



# **TANZANIA INVESTIGATION AND PROSECUTION OF WILDLIFE AND FORESTRY CRIME**



**A RAPID REFERENCE GUIDE FOR  
INVESTIGATORS AND PROSECUTORS  
VOLUME I**

## Table of Contents

<b>Acknowledgements.....</b>	<b>3</b>
<b>FOREWORD by the Director of Public Prosecutions .....</b>	<b>5</b>
<b>FOREWORD by UNODC.....</b>	<b>6</b>
<b>STANDARD OPERATING PROCEDURES for the Investigation and Prosecution of Serious Wildlife and Forestry Crimes .....</b>	<b>7</b>
<b>OFFENCES AND ELEMENTS TO PROVE .....</b>	<b>26</b>
A. OFFENCES UNDER WILDLIFE CONSERVATION ACT 2009 .....	26
B. OFFENCES UNDER THE FORESTRY ACT 2002 .....	91
C. OFFENCES UNDER THE NATIONAL PARKS ACT .....	140
D. OFFENCES UNDER THE ENVIRONMENTAL MANAGEMENT ACT .....	146
E. OFFENCES UNDER THE FIREARMS AND AMMUNITION CONTROL ACT .....	152
F. OFFENCES UNDER THE PENAL CODE .....	163
G. OFFENCES UNDER THE PREVENTION AND COMBATING CORRUPTION ACT.....	170
H. OFFENCES UNDER THE ANTI-MONEY LAUNDERING ACT 2006.....	179
I. OFFENCES UNDER THE ECONOMIC CRIMES CONTROL ACT .....	184
J. OFFENCES UNDER THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT .....	190
<b>GUIDE TO ANCILLARY POWERS.....</b>	<b>198</b>
<b>MODES OF CRIMINAL LIABILITY AND ALTERNATIVE FORMS OF COMMISSION .....</b>	<b>207</b>
<b>GUIDE TO DEFENCES APPLICABLE IN WILDLIFE AND FOREST CRIMES ....</b>	<b>214</b>
<b>BAIL SUBMISSION TEMPLATE .....</b>	<b>219</b>
<b>EOCCA (Cap. 200 RE. 2002), Section 36(4).....</b>	<b>219</b>
<b>COMPELLING REASONS TO WITHHOLD BAIL.....</b>	<b>220</b>
<b>EXHIBIT MANAGEMENT GUIDELINES .....</b>	<b>223</b>
<b>GUIDE TO EXPERT EVIDENCE IN WILDLIFE AND FORESTRY CRIMES.....</b>	<b>232</b>
<b>GUIDE TO MUTUAL LEGAL ASSISTANCE AND INTERNATIONAL CO- OPERATION IN WILDLIFE AND FORESTRY CRIME .....</b>	<b>236</b>

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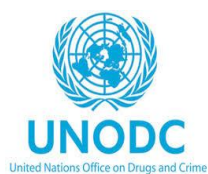
The Rapid Reference Guide was facilitated thanks to a generous contribution from the Bureau of International Narcotics and Law Enforcement Affairs (INL) of the United States Department of State.

*The Government of the United Republic of Tanzania*



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*United Nations Organisations*



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*Civil Society Organisations*



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*The Government of the United States of America*



## FOREWORD

### by the Director of Public Prosecutions

Wildlife and forestry criminality is rampant in the country. Its existence has not only distorted the country's natural heritage but also adversely affected our economy and exacerbated other organised crimes such as money laundering, corruption, drugs and arms trafficking to mention a few. Recent studies show that the number of elephants has decreased by 60.3% between 2009 and 2014, the major reason being poaching. This rampancy of wildlife and forestry crimes has given us all compelling reasons to forge new ways and methods in combating these crimes including amending and standardizing investigative and prosecutorial measures for better results.

It is against this backdrop that the Office of Director of Public Prosecutions in collaboration with the United Nations Office on Drugs and Crime (UNODC) and United Nations Environment (UNEP), has developed these Standard Operating Procedures (SOPs) and Rapid Reference Guide (RRG) for investigation and prosecution of wildlife and forestry crimes. The draft publications were later validated by senior officers from stakeholder institutions including, Tanzania Police Force, President's office, Prevention and Combating of Corruption Bureau, Wildlife Division, Tanzania Wildlife Management Authority, Tanzania National Parks and Tanzania Forestry Services Agency.

The intention behind these tools is to improve the quality of investigation and prosecution of wildlife and related offences, thereby bolstering the fight against wildlife and forestry criminality in the country. On one hand, they provide a consistent and methodological approach in both stages of investigation and prosecution, and on the other hand, foster close co-operation and coordination between all stakeholders, with a view of ensuring cases are well investigated and prosecuted, along with robust recovery of proceeds of crime. All investigators and prosecutors across the country are directed to comply with and use the tools in the investigation and prosecution of wildlife and related offences.

These tools are issued as guidelines for investigators and prosecutors under sections 16(1), 18(1) and 24(2) of the National Prosecutions Service Act, No. 27 of 2008. Thus, every person investigating or prosecuting wildlife and forestry cases must comply with these guidelines. It should be noted that these instructions are intended for internal use by investigators and prosecutors; they do not affect any rule of law or practice relating to the admissibility of evidence. However, non-compliance with these tools may attract administrative and/or penal sanctions.



**Biswalo E.K. MGANGA**  
**Director of Public Prosecutions**

## FOREWORD by UNODC

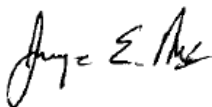
The mandate of the United Nations Office on Drugs and Crime (UNODC) includes the provision of assistance to Member States in reforming their criminal justice systems and carrying out the United Nations standards and norms in prevention, investigation and criminal justice. The present Rapid Reference Guide is one of a series of practical tools that UNODC has developed to strengthen national enforcement and prosecution capacity.

The Rapid Reference Guide is especially timely as wildlife and forest offences in Tanzania threaten the existence of the country's magnificent biodiversity. These offences not only menace invaluable biological and natural resources, they also undermine Tanzania's social, economic and political development. We know that the wildlife sector contributes almost 17% of Tanzania's GDP. Against this backdrop, it is evident that a reduction in wildlife tourism would have a negative impact on the country's economy. Therefore, adequately addressing wildlife and forest crime offences is critical for safeguarding the country's natural resources and growing its economy, as well as preventing associated crimes such as money laundering, corruption and fraud.

Although there has been some progress made in relation to anti-corruption and security, we have not been able to create an environment where the adjudication of law has reversed the current cost-benefit ratio for the criminal enterprise. Poaching and illicit trafficking continue to be low risk, high profit endeavours with little deterrence. We need to alter the formula and we need to do so quickly.

This Wildlife Crime Rapid Reference Guide was developed to help officials in Tanzania to appropriately address and combat wildlife crime. It outlines procedures that can be referenced quickly by prosecutors and investigators covering a range of offences and penalties. It also provides a guideline enabling prosecutors and investigators to draft solid cases to allow the judiciary to make informed decisions. Additionally, it sets the conduct and procedures that must be followed in the initial state of investigation and in the subsequent prosecution and eventual trial.

It was an honour to work closely with Mr. Biswalo Mganga and the colleagues of the Department of Public Prosecutions on this initiative. I would like to convey UNODC's appreciation to the Government of Tanzania, the Government of the United States of America, as well as to the USAID Protect Project team, UN Environment, and Space for Giants. I trust that this Guide will be useful in assisting its users to tackle wildlife and forest crime in Tanzania.



**Jorge E. RIOS**  
**Chief of the Global Programme for Combating Wildlife and Forest Crime (UNODC)**

## STANDARD OPERATING PROCEDURES

### for the Investigation and Prosecution of Serious Wildlife and Forestry Crimes

*These Standard Operating Procedures are issued as Instruction No.1 of 2017 under s.16(1), s.18(1) and s.24(1) of the National Prosecution Service Act No.27 of 2008.*

#### **PREAMBLE**

1. Article 59B of the Constitution of the United Republic of Tanzania provides for the appointment of a Director of Public Prosecutions (“DPP”), and entrusts the DPP with the power to initiate, prosecute and supervise all criminal prosecutions in the country. Sections 16 and 24 of the National Prosecution Service Act No.27 of 2008 gives mandate to the DPP to co-ordinate all criminal investigations in the country.
2. Section 3 of the Police Force and Auxiliary Services Act, [Cap. 322 R.E. 2002] establishes the Police Force of the United Republic. Section 5(2) provides for duties of Police Force to include, among other things, prevent and detect crime, and to apprehend and guard offenders.
3. Section 8 of the Wildlife Conservation Act 2009 mandates the Minister to establish a Wildlife Authority which shall be autonomous and whose structure and functions adequately addresses the protection, management and administration of wildlife resources. In exercise of such authority, via GN No. 135 of 2014 established the Tanzania Wildlife Management Authority (“TAWA”) whose officers are vested with powers of investigation including search and arrest of offenders.
4. Section 3 of the Wildlife Conservation Act extends powers of authorised officers to employees of National Parks and Ngorongoro Conservation Area in relation to the investigation, enforcement and prosecution of offences under each relevant act for these protected areas. Section 6 of the Forest Act No.14 of 2002 provides for the appointment and functions of Forest Officers in similar terms of duties and offences under that Act. Such powers are amplified under section 93 of the Act, which mandates authorized officer to search, arrest and seize forest produce together with instrumentalities.
5. According to reports of Bank of Tanzania, the tourism sector contributes more foreign currency to the country and accounts for almost 12 % of Gross Domestic Product. It is however evident that in recent years wildlife and forestry crimes have mushroomed and jeopardised this sector and which if left uncontrolled, our natural resources, heritage of the Nation and our national economy at large will be at stake. It is on these premises that our joint effort in combating wildlife and forestry crimes becomes imperative.
6. In this undertaking, the DPP recognises the invaluable contributions to the investigation and prosecution of Wildlife and Forestry crimes in Tanzania of the many other key stakeholders, including the Judiciary, Wildlife Division/TAWA, TANAPA, TFS,

NCAA, Tanzania Prisons Service, Prevention and Combating of Corruption Bureau, Financial Intelligence Unit, Immigration Service Department and Civil Society Organisations dealing with Wildlife.

7. DPP Instructions No. 1 of 2008, Schedule 1 sets out the mandates and duties of investigators and prosecutors working to combat crimes including wildlife and forestry crimes.
8. In order to ensure efficiency and effectiveness of investigations and prosecutions of serious Wildlife and Forestry Crimes, there is a need for prosecution-led investigations, and close co-operation and co-ordination between all stakeholders in combating these crimes. It is also vital that there is a consistent and methodological approach to these serious crimes across cases and across the country. Best practice standards should be applied, and the work should be assisted by tools and reference materials. Those are the critical objectives of these Standard Operating Procedures (“SOPs”), which shall apply to all those acting under the supervision of the DPP on serious Wildlife and Forestry Crimes.
9. These Standard Operating Procedures are internal guidelines aimed at enhancing co-operation and the practice of investigators and prosecutors working on serious wildlife and forestry crime cases. Nothing in these Standard Operating Procedures is intended to alter any legislation or rules regarding investigation, court procedure, or the admissibility of evidence.

## DEFINITIONS

10. For the purposes of these SOPs, the following terms shall have the following meanings:
  - a. “AMLA” – means the Anti-Money Laundering Act No.12 of 2016.
  - b. “CITES” – means the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
  - c. “CPA” – means The Criminal Procedure Act [Cap 20 R.E. 2002].
  - d. “criminal racket” - means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to any offence under EOCCA.
  - e. “DPP” – means the Director of Public Prosecutions.
  - f. “DPP HQ” – means The Office of the DPP Headquarters in Dar es Salaam.
  - g. “EOCCA” – means The Economic and Organised Crime Control Act, No.13 of 1984 as amended.
  - h. “FCU” – means the Financial Crimes Unit.
  - i. “FIU” – means the Financial Intelligence Unit.
  - j. “high profile” – means any case which involves high value, high quantities or persons of public interest such that the investigation and prosecution would be likely to attract significant public and media attention, or which affects the



interest or tarnishes the image of the Republic, or which could lead to a public outcry.

- k. “investigator” – means in all services includes any officer acting in an investigative role.
- l. “LIO” – means Lead Investigator assigned to the case.
- m. “MLA” – means mutual legal assistance.
- n. “NCAA” – means Ngorongoro Conservation Area Authority.
- o. “Officer in Charge of Investigation” – means supervisor of the LIO.
- p. “organised crime” - means any offence or non-criminal culpable conduct which is committed in combination or from whose nature, a presumption may be raised that its commission is evidence of the existence of a criminal racket in respect of acts connected with, related to or capable of producing the offence in question.
- q. “PCCB” – means the Prevention and Combating of Corruption Bureau.
- r. “PEP” – means Politically Exposed Person as defined under s.3 of AMLA<sup>1</sup>;
- s. “PFASA” – means The Police Force and Auxiliary Services Act [Cap 322 R.E. 2002].
- t. “PGI” – means The Prosecution General Instructions for State Attorneys and Prosecutors issued by the DPP.
- u. “PGO” – means The Police General Orders, 2<sup>nd</sup> Edition issued in 2006 under s.7(2) of PFASA.
- v. “Prosecutor” – means the lead prosecutor assigned to case.
- w. “RAIC” – means Regional Attorney in Charge.
- x. “RCIO” – means Regional Criminal Investigation Officer.
- y. “Scenes of Crime Officer” - means a specialised officer who leads/conducts crime scene investigations, including search and seizures.
- z. “serious wildlife and forest crime” - means crimes with elements in Paragraph 12A and 12B of these SOPs.
- aa. “Significant Proceeds”- meaning to be guided by the assets forfeiture and recovery section (AFRS).
- bb. “Supervisor” - means the immediate supervisor of the LIO or Prosecutor.
- cc. “TANAPA” – means Tanzania National Parks.
- dd. “TFS” – means the Tanzania Forest Services Agency.
- ee. “Wildlife and Forestry crimes” – means offences falling under Wildlife Conservation Act and Forest Act, or crimes connected to these offences.
- ff. “UNODC” – means the United Nations Office on Drugs and Crimes.

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<sup>1</sup> As at January 2017 “a foreign individual entrusted with prominent public functions including heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations or agencies”.

## **CO-OPERATION AND CO-ORDINATION BETWEEN AUTHORITIES**

11. A. All those with authority to investigate or prosecute Wildlife and Forestry Crimes and associated crimes shall endeavour to co-operate and co-ordinate their work with each other at as early a stage as possible in the detection, investigation and prosecution of these crimes.

B. LIOs and Prosecutors shall conduct their work in detecting, investigating, prosecuting and preventing Wildlife and Forestry Crimes cognizant of the organised criminal nature of these crimes and of the devastating impact these crimes have on our country. Full use and engagement should be made of all of law enforcement powers and capabilities, including the Police Force, Wildlife Division/TAWA, TANAPA, TFS, NCAA, PCCB, the FIU, Immigration Department and any other relevant agency or institution which can assist. Whenever possible, LIOs should apply the principles of intelligence-led investigations and ensure strategic, informed investigations, which consider the full criminality and criminal networks involved in crimes.

## **CRITERIA FOR APPLICATION OF STANDARD OPERATING PROCEDURES TO SERIOUS WILDLIFE AND FORESTRY CRIME CASES**

12. A. In wildlife and forestry crimes in Tanzania, these SOPS shall automatically apply to all cases with the following criteria:

- i. In any matter involving elephant, ivory or its derivative.
- ii. In any matter involving any rhino, or rhino horn or its derivative.
- iii. In any matter involved any giraffe, giraffe bone or its derivative.
- iv. In any matter involving a lion, lion tooth, nail, skin, bone or any derivatives.
- v. In any matter involving a pangolin, pangolin scale, skin or other derivatives.
- vi. In any matter involving any of the following protected or endangered flora and fauna:
  - African Sandalwood *osyris lanceolata*
  - Ground Orchid *Disa robusta*
  - Mninga *Pterocarpus angolensis*
  - African Blackwood *Dalbergia melanoxylon*
  - African Teak, Mvule *Milicia excelsa*
  - Mangrove *Rhizophora sp*
  - Baragaja (Swahili)/William's Lizard *Lygodactylus Williamsi*
- vii. In any matter involving any other species in CITES Appendix I.
- viii. Where the offence involves foreign diplomatic missions, international bodies and/or multi-national bodies.

- ix. Where the suspect is a foreign national or of unknown nationality.
- x. Where the investigation and prosecution of the crime involves and/or requires transnational co-operation (MLA);
- xi. Where there is suspicion of money laundering or corruption linked to wildlife and forestry crime;
- xii. Where the case involves a Politically Exposed Person (PEP).

**B:** For all other wildlife and forestry crimes in Tanzania, cases in which **any one** of the following criteria is present shall be referred to the RAIC who will determine, within 24 hours, whether or not these SOPs should apply to the case:

- i. For matters which relate to an alleged crime(s) which relate(s) to a [subject](s) individually or cumulatively valued above 10m Tanzanian Shillings;
- ii. Where the suspects are two or more in number or if there are other elements indicating a “criminal racket” and the LIO considers it may be an ‘organized crime’;
- iii. Where any of the suspect(s) are serving or retired state or public officer(s), including serving/ex-members of the disciplined services and forces;
- iv. The wildlife or forestry related item is for export or import or transit or concerns a CITES Annex II or III species in the context of export/import or transit;
- v. All forestry offences committed in respect of trees which have been categorised as “Reserve Trees” under s.65 of the Forest Act and plants which have been categorised as “Protected Wild Plants under s.67 of the Forest Act by the Minister through inclusion in Government Gazette Notices;
- vi. Where there is use of any firearm in the commission of the crime;
- vii. In cases where poison is used, the use of that poison is of such scale or concern as to merit the involvement of the DPP Office;
- viii. Involves a “high profile” suspect, including where the suspect is a public or influential figure in his/her community;
- ix. Where in the course of investigation or prosecution of a wildlife or forestry crime, there is an incident of suspected obstruction of justice;
- x. Where the suspect is a repeat offender in the context of wildlife and forestry crimes and related offences;
- xi. Where the suspect is reasonably suspected of being a beneficiary of Significant Proceeds of wildlife and forestry crime; and
- xii. Any other offence that the LIO would wish to refer to DPP HQ for early engagement.

## **EARLY ENGAGEMENT OF THE DPP HQ OR DPP HQ ASSIGNED PROSECUTOR AS PROSECUTION LEAD IN INVESTIGATIONS FOR SOP CASES**

13. As soon as possible after a LIO becomes aware that a wildlife or forestry crime case may contain any element for application of these SOPs under Paragraph 12A or B above, the LIO shall contact the DPP HQ or Regional Attorney in Charge (RAIC). For cases where these SOPs apply, the DPP HQ, or a Prosecutor assigned by the DPP HQ, will become the lead prosecutor on the case, and shall oversee the application of these SOPs to the case during investigation and prosecution.

