, section 36 (1).
- xxix *ibid.*, Section 36 (2) of.
- xxx *ibid.*, Section 36(3).
- xxxi Economic and Organized Crime Control Rules GN.267 of 2016, rule 8 (1).
- xxxii *Ibid.*, rule 8 (2).
- xxxiii *Ibid.*, rule 8 (3) .
- xxxiv Mamlakaya Kudhibiti na Kupambanana Dawaza Kulevya (2019): Taarifaya Hali ya Dawaza Kulevyaya Mwaka 2019 , Ofisiya Waziri Mkuu, Jamhuriya Muunganowa Tanzania, p.13.
- xxxv Mamlakaya Kudhibiti na Kupambanana Dawaza Kulevya (2019): Taarifaya Hali ya Dawaza Kulevyaya Mwaka 2019 , Ofisiya Waziri Mkuu, Jamhuriya Muunganowa Tanzania.
- xxxvi Economic Case No.2 of 2019 , High Court of Tanzania-Economic Crimes Division (unreported)
- xxxvii Economic case No 01 of 2018, High Court of Tanzania-Economic Crimes Division (unreported)
- xxxviii Economic Case No 13 of 2019, High Court of Tanzania-Economic Crimes Division (unreported)
- xxxix Economic Case No. 52 of 2017, High Court of Tanzania-Economic Crimes Division (unreported)
- xl Cap 95 R.E 2019
- xli Criminal Case No. 44 of 2018 in the Court of Resident Magistrate of Dar es Salaam at Kisutu Resident Magistrate Court- Judgment by Resident Magistrate on 9/4/2019 (Unreported)
- xlii *Ibid*.
- xliiii R vs. Abuhi Omari abdallah and 3 others, Criminal .Appeal No. 28 of 2010 (Unreported)
- xliv Criminal Appeal No. 551 of 2015, The Court of Appeal of Tanzania sitting at Mwanza (Unreported)
- xlv Criminal Appeal No. 110 of 2007, High Court of Tanzania (Unreported)
- xlvi Criminal Appeal No.28 of 2010, High Court of Tanzania (Unreported)
- xlvii Cap 95, R.E 2019, Section 48(2) (v).
- xlviii Mamlakaya Kudhibiti na Kupambanana Dawaza Kulevya (2019): Taarifaya Hali ya Dawaza Kulevyaya Mwaka 2019 , Ofisiya Waziri Mkuu, Jamhuriya Muunganowa Tanzania, pp.20-24.
- xlix Criminal Appeal No.28 of 1992, Court of Appeal of Tanzania at Dar Es Salaam, [Unreported], p.9.
- <sup>l</sup>Economic Case Number 16 of 2019, High Court of Tanzania-Economic and Organized Crime Division (unreported)