## **WILDLIFE AND FORESTRY CRIME CASES WHICH INVOLVE ASSOCIATED CORRUPTION**

14. A. If there is any indication of corruption associated with a wildlife or forestry crime, the LIO must report this to DPP HQ and the PCCB.

B. When there is an element of corruption associated with a wildlife or forestry crime, these SOPs shall apply and LIOs shall conduct a joint investigation with investigators from the PCCB and the Public Prosecutor. Any resulting charges will not separate out associated offences, and instead seek to reflect the totality and gravity of the crimes committed, including any associated corruption. Where necessary, the Joint Investigation Plan prepared and implemented under Paragraph 15 below shall include information control, security measures and any other protections required to conduct a corruption investigation effectively, lawfully and safely. The PCCB shall be consulted to agree and sign off on the investigation plan. Investigators from the PCCB and any other agency shall be involved as necessary.

## **CONDUCT OF INVESTIGATIONS**

### **DRAFTING AND ADOPTION OF INVESTIGATION PLAN**

15. A. For all cases to which these SOPs may apply, a Joint Investigation Plan shall be prepared by the LIO as soon as possible after an LIO is in possession of information regarding the possible commission of a wildlife or forestry crime.

B. The LIO shall use the Investigation Plan Template (Toolbox A) to draft the Plan in consultation with Prosecutor. The LIO, the Prosecutor and their supervisors shall all sign off on the plan, which requires to be updated regularly.

### **PRE-ARREST CONFERENCE BETWEEN LIO AND PROSECUTOR**

16. A. For all cases in which these SOPs apply, where an arrest is being contemplated, the LIO will ensure that a pre-arrest conference is held as soon as possible with the Prosecutor. On

matters involving associated corruption, the LIO/Prosecutor will include in the pre-arrest conference the relevant person at the PCCB. Where the matter requires imminent financial investigation, asset tracing and/or necessary pre-arrest freezing orders, the LIO/Prosecutor must ensure that FCU and FIU are involved. The only exception for pre-arrest conferences is for cases which first arise from catching the suspect in the commission of the crime, in which case a Post-Arrest Conference under Paragraph 19 must be held as soon as possible.

B. During the pre-arrest conference, the Prosecutor shall offer consultation and advice which may include:

- i. Reviewing the arrest plan and strategy, ensuring correct procedures and standard forms are ready and will be used (see below Paragraphs 17 and 18–POST-ARREST, SEARCH AND SEIZURE);
- ii. Admissibility and Preservation (form and requirements) of evidence including evidential and legal consequences of a proposed investigative technique;
- iii. Any issue arising from intelligence-led investigations, including protecting means and methods, and how to obtain admissible evidence required to prove the charges;
- iv. Early engagement and involvement of FIU to investigate bank accounts, transfers and assets related to the crimes being investigated;
- v. Potential collection of evidence which needs transport, preservation and referral for expert analysis (if seizures made which require analysis; e.g. bio/DNA samples, computers, ballistics, etc.), including requirements for seizure certification, chain of custody records and preservation pre- and post- analysis;
- vi. Possible legal applications associated with arrest, search and seizure (e.g. restraint of assets or applications for freezing of bank accounts), including consideration of pre-arrest freezing orders;
- vii. Any previous history of offending of any of the accused;
- viii. Identification of issues and applications relevant to witness protection and public interest immunity;
- ix. Consideration of any evidence, assets or persons of interest in other jurisdictions (Mutual Legal Assistance);
- x. Consideration of bail and or any other applications;
- xi. Consideration of DPP consent and/or certificate to transfer jurisdiction to the lower court to lower courts or in fit cases;
- xii. The confidentiality of the investigation (at least before charge);
- xiii. Consideration of the need to secure the availability of interpreters in appropriate cases;
- xiv. Where more than one accused, consideration of separate places of detention; and

- xv. Any other relevant matter for arrest, search and seizure or the immediate post-arrest requirements.

**POST-ARREST REQUIREMENTS INCLUDING STATEMENTS FROM THE SUSPECT:**

17. The LIO shall plan in advance and ensure the following post-arrest requirements are fulfilled:

- i. As an evidential and security measure, immediate body search to collect exhibits, including electronic devices, documents, or dangerous weapons.
- ii. To fill and signed the search warrant/order seizure and to send search warrant to the nearest Magistrate court for signing in line with section 38 of the CPA.
- iii. To photograph and fingerprints the accused, and to fill PF 14B and PF 75 as provided for in the Police General Orders.
- iv. Interview of the suspect(s) within 4 hours including compliance with provisions of Section 50 of CPA (4-hours rule).
  - a. Section 53 of CPA (informing of rights) [*police officer's name and rank, and in language in which suspect fluent in writing and orally, (i) the fact that the person is under arrest and the offence for which he has been arrested, and (ii) (in prescribed form) cautioned that he is not obliged to answer any questions other than to identify his name and address, and that, subject to the Act, he may communicate with a relative or friend.*]
  - b. Section 57/58 of CPA (recording of an interview or preparation of a written statement of the suspect).
- v. The presence of an interpreter when necessary.
- vi. Where possible, in addition to the recording requirements specified in the law, record the interview using audio/video equipment. The record of interview should be preserved and chain of custody maintained.
- vii. Where it is not practicable to interview the suspect within the set time limit, the LIO should consult the Prosecutor to make an application for further extension of time under Section 51(1)(b) of CPA.
- viii. Ensure immediate availability of Prosecutor before and during the suspect's interview to ensure that the interview record meets legal requirements.
- ix. To take the suspect who confesses to the justice of the peace as soon as possible for the Extra-judicial statement.
- x. Appearance of accused before a magistrate within 24 hours or as soon as practicable in accordance with Sections 32-33 of CPA.
- xi. Where circumstances require an identification parade, LIO/Prosecutor shall ensure that the same is conducted in strict compliance with Sections 60 of CPA, 38 of PFASA and PGO 232 of the Police General Orders.

## SEARCH AND SEIZURE BEST PRACTICE PROCEDURE AND PROCESS

18. For wildlife and forestry crime cases to which these SOPS apply under Paragraph 12 above, in addition to the requirement set out in the law and the procedures set out in Police General Orders, the LIO shall ensure that the following best practice and forms are used in relation to any search and seizure:

- i. Properly trained and authorised officers are used in any search and seizure exercise;
- ii. Where possible, the Prosecutor should attend a crime scene so that they can offer advice on how to manage the evidence and exhibits. However the Prosecutor should exercise caution to ensure he/she is not becoming a witness;
- iii. A **Scene of Crimes Register** (Police Form 129)/**Record of Search** including an **Inventory** of seized items shall be created by the LIO or an IO assigned by him; [Tool Box B]
- iv. Where possible, a search and seizure exercise should be audio/video recorded for its duration. This record should be attached to the Record of Search/Scene of Crime Register.
- v. The LIO or an IO assigned by him shall ensure the presence of **2 independent witnesses** where practicable, as well as their signature on a prescribed **Certificate of Seizure** for each item seized; [Toolbox B]
- vi. If independent witnesses are not available, in remote areas or when suspects are caught during commission of a crime by a patrol for example, ensure there is a record of why it was not possible to locate independent witnesses in those circumstances, video-tape the search and seizure, and ensure the Certificate of Seizure and other search records are signed by all those present.
- vii. The LIO or an IO assigned by him shall ensure the presence of the owner, occupier or person in possession of a seized item, as well as their signature on the relevant certificate of seizure;
- viii. A photograph of each item should be taken *in situ* before seizure, a **Log of Photographs** should be kept and the log and photographs should be included/attached to the Record of Search. [Toolbox B]
- ix. The LIO should ensure that the prescribed Certificate of Seizure is completed and signed by an authorised officer;
- x. The LIO should ensure that Chain of Custody procedures and prescribed **Chain of Custody Forms** are used properly for each seized item; [Toolbox B]
  - a. LIO should ensure that each seized item is properly and securely tagged and coded with an **Item Code** (including money with serial numbers recorded) with correct Item Code used in associated Chain of Custody Form and in the Inventory of Seized Items under 19(ii);
  - b. For small items, items should be bagged, tagged and sealed in the presence of the 2

- independent witnesses, the date of seizure should be written across the seal and a prescribed Chain of Custody Form securely attached;
- c. For large items (such as ivory or timber) where it is not practicable to wrap/bag and seal the item, ensure a unique Item Code is written in permanent ink on the item and ensure same Item Code is recorded/used on Certificate of Seizure and Chain of Custody Forms. The independent witnesses shall cross-check the Item Code on the item and the Item Code inputted on the Certificate of Seizure form match before signing.
  - xi. Following seizure, the LIO must ensure the safe and appropriate storage conditions to avoid contamination, preserve the evidence and maintain chain of custody. Evidence should be checked in/registered with and stored in the correct place; in the Evidence Storage Unit, Ivory Room (at the Wildlife Division), the Wildlife Division for live animals, the Forestry Service for timber, the Armoury in Police Stations for firearms and ammunition, etc.
  - xii. Ensure proper Chain of Custody management and preservation of the item during the recovery, transfer and referral for expert evaluation or analysis or valuation of trophies in relevant cases;
  - xiii. If the seizure relates to an item which is a biohazard or which will decay, the LIO shall ensure the Prosecutor is informed as soon as practicable after the seizure to ensure that proper inspection, testing, storage and preservation, tendering and disposal procedures can be addressed as soon as possible. The LIO should ensure preservation in best available conditions, get inspection and report prepared as soon as possible, handle and bag the item to reduce biohazard damage to best of abilities.
  - xiv. Where a firearm or ammunition is seized, LIO shall ensure it is taken for ballistic testing as soon as practicable, and chain of custody procedures are followed. The LIO should also ensure that a usage of ammunition check is done for licensed arms. The LIO shall also ensure that the guidance for storage for firearms and ammunition contained in the Police General Orders is strictly adhered to.
  - xv. No seized items shall be released without the prior written authorisation of the DPP or by order of the Court.
  - xvi. In any case where any exhibit is lost, misappropriated, altered or manipulated in any way or at any time, the DPP shall direct a robust inquiry with a view to identifying and charging the responsible party. Where the exhibit affected under this paragraph concerns ivory or rhino horn, the DPP shall prioritize measures to be taken against responsible persons including prosecution.
  - xvii. Documentary evidence should be treated as physical evidence and chain of custody procedure properly applied. Originals should be stored securely by the LIO with maintenance of proper chain of custody, and copies placed on the police file.
  - xviii. When the technology and equipment becomes available, fingerprinting and DNA



samples should be taken from the scene of crime. |

## **POST ARREST-CONFERENCE**

19. A. In all cases with DPP HQ early engagement under Paragraph 13 above, the LIO shall arrange a post-arrest conference with the Prosecutor as soon as practicable after the arrest and associated exercises. On matters involving associated corruption where there has been no consultation prior to arrest, the LIO shall include in the post-arrest conference the relevant person at the PCCB.

B. During the post-arrest conference, the Prosecutor shall offer consultation and advice which may include:

- i. Review of any advice given in any pre-arrest conference;
- ii. Review of any action taken during the arrest, search and seizure exercise including those provided under Paragraphs 17 and 18 above;
- iii. A specific review of chain of custody for key exhibits;
- iv. Review of any international co-operation (MLA) requests needed;
- v. Review of any asset tracing and freezing steps taken or to be taken;
- vi. A review/update of the Investigative plan prepared under Paragraph 15 above (particularly if the arrest was spontaneous in response to crime in process without prior notice or planning);
- vii. Any issue arising from intelligence-led investigations, including protecting means and methods, and how to obtain admissible evidence required to prove the charges;
- viii. Engagement and involvement of FIU to investigate bank accounts, transfers and assets related to the crimes being investigated;
- ix. Identification of issues and applications relevant to witness protection and public interest immunity;
- x. Bail (as below);
- xi. Any previous history of offending of any of the accused;
- xii. Any follow up arrest to be made in connection with the case; and
- xiii. Getting the accused before a court within 24 hours if circumstances allow.

## **COMPOUNDING**

20. If an IO wishes to apply the compounding rules for any wildlife or forestry crime to which these SOPs apply, they shall obtain the prior written consent of the DPP before proceeding.

## **WITNESS STATEMENTS**

21. A. In all cases with DPP HQ early engagement under Paragraph 13 above, in addition to the requirement set out in the law, including the CPA, and the procedures set out in the Police General Orders, the LIO shall ensure:

- i. Requirements of Section 34B of the Evidence Act are met;
- ii. Residential and work address, telephone number and contact details of a witness are recorded on the Police File in a Witness List. If the law allows, these details should not be recorded in the body of a witness statement.
- iii. In interviewing a witness, an investigator must address how the witness evidence assists the establishing of the offence against the accused and shall refer to the Rapid Reference Guide, the Elements/Evidence Worksheets and the Investigation Plan in order to be prepared for the interviews and statement taking.

B. The Prosecutor shall check and advise on the legal requirements and admissibility of statements.

## **EARLY ASSET TRACING AND RECOVERY**

22. The LIO shall ensure that the investigation of the case is carried out parallel with an investigation and tracing of assets, particularly instrumentalities, proceeds of crime and unexplained wealth within and outside the country. The LIO should contact FIU and FCU as soon as practicable after the start of the investigation. The LIO should maintain an Assets Inventory/Log as part of the Investigation Plan or police file, which includes the status, location and details of each identified asset.

## **EARLY MLA REQUESTS**

23.A. The LIO shall include in the Investigation Plan steps necessary to search national or international seizure databases, other wildlife and forestry crime databases, contact other organisations or agencies which collect information about seizures, and check with intelligence/information sharing agencies (including Interpol) to consider whether the crime being investigated is part of a wider organised crime or network/syndicate crime. The LIO shall also share or enter information about the case into such databases and with partner agencies/organisations where permitted by law.

B. The LIO shall identify any intelligence, information or evidence which is required from another jurisdiction, then pursue informal channels for information sharing and shall consult with the Prosecutor and MLA desk to start formal requests for evidence as soon as possible. The LIO shall maintain an MLA Request Log as part of the Investigation Plan, including the steps taken to expedite the MLA procedure and what stage in the process it has reached. The

LIO shall keep in contact with focal person in the DPP's office for purposes of getting updates on MLA requests.

### **REGULAR REPORTING AND REVIEW POINTS – IO and PROSECUTOR**

24. A. The LIO and Prosecutor shall ensure regular close consultation and review of the case for the purposes of discussing progress, updating the Investigation Plan and co-ordinating preparation of evidence with a view to prepare for trial, including the following review points:

- i. First Point: Development and signing of Investigation Plan under Paragraph 15;
- ii. Second Point: At the Pre-Arrest Conference under Paragraph 16;
- iii. Third Point: At the Post-Arrest Conference under Paragraph 19;
- iv. Fourth Point: At the Pre-Charging Decision stage when the LIO submits the Investigation Report to the Prosecutor with recommendations for charging under Paragraph 25;

B. The LIO and the Prosecutor shall ensure that a consultation is held within every 60 day-period to review progress and determine any necessary steps.

C. If a critical event occurs (e.g. something with a material impact on the investigation), the LIO should arrange a consultation and review with the Prosecutor as soon as possible to determine next steps.

D. The LIO and the Prosecutor shall diarise all deadlines and review points including the 60 day markers under Paragraph 24B.

### **INVESTIGATION REPORT TO PROSECUTOR – RECOMMENDED CHARGES**

25. A. At the point when the LIO determines there is sufficient evidence to lay charges against suspects which fairly reflects the total criminality of the events, the LIO shall send the Police File, along with his recommendation on the charges (“Proposed Charges”) for which, in the opinion of investigator, there is sufficient evidence against each potential accused. These recommendations are not binding upon the DPP or Prosecutor.

B. At the front of the Police File, the LIO should ensure there is a copy of the Investigation Plan, and a completed Element/Evidence Worksheet for each recommended charge [Toolbox C].

### **MINIMUM REQUIREMENTS OF A POLICE FILE SUBMITTED FOR CHARGE**

26. The Police File submitted to the Prosecutor with the Proposed Charges under Paragraph 25

above shall contain, as a minimum, the following:

- a. A certificate issued by RCIO under GN 296 of 2012;
- b. Investigation Plan prepared under Paragraph 15;
- c. Elements/Evidence Worksheet for each recommended charge against each potential accused;
- d. MLA Request Log, where applicable and if separate from the Investigation Plan;
- e. Assets Inventory (if separate from the Investigation Plan);
- f. A Witness List (with contact details) and key statements;
- g. An Exhibits list, including where each exhibit is being stored;
- h. Statement of the accused/record of suspect statement;
- i. Scene of Crime Register/Records of Search, Inventories of Seizure, Photograph Logs, Certificates of Seizure and other documentary exhibits (copies);
- j. Valuation Certificates; and
- k. Expert reports or results of forensic analysis.

## **CHARGING DECISION BY PROSECUTOR**

27. A. Following a review of the evidence on the Police File, the LIO “report” and the Element/Evidence Worksheets, the Prosecutor shall prepare a Report of Opinion, identifying material facts, key evidence, any gaps and issues, and making a recommendation of charges.

B. The Prosecutor shall submit this Report of Opinion to his or her Supervisor.

C. In recommending charges, the Prosecutor should consider any Charging Guidelines which apply, including the Charging Guidelines set out in the PGI. In addition, the Prosecutor should ensure that the recommended charges should:

- i. reflect the seriousness and extent of the offending supported by the evidence (including the use of firearms, organised nature of the crime, any aspect of corruption or abuse of position);
- ii. give the court adequate power to sentence and impose appropriate post-conviction or ancillary orders; and
- iii. enable the case to be presented in a clear and simple way.

D. Upon receiving clearance to proceed from his or her Supervisor, the Prosecutor shall draft charges approved by the Supervisor, using the Model Charges set out in the Rapid Reference Guide.

E. Any subsequent alteration or discontinuance of an approved charge shall be done in

consultation with the DPP.

## **CONSENT OF DPP FOR COMMITTAL OR CERTIFICATION OF TRANSFER TO LOWER COURTS**

28. A. The Prosecutor shall ensure compliance with GN 284 of 2014 and any other DPP instructions or guidelines which pertain to offences which require the DPP's personal consent for prosecution.

B. The Prosecutor shall ensure that the consent covers all counts of the Charge Sheet.

C. The Prosecutor shall ensure that plea taking and preliminary hearing take place ONLY after the Consent and Certificate of Conferring Jurisdiction have been filed.

D. If the charges include a combination of offences (economic and non-economic), the Prosecutor shall ensure that the Certificate Conferring Jurisdiction contains the correct relevant provision in the law (Sections 12(3) & (4) of EOCCA).

## **BAIL**

29. A. There shall be no police decisions (including PCCB police decisions) on bail for Wildlife and Forestry crime cases to which these SOPs apply under Paragraph 12.

B. If a Prosecutor does not intend to object to bail, he or she shall obtain the prior written consent of their RAIC.

C. i. Where an accused person prays for bail orally before a subordinate court or in the High Court when the matter is at the trial stage, the Prosecutor shall prepare comprehensive submissions objecting to the grant of bail to the accused using factors which have been set out in the Bail Submissions Tool/Template.

ii. Where an accused person applies for bail through a formal, written application, the Prosecutor must prepare and file Counter-Affidavit and make comprehensive submissions objecting to the grant of bail to the accused using factors which have been set out in the Bail Submissions Tool/Template (in the Rapid Reference Guide).

D. Where bail is granted and the Prosecutor is dissatisfied, he or she shall:

- i. immediately notify the Court of the intention to appeal; and
- ii. seek a stay on release of the suspect pending appeal.

E. Where bail is not opposed, the Prosecutor shall give further consideration to appropriate conditions that may be attached such as verifying surety documentation, regular reporting,

surrender of travel documents, or travel restrictions. The Prosecutor must move the court to issue mandatory bail conditions and discretionary conditions depending on the nature of the case. The Prosecutor shall notify the LIO of any conditions attached to bail.

## **CONDUCT OF PROSECUTION/TRIAL**

### **PROSECUTION PLAN**

30. Following a plea of ‘not guilty’, the Prosecutor shall prepare a Prosecution Plan using the Prosecution Plan Template, and shall prepare thoroughly and properly for trial in accordance with that Plan [Toolbox D].

### **REGULAR REVIEW OF CHARGING DECISION**

31. The Prosecutor shall regularly review the charging decision made under Paragraph 27 above. It is critical that this is done at the Pre-Trial Conference stage and at any stage where there is a significant change in the evidence or information relating to the case.

### **PRE-TRIAL CONFERENCES**

32. Following preparation of the Prosecution Plan, as soon as possible and at least 14 days before the scheduled trial date, the Prosecutor shall arrange a pre-trial conference with the Investigator and the representative investigators from all key agencies working on the case (e.g. PCCB, FIU, etc.) to discuss and co-ordinate all witness and evidentiary needs for trial, and to ensure co-ordination and effective readiness for trial. This conference shall also address evidential needs and admissibility for intelligence led investigations.

### **MONTHLY PROSECUTION REPORTS**

33. A. For all Wildlife and Forestry crime cases, the Prosecutor shall ensure that information about the case is provided to the District Focal Person.

B. The District Focal Person shall submit to the RAIC by the 5th of the month:

- i. a District Case Report using the standard form provided [Toolbox Ei]; and
- ii. a District Statistical Report [Toolbox Eii].

For all cases to which these SOPs apply, the District Reports shall include information about cases during the investigative phase.

C. The RAIC shall compile a Regional Statistical Report [Toolbox Eii] (using the information in the District Statistical Reports). The RAIC shall submit the Regional Statistical Report

together with all the District Case Reports to the DPP HQ by the 10<sup>th</sup> of each month.

## **TRIAL CONDUCT**

34. A. The Prosecutor shall conduct the trial in accordance with the Prosecution General Instructions, Guidelines, Directives and Instructions issued by the DPP, the Code of Conduct for State Attorneys and the Code of Ethics and Professional Conduct for Law Officers, State Attorney and Legal Officers in the public service. In particular, Prosecutors are expected to conduct trials with professionalism, independence, act in good faith with candour and honesty, punctuality, respect to other court users, and to act without fear, favour or bias.

B. The Prosecution shall also be guided by his Prosecution Plan when conducting the trial.

C. The Prosecutor shall endeavour to keep a clear and accurate record of the conduct of the trial. He shall also take all necessary steps to ensure that the official record of proceedings is accurately kept by the court, including checking translation from Swahili testimony into English court minutes by whatever means provided by law or practice.

D. The Prosecutor shall consider making an opening statement, especially for complex cases for which the judge would benefit from an overview or explanation before commencing hearing witnesses.

E. The Prosecutor shall complete a Proofing Chart as the trial proceeds, using the Proofing Chart Template. This Proofing Chart should be used to inform the Prosecution Final Submissions [Toolbox F].

## **POST CONVICTION SENTENCING AND ORDERS**

35. A. The Prosecutor shall use the Wildlife Crimes Sentencing Submissions Tool in preparing their submissions on sentencing [Toolbox G].

B. The Prosecutor shall ensure he makes a motion for any ancillary orders including seizing and disposal of proceeds of crime, instrumentalities, etc. as well as for the disposal of exhibits. Where forfeiture is sought, the Prosecutor must stipulate the specific government fund to which any such asset is to be forfeited.

C. Upon sentence of a foreign national to a term of imprisonment, the Prosecutor shall be responsible for informing the Immigration Authorities as to the anticipated date of release. The Immigration Authorities shall bear responsibility for contacting the Prison Authorities to ensure that the suspect is deported from a place of custody without delay upon release.

## **APPEALS**

36. A. Upon the Court's issuance of a Judgment or ruling in the case,

- i. should there be reason and grounds for a Prosecution appeal, the Prosecutor should ensure a proper hand-over to the assigned Appeals Prosecutor, including informing them of the deadline for submission of a Notice of Intention to Appeal.
- ii. should a convict submit a Notice of Intention to Appeal, the Prosecutor should ensure a proper hand-over to the assigned Appeals Prosecutor, including their opinion regarding any grounds of appeal specified in the convict's Notice.

B. For Prosecution Appeals, the Appeals Prosecutor shall:

- i. ensure submission of the Notice of Intention to Appeal before the deadline expires;
- ii. Prepare and submit the Petition of Appeal within the applicable deadlines specified in law;

C. Should bail issues arise on appeal, the Appeals Prosecutor should be guided by the Bail Submission tool in Paragraph 29.

D. For all appeals, the Appeals Prosecutor shall:

- i. Liaise with the trial Prosecutor to ensure proper preparation of any written submissions;
- ii. Diarise the Appeal Hearing;
- iii. Ensure proper preparation for the hearing including, where appropriate, scheduling a mock hearing with the (trial) Prosecutor and the Supervisor; and
- iv. Attend the Appeals Hearing.

## **DISPUTE RESOLUTION**

37. In case of a dispute or disagreement between the Prosecutor and LIO that cannot be resolved between them or their Supervisors, the matter should be referred to the DPP.

## **SANCTIONS FOR NON-COMPLIANCE WITH SOPS**

38. A. Without showing good cause or prior written permission in advance from Regional Commanding Office, RAIC or the DPP, any violation or non-compliance with these SOPs shall be reported to the DPP.

B. For serious or repeated violations, the DPP may impose at his or her discretion any of the following:

- i. A Directive issued to obtain information regarding the non-compliance;
- ii. A Directive to an investigator or prosecutor under s.17 of the National Prosecutions Service Act to take steps to comply with the SOPs provisions;
- iii. If a Directive issued under B.ii is wilfully refused or neglected by an investigator or prosecutor, such non-compliance may be deemed to amount to an offence and



measures against such offender shall be taken in line with provisions of section 17 of the National Prosecutions Service Act; and

- iv. Revocation or suspension of prosecution instrument.

C. Given the DPP's supervisory mandate for all investigations and prosecutions, the DPP may also recommend to the Disciplinary Authority of an investigator or prosecutor any of the following steps:

- i. Re-allocation of a matter to another investigator or prosecutor;
- ii. Imposition of enhanced supervision in relation to the investigation or prosecution of the matter;
- iii. An informal warning;
- iv. A Notice placed on the personnel record of the person in non-compliance;
- v. A requirement for further training or skills development/continued professional development;
- vi. Demotion; and/or
- vii. Termination of employment.

39. These SOPs are to come into force on 1 January 2018.

Issued 10th day of March 2017.

## OFFENCES AND ELEMENTS TO PROVE

### A. OFFENCES UNDER WILDLIFE CONSERVATION ACT 2009

<b>OFFENCE</b>			
<b>s.15 WCA unauthorised entry into a game reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 100,000sh - 500,000sh AND/OR Imprisonment: 1-3 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Entry other than by travelling through on a highway or designated waterway (and date).</b>		<p>Eye witness(es) testimony about point and method of entry. Wildlife Officer statement (if arrested in the game reserve),</p> <ul style="list-style-type: none"> <li>• Sketch plan/map of the scene of crime to be drawn by police officer.</li> <li>• Confessional statement.</li> <li>• Any photographic evidence.</li> </ul>	<p>Consider what else the accused was doing in the game reserve, beyond just entering, and what he had in his possession - see other WCA sections relating to unlawful acts in game reserves, also [intention to hunt section]. Consider forfeiture order for instrumentalities under s.111 WCA (vehicles).</p>
<b>2. into a game reserve</b>	<p>“Game reserve”- means any area declared to be a game reserve by an order of the President published in the Gazette. “wetlands reserve”- means any area declared by order of the Minister and published in a gazette to be a wetlands reserve;</p>	Wildlife officer (testimony); Gazette Notice and Plan designating Game Reserve area. [GPS]	Reference to the Gazette Notice and Plan may be suffice to ask the judge to take judicial notice.
<b>3. No written permission of the Director previously sought and obtained</b>	"Director" means the Director of Wildlife	Burden of proof shifted to accused to prove permit	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful entry into a game reserve contrary to section 15(1) and (2) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (place &amp; Name of Game Reserve) did enter in (Name of Game Reserve) without written authority of the Director of Wildlife previously sought and obtained.</b>			

<b>OFFENCE</b>				
<b>s.17 WCA unauthorised possession of a firearm in a game reserve</b>				
<b>PENALTIES</b>				
<b>Fine: Max 200,000sh AND/OR Imprisonment: max 3 years. [Eligible for compounding] *EOCCA, s.60(2) and First Schedule, para.14(c) Imprisonment 20 - 30 years.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Possession (date)</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Wildlife officer (testimony and report), eye witness(es) (testimony), arresting officer (statement or report), suspect (statement), arrest report if caught in possession, Certificate of Seizure if seized from accused. [fingerprint evidence in the future]	Also consider EOCCA First Schedule paras. 12 and 31, also offences under FACA. Also consider s20(1)(b) (possession with intention to hunt) and s.103 (possession of weapon with intent to commit another offence under WCA) for increased penalty range [and to avoid compounding]. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences.
<b>2. a firearm, bow, arrow or other weapon</b>	“weapon”- means any firearm, ammunition, dart-gun, missile, explosive, poison, poisoned bait, spear, bow and arrow, knife, axe, hoe, pick, club, stakes, pitfall, net, gin, trap, snare or any combination of these and any other device, method and or technology whatsoever capable of killing or capturing an animal;		Weapon (exhibit), Certificate of Seizure, Photographs, chain of custody documentation, ballistic/expert evidence if necessary for weapon description/analysis.	Consider offences under the Firearms and Ammunitions Act 2015, consider validity/legality of firearm and ammunition, safe custody, etc. Ensure Certificate of Seizure is correct, signed by PCF, suspect and 2 independent witnesses. Follow seizure and management of exhibits guidelines (RRG). Move the court to make forfeiture order of weapon under S.111 WCA.
<b>3. in a game reserve</b>	“Game reserve”- means any area declared to be a game reserve by an order of the President published in the Gazette.		Wildlife officer (testimony and report), eye witness(es) (testimony), arresting officer (testimony and	Reference to GN for judge to take judicial notice. Consider other offences in Games Reserve if any evidence of using weapon,

VERSION No.4 (February 2018)

		report), crime scene report/sketch-map of locus, photographs, GPS for location, GN and Plan declaring Game Reserve	I.e. why did the accused have a weapon in the game reserve - hunting, etc?
<b>4. No written permit of the Director previously sought and obtained</b>	Director" means the Director of Wildlife appointed	Burden of proof shifted to accused to prove permit	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
Unlawful possession of firearm/bow/arrow/weapons in a game reserve contrary to section 17(1) and (2) of the Wildlife Conservation Act, No. 5 of 2009 read together with Para 14 of the First Schedule to, and section 57(1) of the Economic and Organised Crime Control Act; [Cap. 200] as amended.			
<b>MODEL CHARGES</b>			
(Name of Accused) on or about the (date) at (place & Name of Game Reserve) was found in possession of (type of weapon) without written permission of the Director of Wildlife previously sought and obtained.			

<b>OFFENCE</b>			
<b>s.18(1) WCA Causing damage to vegetation in game reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000sh -500,000sh AND/OR Imprisonment: 3 - 5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Wilfully or negligently.</b>	"Wilful" means voluntary and intentional, but not necessarily malicious. "Negligent" characterised by a person's failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance . (Black's Law Dictionary)	Can be implied from circumstances: eyewitness(es) (testimony), Wildlife Officer (testimony and report), confessional statement.	
<b>2. cutting, burning, felling, injuring, damaging or removing</b>		Eye witness(es), wildlife officer(s), locus in quo inspection and report indicating nature of damage with photographic evidence where possible, confessional statement.	Prosecutor must move the Court to make an order of forfeiture of the instrumentalities s.111 of WCA
<b>3. any standing tree, shrub, bush,grass, sapling, seedling or any part thereof</b>		Statement of eye witness(es), statement of wildlife officer(s), confessional statement of the suspect, scene of crime report and photographs showing material which was damaged, chain of custody paper trail.	Consider sentencing submissions on the seriousness of the damage to the environment and ecosystem.
<b>4. in game reserve</b>	"Game reserve"- means any area declared to be a game reserve by an order of the President published in the Gazette.	GN Notice and Plan. Wildlife Officer (testimony and report), crimescene report with sketch-map, GPS.	
<b>5. No written permit of the Director previously sought and obtained</b>		Burden of proof shifted to accused to prove permit	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
Causing fire or damage to vegetation in a game reserve contrary to section 18(1) and (3) of the Wildlife Conservation Act, No. 5 of 2009.			
<b>MODEL CHARGES</b>			
(Name of Accused) on the (date) at (place & Name of Game Reserve) wilfully/negligently caused fire/ (fell/cut/burnt/injured or removed) trees/shrubs/bush/grass/sapling/seedling in (Name of Game Reserve) without written authority of the Director of Wildlife previously sought and obtained.			

<b>OFFENCE</b> <b>s.18(2) WCA grazing livestock in a game reserve or wetland reserve</b>				
<b>PENALTIES</b> <b>For non-foreign livestock, Fine: 300,000sh - 5m sh AND/OR Imprisonment: 3-5 years.</b> <b>For foreign livestock, Fine: not less than the value of livestock involved AND/OR Imprisonment: 3-5 years.</b>				
Elements to Prove	Definitions	Case Law	Potential Sources of Evidence	Associated Offences and other important issues to consider
1. Grazing (and date).			Eye witness(es), wildlife officer(s), locus in quo inspection with photographic evidence where possible, confessional statement, certificate of Seizure of the livestock.	Consider how the livestock will be managed following seizure - including reporting seizure to the Livestock Officer in nearest area, preparation of an inventory, health check (vet) and weekly reporting of births and deaths [should not be mixed with other herds/livestock]. Consider for sentencing purposes any damage caused by the grazing.
2. livestock, including water kind, whether "foreign" and if so, need Certificate of Value.	<p>"livestock"-includes cattle, sheep, goats, pigs, horses, mules, donkeys and all other domesticated animals and their eggs and young.</p> <p>"foreign livestock"- means a livestock grazed in a game or wetland reserve in contravention of the law the owner of which-</p> <p>(a) is not a Tanzanian and resides outside Tanzania;</p> <p>(b) resides within Tanzania illegally;</p> <p>(c) his ownership is entrusted to a person living in Tanzania while the owner resides or ought to reside outside Tanzania;</p>	<p>1. SAMSON KALALA vs REPUBLIC &amp; Another, Criminal Appeal No. 67 of 2013</p> <p>2. KONDO KUZENZA vs REPUBLIC, 2013. In both cases, the High Court upheld the decision of the trial magistrate of forfeiting to the Government 675 herds of cattle which were being grazed in a game reserve.</p>	<p>Eye witness(es) (testimony), wildlife officer(s) identifying "livestock" and ownership, sketch plan of the scene of crime to be drawn by police officer showing the specific area in a game reserve where livestock was grazed with photographic evidence where possible, confessional statement of the suspect, certificate of Seizure of the livestock. Chain of custody paper trail.</p>	<p>AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Manager of the Game Reserve or Wildlife Officer In-Charge of the area must report the seizure to the District Livestock Officer of the nearest area. DLO in collaboration with Manager of the Game Reserve or Wildlife Officer In Charge must prepare inventory of all livestock, examine their health from time to time and make a weekly report of all deaths &amp; births. Prosecutor may move the Court to make a disposal order of the livestock pending trial under s.101 of WCA wherever necessary.</p>
3. in a game reserve or wetland reserve	<p>"Game reserve"- means any area declared to be a game reserve by an order of the President published in the Gazette. "wetlands reserve"- means any area declared by order of the Minister and published in a gazette to be a wetlands reserve;</p>		GN Notice and Plan. Wildlife Officer (testimony and report), crimescene report with sketch-map, GPS	Reference to GN for judge to take judicial notice.
<b>STATEMENT OF OFFENCE</b> Grazing livestock in a game/wetland reserve contrary to section 18(2) and (4) of the Wildlife Conservation Act, No. 5 of 2009.				
<b>MODEL CHARGES</b>				

VERSION No.4 (February 2018)

(Name of Accused) on or about the (date) at (place & Name of Game/Wetland Reserve) was found grazing (type (including whether foreign), number and value if foreign of livestock) in the said game/wetland reserve.

OFFENCE			
s.19 WCA unauthorised hunting in a game reserve, game controlled area or wetlands reserve			
PENALTIES			
For hunting, capturing or killing a First Schedule Part I animal, Imprisonment: 5 - 10 years AND discretionary fine: 200,000sh - 2m sh. *EOCCA, s.60(2) and First Schedule, para.14(a) Imprisonment 20 - 30 years.			
For hunting, capturing or killing a First Schedule Part II animal, Imprisonment: 2 - 5 years AND discretionary fine: 300,000sh - 500,000sh. *EOCCA, s.60(2) and First Schedule, para.14(c) Imprisonment 20 - 30 years.			
For hunting, capturing or killing a First Schedule Part III animal, Imprisonment: 1 - 3 years AND discretionary fine: 100,000sh - 1m sh. *EOCCA, s.60(2) and First Schedule, para.14(c) Imprisonment 20 - 30 years.			
In any other acts or animals, Fine: 200,000sh - 500,000sh AND/OR Imprisonment: 1 - 6 months. *EOCCA, s.60(2) and First Schedule, para.14(c) Imprisonment 20 - 30 years.			
Elements to Prove	Definitions	Potential Sources of Evidence	Associated Offences and other important issues to consider
<b>1. Hunting, burning, capturing, killing, wounding or molesting .</b>	“ hunting” includes any act directed or incidental to the killing of any animal; “capture” includes any act directed at the taking of any animal, nest or egg; “wounding”- means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming. "Wound" means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming. "Molest" means an act of making unwanted and indecent advances to or on someone, esp. for sexual gratification. "Kill" means to end life; to cause physical death. Penal Code s.2 "maim" means the destruction ,or permanent disabling of any external or internal organ, member or sense.	Eye witness(es), wildlife officer(s), scene of crime Report with sketch-map, inventory, photographs if possible. Confessional statement, certificate of Seizure of the animal, weapon or instrumentality used. Chain of custody paper trail. Trophy Valuation Certificate.	Also consider EOCCA First Schedule paras. (12?) and 31, also offences under FACA. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. Also consider s20(1)(b) (possession with intention to hunt) and s.103 (possession of weapon with intent to commit another offence under WCA) for increased penalty range [and to avoid compounding]. Consider post conviction forfeiture under s.111 WCA. Write letter to Director of Wildlife for post-conviction ban and disqualifications (s.39, s69 of WCA). Also s.120 of WCA if more than 2 year sentence imposed, register as offender - for other crimes too? If weapon used, consider Firearms Act offences and associated offences under WCA, e.g. s.17, 103.
<b>2. any animal or fish (prove which animal and which Part of the First Schedule)</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals. “fish” means all forms of aquatic or amphibious life including finfish, dolphin, whale, dugong, shell fish, turtles and includes spat, brood, fry, spawn, ova and young of all such fish, but does not include any aquatic or amphibious animal.	Wildlife Officer (testimony and report); Certificate of Seizure of the animal. Chain of custody paper trail. Trophy Valuation Certificate. Vet/forensic report with photographs; crime scene report with photographs.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA wherever necessary.



VERSION No.4 (February 2018)

<b>3. in any game reserve, game controlled area or wetlands reserve.</b>	“Game reserve”- means any area declared to be a game reserve by an order of the President published in the Gazette. “wetlands reserve”- means any area declared by order of the Minister and published in a gazette to be a wetlands reserve; “game controlled area”-means any area declared by order of the Minister and published in a gazette to be a game controlled area;	Eye witness(es), wildlife officer(s), scene of crime Report with sketch-map, photographs and GPS if possible. Confessional statement. Relevant GN and Plan.	Reference to GN for judge to take judicial notice.
<b>4. No written permit of the Director previously sought and obtained and in a specified manner.</b>		Burden of proof shifted to accused to prove permit	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful hunting in a game reserve/game controlled area /wetlands reserve contrary to section 19(1) and (2)(a)/(b)/(c)/(d) of the Wildlife Conservation Act, No. 5 of 2009. read together with Paragraph 14 of the First Schedule to, and section 57(1) of the Economic and Organised Crime Control Act, [Cap. 200] as amended.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place &amp; Name of Game Reserve)) hunted/killed/wounded/molested (type of animal or fish) valued at (value of animal) in the said game reserve without a written permission of the Director of Wildlife previously sought and obtained and in the specified manner.</b>			

<b>OFFENCE</b>			
<b>s.20(1)(a) WCA setting traps in game reserve, wetlands or game control area</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000sh - 1m sh AND/OR Imprisonment: 6 months - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. digging, laying or constructing any pitfall, net, trap, snare or any other use of other device capable of killing, capturing, or wounding any animal.</b> .	“capture” includes any act directed at the taking of any animal, nest or egg; “wounding”-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.	Eye witness(es), wildlife officer(s) confirming the nature of the activity or device, including circumstances and other items with the accused. Sketch plan of the scene of crime to be drawn by police officer showing the specific area in a game reserve where prohibited activity occurred with photographic evidence of device if possible. Confessional statement of the suspect. Certificate of Seizure of the snare, net, trap, snare or any other device. Chain of custody paper trail.	NOTE: overlap with s.19(2) and other offences given "use of other device capable of killing, capturing or wounding an animal". If sufficient far on in preparation, consider whether s.19 applies. Consider also what else in accused's possession re trapping and hunting. AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Prosecutor must move the Court to make a forfeiture order of the instrumentalities u/s 111 of WCA.
<b>2. in a game reserve, wetlands reserve or game controlled area</b>	“Game reserve”- means any area declared to be a game reserve by an order of the President published in the Gazette. “wetlands reserve”- means any area declared by order of the Minister and published in a gazette to be a wetlands reserve; “game controlled area”-means any area declared by order of the Minister and published in a gazette to be a game controlled area;	Eye witness(es), wildlife officer(s) . Scene of crime Report with sketch-map, photographs and GPS if possible. Confessional statement. Relevant GN and Plan.	Reference to GN for judge to take judicial notice.
<b>3. No written permit of the Director previously sought and obtained.</b>		Burden of proof shifted to accused to prove permit	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
<b>Digging/laying/constructing a pitfall/net/trap/snare/use of other device capable of killing, capturing or wounding any animal in a game reserve/game controlled area/wetlands reserve contrary to section 20(1)(a) and (4) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			

(Name of Accused) did on or about the (date) at (place & Name of Game Reserve/Wetlands Reserve or Game Controlled Area) dig/lay/construct a pitfall/net/trap/snare capable of killing/capturing/wounding any animal in the said game reserve/wetlands resrve or game controlled area.

OFFENCE				
s.20(1)(b) WCA unauthorised possession of weapon in a game reserve, wetlands reserve or game controlled area for the purposes of hunting, wounding, killing or capturing				
PENALTIES				
Fine: 200,000sh - 1m sh AND/OR Imprisonment: 6 - 2 years.				
Elements to Prove	Definitions	Case Law	Potential Sources of Evidence	Associated Offences and other important issues to consider
<b>1. Carrying or have in his possession or under his control .</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	eye witness(es) testimony .Wildlife Officer statement (if arrested in the game reserve). Certificate of Seizure of taken from accused at arrest. Confessional statement. Any photographic evidence.	Consider overlap with s.17, s.20(1)(a) (given definition of "weapon") and s.103 of WCA and how to charge. Consider also when possession with intent has become hunting, etc. and therefore falls within s.19 WCA. Note that s.103 which does not require to be in a game reserve attracts a higher sentence than this provision.
<b>2. any weapon</b>	“weapon”- means any firearm, ammunition, dart-gun, missile, explosive, poison, poisoned bait, spear, bow and arrow, knife, axe, hoe, pick, club, stakes, pitfall, net, gin, trap, snare or any combination of these and any other device, method and or technology whatsoever capable of killing or capturing an animal;		Eye witness(es), wildlife officer(s). Sketch plan of the scene of crime to be drawn by police officer. photographic evidence. Preparation of Certificate of Seizure. Verification of legality of ownership of fire arm(s). Verification of validity of arms licence & accounting of ammunitions used. Confessional statement. Chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. If weapon(s) or ammunition(s) is illegally owned, charges must be preferred under the Firearms and Ammunition Control Act, 2015. Prosecutor must move the Court to make an order of forfeiture of the instrumentalities u/s 111 of WCA
<b>3. in a game reserve, wetlands reserve or game controlled area.</b>	“Game reserve”- means any area declared to be a game reserve by an order of the President published in the Gazette. “wetlands reserve”- means any area declared by order of the Minister and published in a gazette to be a wetlands reserve; “game controlled area”-means any area declared by order of the Minister and published in a gazette to be a game controlled area;		Statement of eye witness(es). Statement of wildlife officer(s) . Scene of crime Report with sketch-map, photographs and GPS if possible. Confessional statement. Relevant GN and Plan.	Reference to GN for judge to take judicial notice.

VERSION No.4 (February 2018)

<b>4. no proof that it was intended to be used for other purpose other than hunting, killing, wounding or capturing of an animal</b>	<p>“ hunting” includes any act directed or incidental to the killing of any animal;  “capture” includes any act directed at the taking of any animal, nest or egg; “wounding”-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.</p>	<p>Can be implied from circumstances, including location, where weapon was found and what other items were also found/seized. Crime scene report with photographs and inventory.</p>	<p>See above, for overlap with other WCA provisions (s.17, s.19, s.20(1)(a), s.103). Can be implied from circumstances, including location, where weapon was found and what other items were also found/seized. Crime scene report with photographs and inventory.</p>
<p style="text-align: center;"><b>STATEMENT OF OFFENCE</b>  <b>Unlawful carrying/possession of weapon in a game reserve/game controlled area/wetlands reserve contrary to section 20(1)(b) and (4) of the Wildlife Conservation Act, No. 5 of 2009.</b></p>			
<p style="text-align: center;"><b>MODEL CHARGES</b>  <b>(Name of Accused) on the (date) at (place &amp; Name of Game Reserve/Wetland Reserve or Game Controlled Area) was found carrying/in possession of (type of weapon) which having regard to all circumstances it was intended to be used for the purpose of killing/wounding or capturing an animal in the said game/wetlands reserve or game controlled area.</b></p>			

<b>OFFENCE</b>			
<b>s.20(1)(c) WCA crop cultivation in a game reserve, wetland reserve or game controlled area</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000sh - 1m sh AND/OR Imprisonment: 6 months - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Conducting crop cultivation.</b>	Consider legal meaning of “cultivate”, in relation to any plant, includes growing the plant, sowing or scattering the seed produced by the plant or any part thereof, nurturing or tending the plant or harvesting the flowers, fruits, leaves or seeds or the whole or any part of the plant. "crop" - it is not clear whether it has to be identified?	Eye-witness(es) (testimony), wildlife officer (testimony and report), crime scene report with sketch-maps and photographs, Certificate of seizure for any equipments or instruments used to cultivate, [sample or crop to be seized], Confessional statement.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Prosecutor must move the Court to make an order of forfeiture of the instrumentalities u/s 111 of WCA. Consider when and how to stop the cultivation: harvest/dug up/seize and then get order to destroy crops.)
<b>2. in a game reserve, wetlands reserve or game controlled area</b>	“Game reserve”- means any area declared to be a game reserve by an order of the President published in the Gazette. “wetlands reserve”- means any area declared by order of the Minister and published in a gazette to be a wetlands reserve; “game controlled area”-means any area declared by order of the Minister and published in a gazette to be a game controlled area;	Eye witness(es), wildlife officer(s), scene of crime report with sketch-map, photographs and GPS if possible. Confessional statement. Relevant GN and Plan.	Reference to GN for judge to take judicial notice.
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful cultivation of crops in a game reserve/game controlled area/wetlands reserve contrary to section 20(1)(c) and (4) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (place &amp; Name of Game Reserve/wetland reserve/game controlled area)) cultivated crops (type?) in the said game reserve/wetland reserve/game controlled area.</b>			

<b>OFFENCE</b>			
<b>s.20(2) WCA unauthorised collection of sand, prospecting and mining in a game reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000sh - 1m sh AND/OR Imprisonment: 6 months - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Collecting sand or prospect or mining (which does not involve undertaking or prospected or mining for oil, gas or petroleum).</b>		Eye witness(es), wildlife officer(s), sketch plan of the scene of crime to be drawn by police officer showing the mined area within a game reserve with photographic evidence if possible. Preparation of Certificate of Seizure of instrumentalities of mining, prospecting or collecting (plus anything mined, collected or prospected). Confessional statement. Chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Prosecutor must move the Court to make an order of forfeiture of the instrumentalities u/s 111 of WCA.
<b>2. in a game reserve</b>	“Game reserve”- means any area declared to be a game reserve by an order of the President published in the Gazette.	Eye witness(es), wildlife officer(s) . Scene of crime Report with sketch-map, photographs and GPS if possible. Confessional statement. Relevant GN and Plan.	Reference to GN for judge to take judicial notice.
<b>3. without an Environmental Impact Assessment conduct; OR No protection costs paid or no concession fee paid. OR Government not the initiator of the undertaking.</b>		Verification of legality such undertaking from MNRT, MEM and NEMC.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unauthorised collection of sand/mining in a game reserve contrary to section 20(2) and (4) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (place &amp; Name of Game Reserve) collected sand in the said game reserve.</b>			
<b>(Name of Accused) on or about the (date) at (place &amp; Name of Game Reserve) unlawfully conducted mining activities in the said game reserve.</b>			

<b>OFFENCE</b>			
<b>s.21 WCA unauthorised grazing of livestock in any game controlled area</b>			
<b>PENALTIES</b>			
<b>Fine: 100,000sh - 500,000sh AND/OR Imprisonment: 1- 5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. grazing (and date).</b>		Eye witness(es), wildlife officer(s), Locus in quo inspection with photographic evidence where possible, confessional statement, Certificate of Seizure of the livestock.	Consider how the livestock will be managed following seizure - including reporting seizure to the Livestock Officer in nearest area, preparation of an inventory, health check (vet) and weekly reporting of births and deaths [should not be mixed with other herds/livestock]. Consider for sentencing purposes any damage caused by the grazing.
<b>2. livestock</b>	“livestock”-includes cattle, sheep, goats, pigs, horses, mules, donkeys and all other domesticated animals and their eggs and young.	Eye witness(es), wildlife officer(s) identifying "livestock", sketch plan of the scene of crime to be drawn by police officer showing the specific area in a game controlled area where livestock was grazed, with photographic evidence where possible. Confessional statement of the suspect, Certificate of Seizure of the livestock. Chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Manager of the Game Reserve or Wildlife Officer In-Charge of the area must report the seizure to the District Livestock Officer of the nearest area. DLO in collaboration with Manager of the Wildlife Officer In Charge must prepare inventory of all livestock, examine their health from time to time and make a weekly report of all deaths & births. Prosecutor may move the Court to make a disposal order of the livestock pending trial under s.101 of WCA wherever necessary.
<b>3. in any game controlled area</b>	“game controlled area”- means any area declared by order of the Minister and published in a gazette to be a game controlled area;	GN Notice and Plan. Wildlife Office (testimony and report), crimescene report with sketch-map, GPS.	Reference to GN for judge to take judicial notice.
<b>4. No written permission of the Director previously sought and obtained</b>		Burden of proof shifted to accused to prove permit	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
Unlawful grazing livestock in a game controlled area contrary to section 21 of the Wildlife Conservation Act, No. 5 of 2009.			
<b>MODEL CHARGES</b>			
(Name of Accused) on or about the (date) at (place & Name of Game Controlled Area) was found grazing (type and number of livestock) in the said game controlled area without a written permission of the Director of Wildlife previously sought and obtained.			



<b>OFFENCE</b>			
<b>s.24 WCA unauthorised injury to protected species in species management area</b>			
<b>PENALTIES</b>			
<b>For hunting, capturing or killing a "protected animal", fine: of not less than twice the value of the animal hunted AND/OR Imprisonment: 3 - 7 years.</b> <b>*EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.</b> <b>2. In any other case, fine: 100,000sh - 500,000sh AND/OR Imprisonment: 3 months - 2 years.</b> <b>*EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Cutting or burning vegetation, OR hunting, capturing, wounding, injuring, molesting or killing (and date).</b>	“ hunting” includes any act directed or incidental to the killing of any animal; “capture” includes any act directed at the taking of any animal, nest or egg; “wounding”-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.	Eye witness(es), wildlife officer(s), crime scene report with sketch-map, inventory and photographs showing damage or injury. Confessional statement. Certificate of Seizure of the animal and/or weapon used. Chain of custody paper trail.	Also consider EOCCA First Schedule paras. (12?) and 31, also offences under FACA. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>2. any protected species (animal or vegetation and square footage, certificate of value and that it is protected)</b>	"species" means any species, subspecies or geographically separate population thereof;	Order/Declaration "proteected" - GN or legislation. Certificate of Seizure. Crime scene report with inventory and photographs. Expert/forensic evidence identifying species if necessary. Trophy Valuation Certificate	Reference to GN for judge to take judicial notice.
<b>3. in a species management area.</b>	"species management area" means an area of land or water that is subjected to active intervention for management purposes in order to ensure the maintenance of habitat or to meet the requirements of specific species	Given the definition, how to evidence it is one of these areas? Wildlife Officer plus decision/order designating it as such - GN and plan.	Reference to GN for judge to take judicial notice.
<b>4. No written permission of the Director previously sought and obtained.</b>		Burden of proof shifted to accused to prove permit	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
Cutting/burning vegetation or hunting/capturing, wounding, injuring, molesting or killing an animal which is a protected species within a protected species management area contrary to section 24 of the Wildlife Conservation act no.5 of 2009 read together with Para 14 of the First Schedule to, and section 57(1) of the Economic and Organised Crime Control Act [Cap 200] as amended.			
<b>MODEL CHARGES</b>			

VERSION No.4 (February 2018)

(Name of Accused) on or about the (date), at (identify location), being a species management area within the meaning of the Wildlife Conservation Act 2009, [cut/burned vegetation (name type) OR hunted/captured/wounded/injured/ molested/killed (delete as appropriate) an animal (identify)] which is a 'protected species' as defined within the Wildlife Conservation Act 2009 in the said species protection management area without a written permission of the Director of Wildlife previously sought and obtained.

<b>OFFENCE</b>			
<b>s.26 WCA unauthorised actions against national game</b>			
<b>PENALTIES</b>			
<p><b>For hunting, capturing or killing a national game, fine of not less than twice the value of the animal hunted, killed or captured and/or imprisonment not less than 1 year but not exceeding 5 years.</b></p> <p><b>*EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.</b></p> <p><b>In any other case, fine of not less than 300,000sh and not exceeding 1000,000sh and/or imprisonment not less than 12 months but not exceeding 3 years.</b></p> <p><b>*EOCCA, s.60(2) and First Schedule, para.14(c) - captures, hunts or traps -Imprisonment 20 - 30 years.</b></p>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting, killing, capturing, wounding or molesting .</b>	“ hunting” includes any act directed or incidental to the killing of any animal; “capture” includes any act directed at the taking of any animal, nest or egg; “wounding”-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.	Eye witness(es), wildlife officer(s). Locus in quo inspection with photographic evidence of scene, animal and wounds, instrumentalities, where possible. Sketch plan of the scene of crime to be drawn by police officer showing location and any relevant circumstances. Confessional statement. Certificate of Seizure of any instrumentalities or evidence with proper chain of custody paper trail. Confessional statement.	Also consider EOCCA First Schedule paras. (12?) and 31, also offences under FACA. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. AO/IO should ensure that Certificate of Seizure for any instrumentalities or evidence is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Consider what weapons being used and additional charges which could be laid under WCA or Firearms legislation. Consider location (national park, game reserve etc. to see if additional/alternative offence committed.
<b>2. any national game</b>	"national game" means any animal declared as such by the Minister by the order to be published in the Gazette	Seizure of the national game hunted,killed, captured, wounded or molested. Certificate of value. Trophy Valuation Certification. GN of Minister's declaration "national game". Wildlife Officer (testimony) regarding animal. Crime scene report with sketch/map, inventory and photograph if possible. Expert/forensic evidence if necessary.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Follow correct chain of custody procedures. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Reference to GN for judge to take judicial notice. Preparation of sentencing submission on importance of animal as national game and impact of loss.
<b>3. No written permit by the Director previously sought and obtained OR outside the terms of any such permit.</b>		Burden of proof shifted to accused to prove permit. If licence, certified copy or original showing terms which were not adhered to.	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
Hunting/Capturing/Killing national game without authority, contrary to section 26(2)(a) of the Wildlife Conservation Act No.5 of 2009 OR outwith the conditions in a permit issued by the Director of Wildlife, contrary to section 26(2 (b) of the Wildlife Conservation Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to, and section 57(1) of the Economic and Organised Crime Control Act, [Cap. 200] as amended.			
<b>MODEL CHARGES</b>			

VERSION No.4 (February 2018)

(Name of Accused) on or about the (date), at (identify location), hunted/capture/killed (animal), declared by the Minister to be national game, without authority/in contravention of conditions imposed by the Director of Wildlife, namely by (state particulars of the breach if applicable).

<b>OFFENCE</b>			
<b>s.28 WCA unauthorised poaching during closed season</b>			
<b>PENALTIES</b>			
<p>For hunting, capturing or killing a national game, Fine: not less than twice the value of the animal hunted, killed or captured AND/OR Imprisonment: 3 - 5 years. [Part I Animals not mentioned].</p> <p>For First Schedule, Part II animals, Imprisonment: 2- 5 years. In addition, discretionary fine: not less than twice the value of the animal hunted, captured or killed.</p> <p>For First Schedule Part III animals, Imprisonment: 1 - 3 years. In addition, discretionary fine of not less than twice the value of the animal hunted, captured or killed.</p> <p>In any other case, Fine: 300,000 - 2m sh AND/OR Imprisonment: 6 - 12 months.</p> <p>*EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.</p>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Killing, hunting, capturing or wounding.</b>	“ hunting" includes any act directed or incidental to the killing of any animal; “capture” includes any act directed at the taking of any animal, nest or egg; “wounding”-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.	Eye witness(es), wildlife officer(s). Locus in quo inspection with photographic evidence where possible and a sketch plan, inventory, etc. Confessional statement. photographic evidence where possible. Certificate of Seizure for instrumentalities and evidence. Chain of custody paper trail.	Also EOCCA First Schedule paras. 12(?) and 31, and FACA. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition of all seized items.
<b>2. any animal or class of animals specified in a closed season order, as well as its value for sentencing purposes</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Certificate of Seizure of the animal hunted, killed, captured, wounded or molested. Valuation of the national game, Certificate Trophy Value. Forensic evidence if necessary. GN for closed season order if applies specified animals.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prepare sentencing submissions on impact of loss of animal to Tanzanian habitat, ecology and economy.
<b>3. during closed season.</b>	"closed season" means a period declared by the Minister and published in the Gazette prohibiting, restricting or regulating hunting, killing or capturing of any animal or class of animals in any area in a specified period.	GN Minister’s Order , wildlife officer (testimony), eye witnesses (testimony - for location), crime scene report with sketch/map showing location including GPS?	Reference to GN for judge to take judicial notice.
<b>4. No written permit by the Director (or in contravention to the conditions in the written permit).</b>		Burden of proof shifted to accused to prove permit. If licence, certified copy or original showing terms which were not adhered to.	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
Hunting/Capturing/Killing national game/First Schedule Part II or III during closed season, contrary to section 28(1)(3)(a)/(b)/(c) of the Wildlife Conservation Act 2009 read together with Paragraph 14 of the First Schedule to, and section 57(1) of the Economic and Organised Crime Control Act, [Cap. 200] as amended.			
<b>MODEL CHARGES</b>			

VERSION No.4 (February 2018)

(Name of Accused) on or about the (date), at (identify location), hunted/captured/killed (identify animal) [a national game animal/Part II/PartIII First Schedule animal] during a declared 'closed season' [in relation to that species at that location], without permission granted by the Director of Wildlife/in contravention of conditions attached to permission granted by the Director of Wildlife.

<b>OFFENCE</b>			
<b>s.47(a) WCA unlawful hunting of a specified or scheduled animal</b>			
<b>PENALTIES</b>			
For hunting or killing First Schedule, Part I animals, Imprisonment 3 - 5 years. In addition, discretionary fine: not less than 2x value of the animal hunted, killed or wounded.			
For hunting or killing First Schedule Part II animals, Imprisonment: 2 - 5 years. In addition discretionary fine not less than 2x value of the animal killed, hunted or wounded.			
For hunting or killing First Schedule Part III animals, Imprisonment: 12 months - 3 years. In addition, discretionary fine not less than 2x value of the animal.			
If limited to wounding an animal in the course of capturing it, Fine: not less than twice the value of the animal wounded OR Imprisonment: 5 - 12 months. *EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting, killing or wounding.</b>	“ hunting” includes any act directed or incidental to the killing of any animal; “wounding”-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.	Eye witness(es), wildlife officer(s), locus in quo inspection with photographic evidence where possible and a sketch plan, inventory, etc. Confessional statement. Photographic evidence where possible. Certificate of Seizure for instrumentalities and evidence. Chain of custody paper trail.	Also consider EOCCA First Schedule paras. (12?) and 31, also offences under FACA. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Consider method of hunting and whether other offences were committed under WCA or the Firearms legislation.
<b>2. any specified animal or scheduled animal</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals. "scheduled animal" means an animal specified in the Third Schedule to this Act; "specified animal" means an animal specified in the Second Schedule to this Act;	Eye witness(es), Wildlife Officer (testimony and report). Certificate of Seizure of the animal hunted, killed, wounded. Valuation of the animal, Certificate Trophy Value. Expert or Forensic evidence if necessary.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prepare sentencing submissions on impact of loss of animal to Tanzanian habitat, ecology and economy.
<b>3. No valid hunting licence</b>		Burden of proof shifted to accused to prove permit. If licence, handwriting expert or evidence that fraudulent or false.	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
Unlawful hunting/killing/wounding a specified or scheduled animal contrary to section 47(a)(aa) of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14 of the First Schedule to, and section 57(1) of the Economic and Organised Crime Control Act, [Cap. 200] as amended.			
<b>MODEL CHARGES</b>			
(Name of Accused) on the (date) at (place & Name of Game Reserve)) while not being a holder of a hunting licence, hunted/killed/wounded (Name of animal) valued at (value of animal).			

<b>OFFENCE</b>			
<b>s.47(b) WCA unlawful hunting of a specified or scheduled animal beyond the terms of a licence</b>			
<b>PENALTIES</b>			
<p>For hunting or killing First Schedule, Part I animals, Imprisonment 3 - 5 years. In addition, discretionary fine: not less than 2x value of the animal hunted, killed or wounded.</p> <p>For hunting or killing First Schedule Part II animals, Imprisonment: 2 - 5 years. In addition discretionary fine not less than 2x value of the animal killed, hunted or wounded.</p> <p>For hunting or killing First Schedule Part III animals, Imprisonment: 12 months - 3 years. In addition, discretionary fine not less than 2x value of the animal.</p> <p>If limited to wounding an animal, Fine: not less than 2x value of the animal wounded OR Imprisonment: 5 - 12 months.</p> <p>*EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.</p>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Issued valid hunting licence.</b>		Certified copy or original licence showing terms. Certificate of seizure and chain of custody paper trail. Wildlife Officer (or someone from Wildlife Division who issues and keeps records of hunting licences)	EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold. Consider if fraudulent on face or in terms.
<b>2. hunting, killing or wounding</b>	<p>"hunting" includes any act directed or incidental to the killing of any animal;</p> <p>"wounding"-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.</p>	<p>Eye witness(es), wildlife officer(s), locus in quo inspection with photographic evidence where possible and a sketch plan, inventory, etc. Confessional statement. Photographic evidence where possible. Certificate of Seizure for instrumentalities and evidence. Chain of custody paper trail.</p>	<p>AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Consider method of hunting and whether other offences were committed under WCA or the Firearms legislation.</p>
<b>3. either a specified animal or scheduled animal of a species, category, type or description other than that permitted in the licence OR a number of specified animals or scheduled animals larger than the number permitted in the licence OR in an area other than the one permitted in the licence</b>	<p>"animal"- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.</p> <p>"scheduled animal" means an animal specified in the Third Schedule to this Act;</p> <p>"specified animal" means an animal specified in the Second Schedule to this Act;</p>	<p>Eye witness(es), Wildlife Officer (testimony and report). Crime scene report with sketch map, inventory and photographs where possible. Certificate of Seizure of the animal hunted, killed, wounded. Valuation of the animal, Certificate Trophy Value. Expert or Forensic evidence if necessary.</p>	<p>Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prepare sentencing submissions on impact of loss of animal to Tanzanian habitat, ecology and economy.</p>
<b>STATEMENT OF OFFENCE</b>			
<p>Unlawful hunting/killing/wounding a specified or scheduled animal contrary to section 47(b)(i)/(ii)/(iii)(aa) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14(a) of the First Schedule to, and section 57(1) of the Economic and Organised Crime Control Act, [Cap. 200 RE 2002].</p>			
<b>MODEL CHARGES</b>			
<p>(Name of Accused) on or about the (date) at (place) being a holder of a hunting licence (No. of hunting licence), hunted/killed/wounded (number) of (Name of animal) valued at (value of animal) [of category/type/description other than that specified in the aforementioned licence. OR arger than those authorized by the aforementioned licence OR in an area other than the area specified in the licence.</p>			



<b>OFFENCE</b>			
<b>s.53(a) WCA unauthorised capture of an animal</b>			
<b>PENALTIES</b>			
<p>For First Schedule, Part I animals, Imprisonment 3 - 5 years. In addition, discretionary fine: not less than twice the value of the animal hunted, killed or wounded.</p> <p>For First Schedule Part II animals, Imprisonment: 2 - 5 years. In addition discretionary fine not less than twice the value of the animal killed, hunted or wounded.</p> <p>For First Schedule Part III animals, Imprisonment: 12 months - 3 years. In addition, discretionary fine not less than twice the value of the animal.</p> <p>If limited to wounding an animal in the course of capturing it, Fine: not less than twice the value of the animal wounded OR Imprisonment: 5 - 12 months. *EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.</p>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. capture.</b>	“capture” includes any act directed at the taking of any animal, nest or egg;	Eye witness(es), wildlife officer(s), locus in quo inspection with photographic evidence where possible and a sketch plan, inventory, etc. Confessional statement of the suspect. Certificate of Seizure for instrumentalities and evidence. Chain of custody paper trail.	EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Consider if method of capture or instrumentalities or location trigger other offences under WCA.
<b>2. any animal</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Eye witness(es), Wildlife Officer (testimony and report). Crime scene report with sketch map, inventory and photographs where possible. Certificate of Seizure of the animal captured. Valuation of the animal, Certificate Trophy Value. Expert or Forensic evidence if necessary.	Consider management of any seized captured animal. Ensure certificate of seizure is properly prepared, signed by 2 independently witnesses and accused and filed on PCF. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>3. without valid capture permit</b>		Burden of proof shifted to accused to prove permit. If licence, handwriting expert or evidence that fraudulent or false.	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
<b>Capturing an animal/wounding an animal in the cause of capture without a capture licence, contrary to section 53(a) of the Wildlife Conservation Act 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date), at (location), captured/wounded in the course of capture, (number) of (type of animal) without a valid capture licence.</b>			

<b>OFFENCE</b>			
<b>s.53(b) WCA unauthorised capture beyond terms of capture permit</b>			
<b>PENALTIES</b>			
<p>For First Schedule, Part I animals, Imprisonment 3 - 5 years. In addition, discretionary fine: not less than twice the value of the animal hunted, killed or wounded.</p> <p>For First Schedule Part II animals, Imprisonment: 2 - 5 years. In addition discretionary fine not less than twice the value of the animal killed, hunted or wounded.</p> <p>For First Schedule Part III animals, Imprisonment: 12 months - 3 years. In addition, discretionary fine not less than twice the value of the animal.</p> <p>If limited to wounding an animal in the course of capturing it, Fine: not less than twice the value of the animal wounded OR Imprisonment: 5 - 12 months. *EOCCA, s.60(2) and First Schedule, para.14(a) - captures, hunts or traps -Imprisonment 20 - 30 years.</p>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. a valid Capture Permit.</b>	"capture permit" means a permit issued under Regulation 3 of the Wildlife Conservation (Capture of Animals) Regulations, 2009.	Certified copy or original capture permit showing terms. Certificate of seizure and chain of custody paper trail. Wildlife Officer (or someone from Wildlife Division who issues and keeps records of capture permits)	EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. Consider if fraudulent on face or in terms.
<b>2. Capture</b>	"capture" includes any act directed at the taking of any animal, nest or egg;	Eye witness(es), wildlife officer(s), Locus in quo inspection with photographic evidence where possible and a sketch plan, inventory, etc. Confessional statement. Certificate of Seizure for instrumentalities and evidence. Chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Consider if method of capture or instrumentalities or location trigger other offences under WCA.
<b>3. EITHER of a category, type or description of an animal species other than that specified in the permit OR a number of animals more than that authorised in the permit OR in a area other than that specified in the permit.</b>	"animal"- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Eye witness(es), Wildlife Officer (testimony and report). Crime scene report with sketch map, inventory and photographs where possible. Certificate of Seizure of the animal captured. Valuation of the animal, Certificate Trophy Value. Expert or Forensic evidence if necessary.	Consider management of any seized captured animal. Ensure certificate of seizure is properly prepared, signed by 2 independently witnesses and accused and filed on PCF. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>STATEMENT OF OFFENCE</b>			
<b>Capturing an animal/wounding an animal in the cause of capture in breach of a capture licence, contrary to section 53(a) of the Wildlife Conservation Act 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (place) being a holder of a capture permit (No. of permit), captured or wounded in course of capture (number) of (Name of animal) valued at (value of animal) [of category/type/description other than that specified in the aforementioned licence. OR larger than those authorized by the aforementioned licence OR in an area other than the area specified in the licence.</b>			

<b>OFFENCE</b>			
<b>s.55 WCA unauthorised hunting of unscheduled animals</b>			
<b>PENALTIES</b>			
<b>Fine: not less than twice the value of the animal AND/OR Imprisonment 1 - 5 years</b>			
<b>[Note: This is higher than for some scheduled animals. E.g. Part III animals the sentencing range is up to 3 years.]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting, killing or wounding.</b>	“ hunting" includes any act directed or incidental to the killing of any animal; “wounding”-means any incision or puncture which divides or pierces any exterior membrane of the body and includes maiming.	Eye witness(es), wildlife officer(s), Locus in quo inspection with photographic evidence where possible and a sketch plan, inventory, etc. Confessional statement. Photographic evidence where possible. Certificate of Seizure for instrumentalities and evidence. Chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Consider method of hunting and whether other offences were committed under WCA or the Firearms legislation.
<b>2. any unscheduled animal</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals. ["scheduled animal" means an animal specified in the Third Schedule to this Act;]	Eye witness(es), Wildlife Officer (testimony and report). Crime scene report with sketch map, inventory and photographs where possible. Certificate of Seizure of the animal captured. Valuation of the animal, Certificate Trophy Value. Expert or Forensic evidence if necessary.	Ensure certificate of seizure is properly prepared, signed by 2 independently witnesses and accused and filed on PCF. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>3. No written permit by the Director previously sought and obtained</b>		Burden of proof shifted to accused to prove permit. If licence, handwriting expert or evidence that fraudulent or false.	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
<b>Hunting/killing/wounding an unscheduled animal without written permission previously sought and obtained, contrary to section 55(2) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused(s)) on or about the (date), at (location) hunted/killed/wounded (number) unsecheduled animal, namely (species) without written permission.</b>			

<b>OFFENCE</b>			
<b>s.56 WCA killing of young animals or female pregnant animals</b>			
<b>PENALTIES</b>			
<b>1. Where offence is committed by holder of a licence, Fine: not less twice the value of the such animal AND/OR Imprisonment: not less than 3 years. Query: Cumulative or alternative with s.47(b) for example and additional sentence.</b>			
<b>2. Where offence is committed by a person not holding a licence, Fine: not less than twice the value of such animal AND/OR Imprisonment: not less than 5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting or killing.</b>	“ hunting” includes any act directed or incidental to the killing of any animal;	Eye witness(es), wildlife officer(s), Locus in quo inspection with photographic evidence where possible and a sketch plan, inventory, etc. Confessional statement. Photographic evidence where possible. Certificate of Seizure for instrumentalities and evidence. Chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Consider method of hunting and whether other offences were committed under WCA or the Firearms legislation.
<b>2. EITHER the young of any animal OR any female animal which is apparently pregnant OR female animal which is accompanied by its young.</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals. "Apparently pregnant", "young" are not defined.	Eye witness(es), Wildlife Officer (testimony and report). Crime scene report with sketch map, inventory and photographs where possible. Certificate of Seizure of the animal. Valuation of the animal, Certificate Trophy Value. Expert or Forensic evidence if necessary to establish sex, age and pregnancy (also how "apparent" that pregnancy would be) including photographs, height, weight and other featuring showing age, development or pregnancy.	Ensure certificate of seizure is properly prepared, signed by 2 independently witnesses and accused and filed on PCF. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Consider how to prove age and that it fits within "young" - consider expert evidence. Also consider how to show the animal was "apparently pregnant".
<b>3. EITHER without a valid licence, permit or authority OR with a licence, permit or written authority without the express authority of hunting of such young or such female</b>		Burden of proof shifted to accused to prove permit. If licence, handwriting expert or evidence that fraudulent or false.	Consider fraudulent or false permission submitted in defence and prepare to counter this.
<b>STATEMENT OF OFFENCE</b>			
<b>Hunting/killing a young animal/pregnant animal/animal accompanied by its young, without a valid licence/in breach of a license, contrary to section 56 of the Wildlife Conservation Act 2009.</b>			
<b>MODEL CHARGES</b>			

(Name of Accused) on or about the (date), at (identify location), [whilst in possession of a licence, permit or written authority to hunt an animal], hunted and/or killed an animal that was young/pregnant/accompanied by its young without express written authority or licence to do so.

<b>OFFENCE</b>			
<b>s.57(1)/57(5)(a) WCA unauthorised hunting on private land</b>			
<b>PENALTIES</b>			
<b>Fine: no less than twice the value of the animal (minimum) AND/OR Imprisonment: 6 months - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting or capturing.</b>	“hunting” includes any act directed or incidental to the killing of any animal; “capture” includes any act directed at the taking of any animal, nest or egg.	eye witness(es), occupier of land, wildlife officer(s), locus in quo inspection with photographic evidence where possible and a sketch/map, confessional statement. Certificate of seizure for any instrumentalities or evidence, with chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA.
<b>2. Any animal</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Certificate of Seizure of hunted or killed young animal or female pregnant. Chain of custody paper trail. Trophy Valuation Certificate.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>3. On the land occupied under a right of occupancy or derivative right of occupancy/private land</b>	Not including zoos, wildlife farms, game sanctuaries, orphanage centres or similar establishments.	Proof of ownership or occupancy of land. Occupier testimony. Sketch plan of the scene of crime to be drawn by police officer showing that the incident occurred on the land occupied under a right of occupancy or derivative right	
<b>4. With holding a licence, permit or written authority issued or granted under WCA to hunt or capture</b>		Burden of proof shifted to accused to prove permit	Be prepared to investigate fraudulent licence or permit if produced
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful hunting on land occupied under a right of occupancy or derivative right, contrary to section 57(1),(4) and (5)(a) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) while on a land occupied under a right of occupancy No.(Title No.) hunted/captured (Name of animal) valued at (Insert value) on the said land without written authorization of the Director of Wildlife.</b>			

<b>OFFENCE</b>			
<b>s.57(2)/s.57(5) WCA unauthorised hunting on village land. Note: consider which is an offence creating provision - is it captured by (4)? (4) is "such land" which could be village land? If so, offence under (5).</b>			
<b>PENALTIES</b>			
<b>Fine: equal to twice the value of such animal AND/OR Imprisonment: 6 months - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting or capturing.</b>	“ hunting" includes any act directed or incidental to the killing of any animal; “capture” includes any act directed at the taking of any animal, nest or egg.	Eye witness(es), wildlife officer(s), locus in quo inspection with photographic evidence where possible and a sketch/map, confessional statement. Certificate of seizure for any instrumentalities or evidence, with chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>2. any animal</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Certificate of Seizure of hunted or killed young animal or female pregnant. Chain of custody paper trail. Trophy Valuation Certificate.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>3. on village land</b>	"village land" is not defined.	Member of Village Council	
<b>4. With a permit or licence but without presenting the certified copies of a permit or licence to the Village Council, authorisation association or District Wildlife Officer</b>		Member of Village Council. District Wildlife Officer	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful hunting on village land contrary to section 57(2),(3) and (5)(b) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) being the holder of written authorization (No. of Permit) issued by the Director of Wildlife hunted on village land, namely (village name) without serving certified copy of the said written authorization to the village council, district wildlife officer or authorisation association.</b>			

VERSION No.4 (February 2018)

<b>OFFENCE</b>			
<b>s.57(4)(5)(b) WCA hunting on private land without serving notice on occupiers</b>			
<b>PENALTIES</b>			
<b>Fine: no less than twice the value of the animal (minimum) AND/OR Imprisonment: 6 months - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting or capturing.</b>	“ hunting” includes any act directed or incidental to the killing of any animal;“capture” includes any act directed at the taking of any animal, nest or egg.	Eye witness(es), wildlife officer(s), locus in quo inspection with photographic evidence where possible and a sketch/map, confessional statement, Certificate of Seizure for any instrumentalities or evidence, with chain of custody paper trail.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>2. any animal</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Certificate of Seizure of hunted or captured. Chain of custody paper trail. Trophy Valuation Certificate.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>3. on private land</b>	Not including zoos, wildlife farms, game sanctuaries, orphanage centres or similar establishments.	Proof of ownership or occupancy of land. Occupier testimony. Sketch plan of the scene of crime to be drawn by police officer showing that the incident occurred on the land occupied under a right of occupancy or derivative right, GPS if possible.	
<b>4. holder of licence, permit or written authority issued or granted under WCA BUT</b>	Served certified copy on occupier of such land? S.57(3) requirement, does not need consent of occupier.	Licence	
<b>5. without serving a certified copy on the occupier of the land</b>		Occupier of land as witness.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful hunting on land occupied under a right of occupancy or derivative right contrary to section 57(1),(4) and (5)(b) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) being the holder of written authorization (No. of Permit) issued by the Director of Wildlife hunted on land occupied under a right of occupancy No.(Title No.) without serving certified copy of the said written authorization to the owner of such land.</b>			

<b>OFFENCE</b>			
<b>s.57(4)(5)(b) WCA obstructing authorized person from hunting or capturing animal</b>			
<b>PENALTIES</b>			
<b>Fine: no less than twice the value of the animal (minimum) AND/OR Imprisonment: 6 months - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. The owner of any private land.</b>	"owner" in relation to any land means the person holding or deemed by any written law to be holding a right of occupancy over the land and includes a lessee, a mortgagee in possession and any person authorized by the owner, lessee or mortgagee to act on his behalf or in his absence;	Proof of ownership - Land Registry. Confessional statement.	
<b>2. Served with a certified copy of a written authorisation to hunt or capture animals on private land</b>		Licence, permit or written authority. Certified copy which was served - or receipt of service if any. Hunter who was obstructed (testimony). Eye witnesses.	
<b>3. obstructs the person so authorised</b>		Eye witness(es) testimony, complainant. Wildlife officer, investigating officer. Crime scene report, sketch/plan and photographs if relevant.	
<b>STATEMENT OF OFFENCE</b>			
<b>Obstructing authorized person from hunting or capturing animal contrary to section 57(4) and (5)(b) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) being the owner of land occupied under a right of occupancy No.(Title No.) and having being served with certified copy of written authorisation (No. of Permit) issued by the Director of Wildlife, obstructed by (describe act) (name of complainant) who was authorised to hunt or capture any animal on such land under that written authorisation.</b>			



<b>OFFENCE</b>			
<b>s.60 WCA unauthorised transfer of permit, written authority or licence</b>			
<b>PENALTIES</b>			
<b>Fine: not less than 5m sh and/or Imprisonment: 1 - 5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. transfer or assignment to any other person.</b>	“Transfer” (verb) means:-1. To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of. 2. To sell or give. (Black’s law Dictionary)	Wildlife officer(s), eye witnesses. Interview of the suspect(s) including the transferee within four hours after arrest.	Prosecutor must guide the Director to apply ancillary powers such as suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the Wildlife Conservation Act, no. 5 of 2009
<b>2. any licence, permit or other written authority held in his name</b>		All documentation related to issue of the respective licence, permit or written authority from Director of Wildlife. Seizure of the transferred licence, permit or written authority.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>3. no written authority to do so from the Director</b>		Burden of proof shifted to accused to prove permit	Be prepared to investigate fraudulent permission if produced
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful transfer of licence contrary to section 60(1) &amp; (4) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (place) being the holder of licence/permit/written authority (No. of Permit) transferred the said licence to (Name of the Transferee) without written authority of the Director of Wildlife.</b>			

<b>OFFENCE</b>			
<b>s.61 WCA failure to carry out licence requirements</b>			
<b>PENALTIES</b>			
<b>Fine: 5m sh - 1m sh and/or Imprisonment: 2 - 5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Holder of a licence, permit or written authority.</b>		Permit. Wildlife Officer, issuing officer.	Prosecutor must guide the Director to apply ancillary powers such as suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the Wildlife Conservation Act, no. 5 of 2009
<b>2. failure to EITHER (a) carry the licence, permit or written authority when exercising its rights OR (b) record in Kiswahili or English in the space provided all of the relevant details of all animals killed, wounded or captured OR (c) surrender the permit, licence or written authority within 30 days after expiry OR sign a declaration certifying the accuracy of the record before a licensing officer OR fails to surrender the same when departing from the country area where it was issued.</b>	“Carry” means to have on one’s person wherever one goes. “Record” means a piece of evidence about the past, especially a written or other permanent account of something. “Surrender” means to give up (a person, right, or possession) on compulsion or demand. (Black’s Law Dictionary)	Wildlife Officer. Licensing Officer. Permit and details records therein, certificate of seizure and chain of custody records.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Record must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>STATEMENT OF OFFENCE</b>			
<b>Failure to carry licence/permit/written authority contrary to section 61(1)(a) and (3) of the Wildlife Conservation Act, No. 5 of 2009. OR Failure to record details of animals killed/wounded/captured contrary to section 61(1)(b) and (3) of the Wildlife Conservation Act, No. 5 of 2009 OR Failure to surrender licence/permit/written authority contrary to section 61(1)(c) and (3) of the Wildlife Conservation Act, No. 5 of 2009 OR Failure to surrender licence/permit/written authority contrary to section 61(1)(c) and (3) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) being the holder of licence/permit/written authority (No. of Permit) and while exercising the rights conferred therein failed to carry such licence/permit/written authority. OR failed to record in the said licence/permit/written authority relevant details of animal(s) killed/ wounded/captured. OR which expired on (date of expiry), failed to surrender the said licence/permit/written authority to the licensing officer who issued it. OR failed to surrender the said licence/permit/written authority to the licensing officer who issued it when departing from the country or area where it was issued (details).</b>			

VERSION No.4 (February 2018)

<b>OFFENCE</b>			
<b>s.63 WCA failure to take necessary steps on accidental killing</b>			
<b>PENALTIES</b>			
<b>Fine: not less than twice the value of the animal AND/OR Imprisonment: "not less than one year but not exceeding two months". Note: mixed up language for imprisonment.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. killing by accident or error.</b>	"Accident"- means an unfortunate incident that happens unexpectedly and unintentionally. (Black's Law Dictionary) S.63(2) not deemed to be an accident if by a holder of a hunting licence covering an animal of that species.	Hunting license if any. Once proof killed animal, burden of proof on accused to show accident or error as presumption if animal wounded or killed it was done intentionally to hunt. s.75 WCA.	Prosecutor must move the court to forfeit subject matter of the offence including instrumentalities. Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the Wildlife Conservation Act, no. 5 of 2009 . Consider instrumentalities- other potential offences e.g. possession of firearm, etc.
<b>2. of a animal specified in any of the Schedules to WCA</b>	"animal"- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Eye witness(es), Wildlife Officer (testimony and report), scene of crime report with sketch/map and photographs. Certificate of Seizure of the animal hunted, killed, wounded. Valuation of the animal, Certificate Trophy Value. Expert or Forensic evidence as to animal and cause of death.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>3. failure to EITHER (a) remove from any such animal any skins, ivory, horn, tooth or any other trophy AND/OR (b) report the fact and circumstances to the nearest wildlife officer, ranger, warden, park warden or ranger, or village game scout within 3 working days AND/OR (c) hand over to such officer any trophy removed from the animal AND/OR (d) show the officer the place or site where the animal was killed when requested.</b>	"horn" includes rhinoceros horn. "ivory" means elephant tusk. "trophy" means any animal alive or dead, and any horn, ivory, tooth, tusk, bone, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal and includes a manufactured trophy. "wildlife officer" means a wildlife officer, wildlife warden and wildlife ranger engaged for the purposes of enforcing this Act.	Eye witness(es), wildlife officer(s) to testify that the accused failed to follow such required steps. Locus in quo inspection with sketch map and photographic evidence where possible. Interview of the suspect within four hours after arrest. Important to establish timeframes - expert forensic evidence re animal, cause and timing of death.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>STATEMENT OF OFFENCE</b>			
Failure to remove trophy from animal killed by accident contrary to section 63(1)(a) and (3) of the Wildlife Conservation Act, No. 5 of 2009. OR Failure to report killing of animal by accident contrary to section 63(1)(b) and (3) of the Wildlife Conservation Act, No. 5 of 2009. OR Failure to have over trophies from an animal killed by accident contrary to section 63(1)(c) and (3) of the Wildlife Conservation Act no.5 of 2009. OR Failure to show the place where animal was killed by accident contrary to section 63(1)(d) and (3) of the Wildlife Conservation Act, No. 5 of 2009.			
<b>MODEL CHARGES</b>			
(Name of Accused) on the (date) at (place) having killed an animal namely (Name of animal) valued at (Insert value) by accident then failed to remove from such animal a skin/ivory/horn/tooth/trophy. OR (Name of Accused) on the (date) at (place) having killed an animal namely (Name of animal) valued at (Insert value) by accident then failed to report the fact and circumstances of such killing to the nearest wildlife officer/wildlife warden/wildlife ranger/park warden/park ranger or village game scout within three working days. OR (Name of Accused) on the (date) at (place) having killed an animal namely (Name of animal) valued at (Insert value) by accident then failed to hand over trophies removed from that animal to the nearest wildlife officer/wildlife warden/wildlife ranger/park warden/park ranger or			

VERSION No.4 (February 2018)

village game scout within three working days. OR (Name of Accused) on the (date) at (place) having killed an animal namely (Name of animal) valued at (Insert value) by accident then failed to show officer/wildlife warden/wildlife ranger/park warden/park ranger or village game scout the place or site where the animal was killed.

<b>OFFENCE</b>			
<b>s.64(2) WCA use of prohibited weapons to hunt</b>			
<b>PENALTIES</b>			
<b>Fine: not less than twice the value of the animal hunted AND/OR Imprisonment: 1 - 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. hunting.</b>	“ hunting" includes any act directed or incidental to the killing of any animal;	Eye witness(es), wildlife officer(s), Locus in quo inspection with photographic evidence where possible and a sketch/map. Confessional statement of the suspect. Certificate of seizure for any instrumentalities or evidence, with chain of custody paper trail. Once proof wounded or killed animal, presumption intentionally hunting. s.75 WCA.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF, Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>2. by means of any weapon prescribed under a GN Order made under s.64(1) WCA</b>	“weapon”- means any firearm, ammunition, dart-gun, missile, explosive, poison, poisoned bait, spear, bow and arrow, knife, axe, hoe, pick, club, stakes, pitfall, net, gin, trap, snare or any combination of these and any other device, method and or technology whatsoever capable of killing or capturing an animal; See GN Order.	GN order. Eye witnesses (testimony), wildlife officer, investigating officer, scene of crime report with sketch, inventory and photographs, expert forensic report on cause of death if necessary and possible. Weapon, certificate of seizure and chain of custody records.	
<b>3. any animal(s) or classes of animals for which that weapon is prescribed or not authorised</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Certificate of Seizure of hunted or captured. Chain of custody paper trail. Trophy Valuation Certificate. Forensic expert evidence if necessary and possible.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>STATEMENT OF OFFENCE</b>			
<b>Use of prohibited weapon(s) in hunting contrary to section 64(1), GN Order No.(x) and s.64(2) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (place) hunted an animal (identify species) by means of a prohibited weapon by virtue of section 64(1) of Wildlife Conservation Act 2009.</b>			

<b>OFFENCE</b>			
<b>s.65(1)(a) WCA use of unlawful hunting methods</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years. If hunted or killed animal: fine not less than twice the value of the animal hunted or killed.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. For the purposes of hunting any animal.</b>	"animal" means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals; "hunting" includes any act directed or incidental to the killing of any animal;	Circumstances which raise a reasonable presumption for hunting, including proximity to game reserve, animals, hideout or in possession of other items for hunting, capturing, etc. Wildlife officer (testimony and report), crime scene report, inventory, sketch and photographs.	
<b>2. Use any of the following methods: (a)(i) any mechanically propelled vehicle (ii) any poison, bait, poisoned bait, poisoned weapon, stakes, net, gin, trap, set gun, pitfall, missile, explosives, ball ammunition, snare, hide, spear, fence or enclosure; (iii) a dog or any domesticated animal; (iv) any automatic or semi automatic firearm capable of firing more than one cartridge as a result of one pressure of the trigger or of reloading itself more than once without further action by the operator; (v) any device capable of reducing or designed to reduce the sound made by the discharge of any firearm; (vi) any artificial light or flare, night vision devices; or (vii) any anaesthetic dart capable of immobilisation;</b>	"mechanically propelled vehicle" means all vehicles, including watercraft and aircraft, which receive their motive power from internal combustion, steam, reaction or electrical propulsion.	Eye-witness(es) (testimony), wildlife officer (testimony and report), crime scene report with sketch-maps, inventories and photographs, seized instrumentalities and weapons with certificates of seizure, chain of custody records. Expert evidence (ballistics, firearms, poisons) Confessional statement.	Consider additional or alternative charges, for example, FACA. Consider management of any dangerous or live seized instrumentalities - e.g. poison or dogs. Consider forensic/lab testig if necessary.
<b>3. without the written authority of the Director previously sought and obtained or not in accordance with regulations made under WCA.</b>		Burden of proof shifted to accused to prove lawful	Be prepared to investigate fraudulent licence or permit if produced
<b>STATEMENT OF OFFENCE</b>			
<b>Using an unlawful method of hunting, contrary to s.65(1)(a) and s.61(5) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date), at (identify location), for the purpose of hunting an animal (name animal/species), used an unlawful method, namely; (identify and give brief particulars).</b>			

<b>OFFENCE</b>			
<b>s.65(1)(b) WCA unlawful causing fire during hunting</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years. If hunted or killed animal: fine not less than twice the value of the animal hunted or killed.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Causing fire.</b>	"cause" means something that produces an effect or result. (Blacks Law Dictionary)	Eye witness(es), wildlife officer(s), Locus in quo inspection with photographic evidence where possible. Any seized firelighting items with certificate of seizure and chain of custody records. Interview of the suspect within four hours after arrest.	
<b>2. in the process of hunting any animal</b>	"animal" means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals; "hunting" includes any act directed or incidental to the killing of any animal;	Eye witness testimony or circumstances which raise a reasonable presumption hunting, including proximity to game reserve, animals, hideout or in possession of other items for hunting, capturing, etc. Wildlife officer (testimony and report), crime scene report, inventory, sketch and photographs.	
<b>3. No written permission of the Director</b>		Burden of proof shifted to accused to prove lawful	Be prepared to investigate fraudulent licence or permit if produced
<b>STATEMENT OF OFFENCE</b>			
<b>Causing fire during hunting contrary to section 65(b) and (5) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place/Game Reserve) while in the process of hunting caused fire in the said (Name of Game reserve).</b>			

<b>OFFENCE</b>			
<b>s.65(1)(c) WCA hunting near a waterhole, pool or salt-lick or during the hours of darkness</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years. If hunted or killed animal: fine not less than twice the value of the animal hunted or killed.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Hunting.</b>	"hunting" includes any act directed or incidental to the killing of any animal;	Eye witness(es), wildlife officer(s), locus in quo inspection with photographic evidence where possible and a sketch/map, confessional statement. Certificate of seizure for any instrumentalities or evidence, with chain of custody paper trail. See s.75 if prove wound or kill, assume intentionall hunting, unless accused can show otherwise	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>2. any animal</b>	"animal"- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Certificate of Seizure of hunted or captured. Chain of custody paper trail. Trophy Valuation Certificate. Forensic expert evidence if necessary and possible.	Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.
<b>3. (c)((i) from any mechanically propelled vehicle or within two hundred metres of such vehicle, except when hunting birds in water; (ii) (other than a hippopotamus, otter, sitatunga, puku, crocodile, water-buck or bird) within 500m of permanent water, wateringhole, pool or salt-lick OR (iii) within 1km of same within an national park a zoo, game sanctuary, the Ngorongoro Conservation Area or an aerodrome; (iv) OR during hours of the darkness.</b>	"mechanically propelled vehicle" means all vehicles, including watercraft and aircraft, which receive their motive power from internal combustion, steam, reaction or electrical propulsion; "Hours of darkness"- means the period commencing at 6.30 p.m. on any day and expiring at 5.30 a.m. on the following day. "Aerodrome" means a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft; "Zoo" means a place where wild animals are kept in captivity for recreation, research and educational purposes. "Game sanctuary" means a place where wild animals are reared in captivity in a natural state, primarily for educational and recreational purposes;	Eye witness(es), wildlife officer, investigating officer, crime scene report with sketch/map, inventory and photographs where possible. For location/distance: Wildlife officer. Crime scene report with sketch/map and location (GPS if possible). Map showing location of prohibited place. Car pedometer, measured on map - investigator testimony or report.	
<b>4. No written permission of the Director previously sought and obtained</b>		Burden of proof shifted to accused to prove lawful	Be prepared to investigate fraudulent licence or permit if produced
<b>STATEMENT OF OFFENCE</b>			



**Unlawful methods of hunting contrary to section 65(c)(i)/(ii) and (5) of the Wildlife Conservation Act, No. 5 of 2009 OR Hunting during hours of darkness contrary to section 65(c)(iii) and (5) of the Wildlife Conservation Act, No. 5 of 2009.**

**MODEL CHARGES**

**(Name of Accused) on the (date) at (place/Game Reserve) hunted animal(s) (Type of animal) valued at (Insert value) within 500 metres of a permanent water/pool/waterhole/salt-lick OR 1km of a national park pool/waterhole/salt-lick OR (Name of Accused) on the (date) at (place/Game Reserve) hunted animal(s) (Type of animal) valued at (Insert value) at (Insert time).**

<b>OFFENCE</b>			
<b>s.65(2)(a) WCA camping near an aerodrome</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years. If hunted or killed animal: fine not less than twice the value of the animal hunted or killed.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. for the purposes of hunting or while on hunting trip.</b>	" hunting" includes any act directed or incidental to the killing of any animal;	Eye witnesses or circumstance which indicating hunting - location, items in their possession, hunting paraphernalia -seized items, certificates of seizure and chain of custody records.	
<b>2. camps within a kilometer of an aerodrome</b>	"Aerodrome" means a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;	Wildlife officer. Crime scene report with sketch/map and location (GPS if possible). Map showing location of aerodrome.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful activity during hunting contrary to section 65(2)(a) and (5) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place/Game Reserve) for the purposes of hunting or during hunting camped within a kilometer of an aerodrome.</b>			

<b>OFFENCE</b>			
<b>s.56(2)(b)-(d) WCA drags cuts displays throws dead animal</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years. If hunted or killed animal: fine not less than twice the value of the animal hunted or killed.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. drags, cuts, displays any dead animal</b> .	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Eye witness(es), wildlife officer(s), locus in quo inspection with sketch/map, inventory and photographic evidence where possible. Interview of the suspect within four hours after arrest. Seizure of the animal hunted or killed, certificate of seizure and chain of custody records. Valuation of the animal.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Trophy Valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the WCA, No. 5 of 2009
<b>2. in the vicinity of any lodge, hotel, zoo or camp frequented by visitors;</b>	Zoo" means a place where wild animals are kept in captivity for recreation, research and educational purposes.	Wildlife officer. Crime scene report with sketch/map and location (GPS if possible). Map showing location of aerodrome.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful activity during hunting contrary to section 65(2)(c)/(d) and (5) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on the (date) at (place) dragged/cut/displayed a dead (animal) in the vicinity of the (name of place) lodge/hotel/zoo, camp which is frequented by visitors.</b>			

<b>OFFENCE</b>			
<b>s.65(2)(c) WCA throwing carcasses in prohibited places</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years. If hunted or killed animal: fine not less than twice the value of the animal hunted or killed.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. throw any animal carcass.</b>	“animal”- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Eye witness(es), wildlife officer(s), locus in quo inspection with sketch/map, inventory and photographic evidence where possible. Interview of the suspect within four hours after arrest. Seizure of the animal hunted or killed, and chain of custody records. Valuation of the animal.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the dead animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the WCA, No. 5 of 2009
<b>2. into any permanent water, pool, water-hole, salt-lick or any place commonly used by animals as resting place;</b>	No further definitions or guidance given.	Wildlife officer. Crime scene report with sketch/map and location (GPS if possible). Map showing location of water feature.	
<b>STATEMENT OF OFFENCE</b>			
<b>Throwing an animal carcass into any animal watering or resting place contrary to s.65(2)(c) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) threw the carcass of (name animal) into (place), a permanent water/watering hole, salt-lick/resting place commonly used by animals.</b>			

<b>OFFENCE</b>			
<b>s.65(2)(d) WCA leaving carcass in prohibited places</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years. If hunted or killed animal: fine not less than twice the value of the animal hunted or killed.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. leaves any animal carcass.</b>	"animal"- means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals.	Eye witness (testimony). Wildlife officer.Scene of Crime Report, with sketch/map, inventory and photographs where possible. Seized animal carcass and certificate of seizure with chain of custody records. Certificate of value.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the dead animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of WCA.
<b>2. within two kilometers of any aerodrome or a kilometer of any public road, lodge, hotel, game sanctuary, wildlife farm or zoo;</b>	"Zoo" means a place where wild animals are kept in captivity for recreation, research and educational purposes. "Game sanctuary" means a place where wild animals are reared in captivity in a natural state, primarily for educational and recreational purposes; "Aerodrome" means a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;	Wildlife officer. Crime scene report with sketch/map and location (GPS if possible). Map showing location of aerodrome.	
<b>STATEMENT OF OFFENCE</b>			
<b>Leaving an animal carcass within [2km of an aerodrome/1km of any public road, lodge, hotel, game sanctuary, wildlife farm or zoo] contrary to s.65(2)(d) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on the (date) at (location) left the carcass of (animal) within [&lt;2km of (name) aerodrome/&lt;1km of the public road (no./name)/(name of) lodge/hotel/game sanctuary/wildlife farm or zoo (address or location).</b>			

<b>OFFENCE</b>			
<b>s.65(2)(e) WCA leaves residue of hunting</b>			
<b>PENALTIES</b>			
<b>Fine: 1m - 2m sh AND/OR Imprisonment: 1-3 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. leaves litter, refuse, unburnt trophy, drying racks or burning fire OR leaves in a state likely to constitute a danger to the public or animal health.</b>	"trophy" means any animal alive or dead, and any horn, ivory, tooth, tursh, bone, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal and includes a manufactured trophy.	Eye witness, wildlife officer, crime scene report with sketch/map, inventory and photographs if possible. Seizure of hunting paraphenalia/instrumentalities, with certificates of seizure and chain of custody records. Confessional statement.	
<b>2. on any hunting site</b>		Wildlife officer, scene of crime report with photographs showing hunting paaraphenalia or other circumstances indicating use for hunting. Confessional statement. Eye witnesses.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful activity during hunting contrary to section 65(2)(e) and (5) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place/Game Reserve) having hunted left on the said game reserve litter/refuse/unburnt trophy/drying racks/burning fire/ or left the said hunting site in a state likely to constitute a danger to the public or animal health.</b>			

<b>OFFENCE</b>			
<b>s.67(2) WCA Failure to disclose grounds for disqualification</b>			
<b>PENALTIES</b>			
<b>Imprisonment: 1-3 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Conviction for an offence under WCA,NCAA,NPA or any other written law applicable in any other country and designed for the protection and conservation of wildlife in that country OR a cancelled or suspended licence, permit, written permission. .</b>		Wildlife officer(s), Interview of the suspect within four hours after arrest. Seizure of the licence, permit or written authority. All documentation related to issue of the respective licence, permit or written authority from Director of Wildlife. Proof of conviction and/or licence suspension or cancellation.	Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the Wildlife Conservation Act, no. 5 of 2009
<b>2. an application for a licence, permit or written permission or authority</b>		Application Form, licensing officer	
<b>3. failure to inform the Director or any wildlife officer or licensing officer that he is disqualified by virtue of 1.</b>	“Disqualification” means 1. Something that makes one ineligible 2. state of being ineligible for an office or activity because of an offence or infringement. (Black's Law Dictionary.)	Application Form, licensing officer	
<b>STATEMENT OF OFFENCE</b>			
<b>Failure to disclose disqualification in licence application contrary to section 67(2) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) having being convicted of an offence of (Type Offence and Law), failed to disclose such information to Director of Wildlife when making an application or request for licence/permit/written permission.</b>			

<b>OFFENCE</b>			
<b>s.68 WCA contravening the terms of any licence or permit issued under the Act</b>			
<b>PENALTIES</b>			
<b>Fine: 1 - 5m sh AND/OR Imprisonment 3-5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. holder of any licence, permit, written permission or written authority.</b>		Licence, permit or written authority. Licensing or issuing authority	Note: this overlaps with all offences which are about exceeding or violating terms of permits/licences, etc. And the sentencing range is higher than most of the other offences.
<b>2. contravene its terms or conditions</b>		Eye witness, wildlife officer, crime scene report with sketch/map, inventory and photographs if possible. Seizure of instrumentalities, with certificates of seizure and chain of custody records. Confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Contravention of the conditions or terms of a permit/licence/written permission or authority contrary to s.68(2) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location), being the holder of licence/permit/written authority/written permission (No.) dated (date) issued by (authority/entity) contravened the conditions and terms by (describe material elements of contravention).</b>			



<b>OFFENCE</b>			
<b>s.72 WCA Failure to comply with requirements on wounding a dangerous animal</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000sh - 5m sh AND/OR Imprisonment: 6 months - 3 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. wounds and fails to kill.</b>	"Wound"- means an injury to living tissue caused by a cut, blow, or other impact.	Confessional statement. Eye witnesses. Expert evidence (ballistics, fingerprints). Wildlife Officer. Seized hunting items from accused, certificates of seizure and chain of custody records. Arrest report if relevant.	If no licence or permit, consider what other offences have been committed under the WCA. If firearms involved, FACA offences?
<b>2. a dangerous animal</b>	"dangerous animal" means any animal specified in the Fourth Schedule.	Wildlife Officer. If dead, crime scene report with sketch/map, inventory and photographs where possible.	If person wounding the animal has hunting licence, reported and did all he could to kill the wounded animal, he is entitled to the trophies (4).
<b>3. (2) fails to report the wounding to the nearest wildlife officer, forest officer, park warden, village game scout or conservator</b>	(3) shall specify the species, date, time and place of the wounding, the nature of the wound, the efforts made to kill the animal and such other information as may assist in locating	Wildlife officer, scene of crime report with photographs. Confessional statement.	Where is the nearest officer from where the wounding happened? What if not clear where wounding happened?
<b>4. OR (1) if the wounded animal enters a game controlled area, game reserve, marine park, forest reserve, national park, Wildlife Management Area or the Ngorongoro Conservation Area, failure to report such entry to the nearest wildlife officer, forest officer, park warden, village game scout or conservator</b>	" such officer shall take all necessary measures to assist such person in killing the animal." Also see requirements of 72(4)(a) every endeavour to kill it - in order to get the trophies from it. And the different language between (1) and (2).	Eye witness(es). Confessional statement. Wildlife Officer. If dead, scene of crime report with sketch, inventory and photographs if possible. Location and GN declaration and plan of area.	Where is the nearest officer from where the entry happened? What if not clear where entry happened?
<b>5. AND/OR (implied) fails to work with officer to kill the animal in relation to entry into one of those areas.</b>			
<b>STATEMENT OF OFFENCE</b>			
<b>Failure to comply with the requirements on wounding a dangerous animal contrary to section 72(1)/(2) and (5) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
(Name of Accused) on the (date) at (place) having wounded a dangerous animal (Insert name of animal) failed to report such incident to the nearest wildlife officer, forest officer, park warden, village game scout or conservator. OR (Name of Accused) on the (date) at (place) having wounded a dangerous animal (name of animal from 4th Schedule) which then entered (name),[a game controlled area, game reserve, marine park, forest reserve, national park, Wildlife Management Area or the Ngorongoro Conservation Area], failed to report that entry to the nearestnearest wildlife officer, forest officer, park warden, village game scout or conservator [and failed to assist that officer to kill the animal.]			

<b>OFFENCE</b>			
<b>s.73 WCA failure to comply with requirements upon killing dangerous animal in self defence</b>			
<b>PENALTIES</b>			
<b>Fine: not less than 500,000 sh - 5m sh AND/OR Imprisonment: 2 - 5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. kills in self defence.</b>	“Self-defence” means.1. The use of force to protect oneself, one's family, or one's property from a real or threatened attack. • Generally, a person is justified in using a reasonable amount of force in self-defence if he or she believes that the danger of bodily harm is imminent and that force is necessary to avoid this danger (Black's Law Dictionary). QUALIFICATIONS in s.73(2) NOT if- (a) the behaviour of the animal necessitating such killing is the result of molestation or deliberate provocation by or with the knowledge of the person killing such animal; or (b) the person killing such animal or the person whose life is being defended was, when such defence became necessary, committing an act which constitutes an offence under WCA;	Confessional statement. Eye witnesses. Expert evidence and reports (ballistics, fingerprints, cause of death, etc.). Wildlife Officer. Seized hunting items from accused, certificates of seizure and chain of custody records. Arrest report if relevant. Once proof killed animal, burden of proof on accused to show self defence as presumption if animal wounded or killed it was done intentionally to hunt. s.75 WCA.	(c) nothing in this section shall be deemed to authorize- (i) the use of stakes in pitfalls, snare or of any other method which is likely to result in undue cruelty to animals or to endanger human life; or (ii) the owner or occupier of any property adjoining any conservation area to hunt in such area without the previous consent in writing of the appropriate officer of such conservation area; or(iii)the killing of any national game without the written authority ofthe Director previously sought and obtained.
<b>2. a dangerous animal</b>	"dangerous animal" means any animal specified in the Fourth Schedule.	Wildlife Officer. Crime scene report with sketch/map, inventory and photographs where possible. Seizure of the animal hunted or killed. Valuation of the animal.	
<b>3. fails to do ANY of the following: remove from such an animal any skin, ivory, horn, tooth or any other trophy; OR report the fact and circumstances of such killing to the nearest wildlife officer, forest officer, park warden, village game scout or conservator; OR hand over to such officer any trophy removed from such animal; OR show the officer the damage caused and place of such killing</b>		Eye witness(es), wildlife officer(s) to testify that the accused failed to follow such required steps. Locus in quo inspection with photographic evidence where possible. Interview of the suspect within four hours after arrest. Expert evidence (forensics - condition and what had or had not been removed from the carcass) seized trophies, certificates of seizure and chain of custody records.	Where is the nearest wildlife officer?
<b>STATEMENT OF OFFENCE</b>			
Failure to comply with requirements on killing animal in self defence contrary to section 73(3)[(a)-(d)] and (5) the Wildlife Conservation Act, No. 5 of 2009.			
<b>MODEL CHARGES</b>			

VERSION No.4 (February 2018)

(Name of Accused) on the (date) at (place) having killed an animal namely (Name of animal) valued at (Insert value) by in self defence failed to [remove from such animal skin/ivory/horn/tooth/trophy. OR report the fact and circumstances of such killing to the nearest wildlife officer/wildlife warden/wildlife ranger/park warden/park ranger or village game scout. OR show officer/wildlife warden/wildlife ranger/park warden/park ranger or village game scout the place or site where the animal was killed.]

<b>OFFENCE</b>				
<b>s.79(1) WCA possession of trophy without registration</b>				
<b>PENALTIES</b>				
<b>Fine: not less than twice the value of the trophy and/or Imprisonment: 1 - 5 years.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. possession of (and when acquired)</b>	<p>"Possession" means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object.</p> <p>"Actual possession" means physical occupancy or control over property</p> <p>"Constructive possession" means control or dominion over a property without actual possession or custody of it.</p>	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eye witness(es). Wildlife Officer. Arresting Officer and arrest report. Interview of the suspect within four hours after arrest. Seizure of the trophy, certificate of seizure and chain of custody.	Entitled to acquittal if less than 90 days between Must be more than 90 days between his acquiring the item and the seizure of the trophy/institution of proceedings – whichever comes first.
<b>2. of a trophy or manufactured trophy</b>	<p>"Trophy" means ivory, rhinoceros horns, hippopotamus tooth, animal tation turshes, animal horns and skin of any game animal. "Manufactured trophy" means any article made from any trophy or from any tooth, tusk, horn, bone, claw, hoof, hair, feather, egg or any other portion of any animal. [BUT SEE s.3 definition "manufactured trophy" means any article made either wholly or partly, of or from any durable part of an animal by subjecting such part to any chemical or mechanical process, tanning, sewing or other process whatsoever; And earlier definition of trophy used in other sections: "trophy" means any animal alive or dead, and any horn, ivory, tooth, tursh, bone, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal and includes a manufactured trophy.]</p>		Seizure of the trophy, certificate of seizure and chain of custody. Scene of Crime report with sketch/map, inventory and photographs if possible. Expert Report (identifying species if necessary).	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prosecutor must move the court to forfeit subject matter of the offence including instrumentalities. Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the WCA, No. 5 of 2009.
<b>3. without holding a registraion certificate for the trophy.</b>			Wildlife officer to testify that the accused had no certificate of registraion inspection	Defence if since commencement of proceedings he has lawfully obtained a certificate of registration.
<b>STATEMENT OF OFFENCE</b>				
Possession of trophy without certificate of registration contrary to section 79(1) the Wildlife Conservation Act, No. 5 of 2009.				

**MODEL CHARGES**

(Name of Accused) on the (date) at (place) was found in possession of (type of trophy) valued at (value of trophy) without a certificate of registration.

<b>OFFENCE</b>			
<b>s.79(2) WCA transfer of trophy for which no certificate of registration exists</b>			
<b>PENALTIES</b>			
<b>Fine: not less than twice the value of the trophy AND/OR Imprisonment: 1-5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Transfer or acceptance of transfer.</b>		Eye witness(es), wildlife officer(s) to testify that the accused had transferred a trophy without having a certificate of registration inspection. Interview of the suspect within four hours after arrest. Record of transfer. Handwriting Examination Report.	IO may wish to send the record of transfer to Forensic Bureau to acquire Handwriting Examination Report. Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the WCA, No. 5 of 2009.
<b>2. of a trophy or manufactured trophy</b>	"Trophy" means ivory, rhinoceros horns, hippopotamus tooth, animal turshes, animal horns and skin of any game animal. "Manufactured trophy" means any article made either wholly or partly, of or from any durable part of an animal by subjecting such part to any chemical or mechanical process, tanning, sewing or other process whatsoever.	Seizure of the trophy - exhibit, certificate of seizure and chain of custody records. Expert evidence if necessary to identify the species. Valuation of Trophy.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prosecutor must move the court to forfeit subject matter of the offence including instrumentalities.
<b>3. where a certificate of registration does not exist at the date of the transfer</b>		Wildlife officer to testify that the accused had no certificate of registration inspection	Be prepared to investigate fraudulent registration if produced
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful transfer of trophy contrary to section 79(2) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) being in possession of (type of trophy) valued at (value of trophy) without a certificate of registration, transferred the said trophy to (Name of transferee) OR (Name of the Accused) on the (date) at (place) accepted the transfer from (transferor) of (type of trophy) valued at (value of trophy) which did not have a certificate of registration at the time of transfer.</b>			

<b>OFFENCE</b>			
<b>s.79(3) WCA transfer of a trophy without registration</b>			
<b>PENALTIES</b>			
<b>A fine not less than twice the value of the trophy or manufactured trophy or imprisonment for a term not less than one year but not exceeding three years or to both.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. transfer or acceptance of transfer.</b>		Eye witness(es), wildlife officer(s) to testify that the accused had transferred a trophy without having a certificate of registration inspection. Interview of the suspect within four hours after arrest. Record of transfer. Handwriting Examination Report.	IO may wish to send the record of transfer to Forensic Bureau to acquire Handwriting Examination Report. Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of licence, permit, written permission or other written authority u/s 66 of the WCA, No. 5 of 2009
<b>2. of a trophy or manufactured trophy</b>	"Trophy" means ivory, rhinoceros horns, hippopotamus tooth, animal turshes, animal horns and skin of any game animal. "Manufactured trophy" means any article made from any trophy or from any tooth, tusk, horn, bone, claw, hoof, hair, feather, egg or any other portion of any animal.	Seizure of the trophy - exhibit, certificate of seizure and chain of custody records. Expert evidence if necessary to identify the species. Valuation of Trophy.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary. Prosecutor must move the court to forfeit subject matter of the offence including instrumentalities.
<b>3. without handing over or obtaining the certificate of registration in respect of the transfer</b>		Wildlife officer to testify that the accused had no certificate of registration inspection	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful transfer of trophy contrary to section 79(3) of the Wildlife Conservation Act, No. 5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) being in possession of (type of trophy) valued at (value of trophy) transferred the said trophy to (Name of transferee) without handing over the certificate of registration for that trophy. OR (Name of Accused) on the (date) at (place) accepted the transfer from (transferor) of (type of trophy) valued at (value of trophy) without obtaining the certificate of registration for that trophy.</b>			

<b>OFFENCE</b>			
<b>s.84 WCA Buying, selling, transferring, transporting, accepting, importing or exporting trophies [See also s.80 dealing, s.81 transfer, s.82 export, s.83 import]</b>			
<b>PENALTIES</b>			
<b>Fine: not less than twice the value of the trophy AND/OR Imprisonment: 2 - 5 years. *EOCCA s.60(2) plus First Schedule para.14(b) penalty 20-30 years imprisonment.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. sold, bought, transferred, transported, accepted, exported or imported in contravention of ss.80-83 WCA.</b>		Eye witness(es). Wildlife Officer. Arresting Officer and arrest report. Interview of the suspect within four hours after arrest. Transaction records (documents, witnesses). Customs officer if import/export, custom records.	EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold. S.3(3)(a) EOCCA and para.14.
<b>2. a trophy or manufactured from a trophy</b>	"Trophy" means ivory, rhinoceros horns, hippopotamus tooth, animal turshes, animal horns and skin of any game animal. "Manufactured trophy" means any article made from any trophy or from any tooth, tusk, horn, bone, claw, hoof, hair, feather, egg or any other portion of any animal.	Seizure of the trophy, certificate of seizure and chain of custody. Exhibits officer. Customs Officer. Wildlife Officer/expert evidence to identify.	CHECK WHETHER GOVERNMENT TROPHY - see ss.85-86. s.84(2) trophies shall be confiscated
<b>3. No valid Trophy Dealer's Licence (dealing) or transfer permit, or trophy export certificate of CITES permit or written authority for import</b>		wildlife officer to testify that the accused had nolicence.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful dealing in government trophies; Contrary to sections 80(1) [other sections for import/export/transfer] and 84(1) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(b) of the First Schedule and section 57(1) of the Economic and Organised Crime Control Act, [CAP 200 R:E 2002].</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place) sold/bought/transferred/transported/accepted/exported to (place)/imported from (place) [name of trophy(ies)] valued at (value of trophy) without trophy dealer's licence/trophy export certificate/transfer permit or CITES permit.</b>			



OFFENCE				
s.86 WCA Unlawful possession, buying, selling or dealing in government trophies				
PENALTIES				
For trophies from First Schedule Part I animals with a value of more than 100,000 sh, Fine: not less than ten times the value of the trophy AND/OR Imprisonment: 20-30 years.				
For trophies from First Schedule Part I animals with a value less than 100,000 sh, Fine: not less than twice the value of the trophy AND/OR Imprisonment: 5-15 years.				
For all other trophies with a value over 1m sh, Imprisonment: 20-30 years AND discretionary Fine: 10x the value of the trophy or fine not exceeding 5m, whichever is larger. [Note: Value of trophy has to be over 1m for this, so 10x is at least 10m Tsh. 5m max is never going to be the larger.				
Added in 2016: Other trophies of value between 100-00 - 999,999sh: imprisonment 10-20 years AND/OR fine not less than 3x value of trophy.				
For all other trophies under the value of 100,000 sh, Fine: not less than 2x value of trophy OR Imprisonment: 3-10 years.				
NOTE: for more than one trophy - aggregate value used, and sentence for Part I animal if at least one of the trophies from Part I animal.				
*EOCCA s.60(2) plus First Schedule para.14(b) penalty 20-30 years imprisonment.				
Elements to Prove	Definitions	Case Law	Potential Sources of Evidence	Associated Offences and other important issues to consider
<b>1. possession of, or buy, sell or otherwise deal in.</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property, “Constructive possession” means control or dominion over a property without actual possession or custody of it.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eye witness(es), wildlife officer(s), photographic evidence where possible, interview of the suspect.	EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold. S.3(3)(a) EOCCA and para.14. WCA s.100(2) presumption of "possession" if proven found in any building, premises or vessel, or any part of any building, premises or vessel occupied by the accused or his dependant, whether or not the accused was physically present when the trophy was found; or found in any vehicle, baggage, package or parcel in possession of or owned by the accused or over which the accused had control at the time.
<b>2. any government trophy.</b>	“Government trophy” means- (a) any animal which has been killed or captured without a license, permit, written permission or written authority granted under WCA, and any part of any such animal; (b) any animal which is found dead, and any part of any such animal; (c) any animal which has been killed in defence of life or property and any part of any such animal; (d) any trophy which is in the possession of any person who is unable to satisfy the Director that he lawfully acquired the same; (e) any trophy in respect of which a breach of the provisions of WCA has been committed; (f) any trophy which the Minister may, by order in the Gazette, declare to be Government trophy; (g) specimens		Eye witness(es), wildlife officer(s) confirming that the accused unlawfully dealt with government trophy. Confessional statement. Photographic evidence where possible. Certificate of Seizure of trophy and relevant documents. Chain of custody paper trail. Trophy Valuation Certificate. Identify species and which Part of First Schedule -may need Expert Evidence for this. Also have to show it is a Government Trophy in terms of s.85 definition - origin and circumstances of animal's death.	(if no evidence or ability to trace origin - consider (d) - burden of proof on accused to show lawfully acquired). AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.

VERSION No.4 (February 2018)

<p>originating from Tanzania exported or re-exported in contravention of the provisions of WCA and CITES implementation regulations; and (h) specimens re-exported or imported in contravention of the provisions of CITES which cannot be returned to the country of origin.</p>	<p>Trophy valuation Certificate must be prepared as soon as possible u/s 114 of WCA. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial u/s 101 of WCA whenever necessary.</p>
<p><b>3. No valid permit from the Director of Wildlife</b></p>	<p>See s.100(3) "the burden of proof that- (a) the possession of the Government trophy was lawful; (b) the sale, purchase or other transaction relating to the government trophy was lawful; (c) the accused had assumed possession of the trophy in order to comply with the requirements of sections 85 and 86; or (d) the trophy is not a Government trophy, shall lie on the person charged.</p>
<p style="text-align: center;"><b>STATEMENT OF OFFENCE</b></p> <p><b>Unlawful possession of/buying of/selling of/dealing in government trophies contrary to section 86(1)(2) and (3) of the Wildlife Conservation Act No. 5 of 2009 read together with Paragraph 14(d) of the First Schedule to, and section 57(1) of Economic and Organized Crime Control Act, [Cap. 200 R.E 2002].</b></p>	
<p style="text-align: center;"><b>MODEL CHARGES</b></p> <p><b>(Name of Accused) on the (date) at (place) was found in possession of/bought/sold/dealt in (type of trophy), valued at (value of trophy) the property of the United Republic of Tanzania, without a permit from the Director of Wildlife.</b></p>	

VERSION No.4 (February 2018)

<b>OFFENCE</b>				
s.87 WCA Failure to report unlawful possession of government trophy				
<b>PENALTIES</b>				
Fine:100,000 - 500,000 sh AND/OR Imprisonment: 12-18 months. *EOCCA s.60(2) plus First Schedule para.14(b) penalty 20-30 years imprisonment.				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Sees any government trophy in the possession of any person not authorised to possess a government trophy</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. “Government trophy” means- (a) any animal which has been killed or captured without a license, permit, written permission or written authority granted under WCA, and any part of any such animal; (b) any animal which is found dead, and any part of any such animal; (c) any animal which has been killed in defence of life or property and any part of any such animal; (d) any trophy which is in the possession of any person who is unable to satisfy the Director that he lawfully acquired the same; (e) any trophy in respect of which a breach of the provisions of WCA has been committed; (f) any trophy which the Minister may, by order in the Gazette, declare to be Government trophy; (g) specimens originating from Tanzania exported or re-exported in contravention of the provisions of WCA and CITES implementation regulations; and (h) specimens re-exported or imported in contravention of the provisions of CITES which cannot be returned to the country of origin.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eye witness(es), wildlife officer(s), Interview of the suspect.	Limited to "seeing" NOT KNOWING. Presumably aimed at customs officers, etc. Consider ABUSE OF OFFICE/POSITION, etc. instead. Further more, how can you tell it's a government trophy, rather than just a trophy by just looking - s.85 definition - alot to do with circumstances of death of animal or acquiring trophy. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold. S.3(3)(a) EOCCA and para.14.
<b>2. fails to report immediately such possession to the nearest wildlife officer/ warden/ ranger, park warden/ranger, police officer, and where required deliver trophy to them with details of person who (had been) in possession.</b>			Wildlife Officer	
<b>STATEMENT OF OFFENCE</b>				
Failure to report unauthorized possession of government trophy contrary to section 87(1) and (2) of the Wildlife Conservation Act No. 5 of 2009.				
<b>MODEL CHARGES</b>				
(Name of Accused) on the (date) at (place) having seen (type of trophy) which is part of an animal specified in the (Name relevant Schedule) valued at (value of trophy)[Needed? not an element of the crime or necessary for sentencing] which is a government trophy, in the possession of (Name of Possessor) who is unauthorized person, knowing or having reason to				

believe that such possession was unauthorised, failed to report immediately such possession to the nearest wildlife officer/wildlife warden/wildlife ranger/park warden/park ranger/police.

<b>OFFENCE</b>			
<b>s.95(7) WCA wildlife trade in violation of CITES</b>			
<b>PENALTIES</b>			
<b>Fine: not less than three times the value of the specimen involved in the commission of the offence AND/OR Imprisonment: minimum 5 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. export, import, transport through or re-export.</b>	"re-export" means export of any specimen which was previously imported.	Seized import /export /transfer/transportation papers and records, certificates of seizure and chain of custody. Investigating officer. Customs officer. Crime scene report with sketch, inventory and photographs. Handwriting expert report.	Overlap with s.84 and s.86 for trophies. Check intelligence or data bases for other seizures with matching modus operandi or paperwork. Consider if MLA needed.
<b>2. of any wildlife species, specimens or products</b>	Appears to be drafted more widely than those listed in CITES - see (s.95(2)+(3).	Seized items, photographs, certificates of seizure and chain of custody records. Expert evidence on species if necessary. Investigating officer. Customs officer.	
<b>3. without or outwith the terms of a permit from the Director issued in accordance with the provisions of CITES</b>		Burden of proof on accused to show lawful	Be prepared to investigate fraudulent licence or permit if produced
<b>STATEMENT OF OFFENCE</b>			
<b>Illegal export/import/re-export or transit of a wildlife species/specimen/product, contrary to section 95(7) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date), at (location) exported/imported/re-exported/transported a wildlife species/specimen/product (delete as appropriate) without/in breach of a permit issued under Part XV of the Wildlife Conservation Act 2009.</b>			

<b>OFFENCE</b>				
<b>s.103 WCA Possession of weapon with intent to commit an offence under WCA.</b>				
<b>PENALTIES</b>				
<b>Fine: 100,000sh - 5 million sh AND/OR Imprisonment: 1-3 years. *EOCCA, s.60(2) and First Schedule, para.14(c) Imprisonment 20 - 30 years.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Possession of (and date).</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Wildlife officer (testimony and report), eye witness(es) (testimony), arresting officer (statement or report), suspect (statement), arrest report if caught in possession, Certificate of Seizure if seized from accused. [fingerprint evidence in the future]	Also consider EOCCA First Schedule paras. (12?) and 31, also offences under FACA. EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold or automatically for FACA offences. Also consider s20(1)(b) (possession with intent).
<b>2. a weapon</b>	“weapon”- means any firearm, ammunition, dart-gun, missile, explosive, poison, poisoned bait, spear, bow and arrow, knife, axe, hoe, pick, club, stakes, pitfall, net, gin, trap, snare or any combination of these and any other device, method and or technology whatsoever capable of killing or capturing an animal;		Weapon (exhibit), Certificate of Seizure, Photographs, chain of custody documentation, ballistic/expert evidence if necessary for weapon description/analysis.	Consider offences under the Firearms and Ammunitions Act 2015, consider validity/legality of firearm and ammunition, safe custody, etc. Ensure Certificate of Seizure is correct, signed by PCF, suspect and 2 independent witnesses. Follow seizure and management of exhibits guidelines (RRG). Move the court to make forfeiture order of weapon under S.111 WCA.
<b>3. with intention to commit an offence under the WCA.</b>			Circumstance which raise a reasonable presumption that intended to use to commit another offence, including proximity to game reserve, animals, hideout or in possession of other items for hunting, capturing, etc. Wildlife officer (testimony and report), eye witnesses (testimony), confessional statement, Certificate of Seizure of other items. Crime scene report with sketch-map, inventory and photographs.	
<b>STATEMENT OF OFFENCE</b>				
Unlawful possession of a weapon with intent to commit an offence under the Wildlife Conservation Act No.5 of 2009, contrary to section 103 of the Wildlife Conservation Act No.5 of 2009.				

**MODEL CHARGES**

(Name of the Accused) on the (date) at (place) was found in possession of a (type of weapon), with intent to commit an offence under the Wildlife Conservation Act.

<b>OFFENCE</b> <b>s.104 WCA failure to take care of official stamps, badges, etc.</b>				
<b>PENALTIES</b> <b>Fine: 500,000 - 5m sh AND/OR Imprisonment: 6 months - 1 year.</b>				
Elements to Prove	Definitions	Case Law	Potential Sources of Evidence	Associated Offences and other important issues to consider
1. possession, control, custody or care .	<p>“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;</p>	<p>Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.</p>	<p>Employer or official entrusting item to accused (testimony and records). Any receipt signed by the accused for the item. Eye witnesses who saw him receive the same.</p>	
2. (a) any any licence, permit, certificate, licence book, permit book, certificate book or other official document granted or issued (b) official mark, stamp or ink used for or in connection with the administration of WCA; (c) any official uniform or badge approved for use; or (d) any trophy which is required by any provision of this Act to be delivered to a police officer, wildlife officer, wildlife warden, wildlife ranger, village game scout or which is in his possession by virtue of his holding any public office, under, or used for the purposes of WCA.			<p>Also from above evidence. Seized items (if not lost), photographs, certificates of seizure and chain of custody records. Confessional statement.</p>	



VERSION No.4 (February 2018)

<b>3. failure to take all reasonable precautions to prevent same from falling into the hands or custody of any person not authorised to be in possession</b>	Burden of proof to show all reasonable precautions taken on accused. If lost, presumed in the hands of someone not authorised.s.104(2)
<b>STATEMENT OF OFFENCE</b>	
<b>Failure to take all reasonable precautions to safekeep a licence/permit/certificate book/official document, official stamp/official uniform/official badge/trophy contrary to section 104 of the Wildlife Conservation Act No.5 of 2009.</b>	
<b>MODEL CHARGES</b>	
<b>(Name of accused) on or about the (date) at (location), having in his possession, control, custody and care a (item from lists in s.104(a)-(d) with description), failed to take all reasonable precautions to prevent that item falling into the hands of someone unauthorised to be in possession of it, in that (e.g. it was lost/he left it unattended/it fell into the hands of (unauthorised person)).</b>	

<b>OFFENCE</b>			
<b>s.105 WCA fraud in relation to licences, permits and authorities under WCA</b>			
<b>PENALTIES</b>			
<b>Fine: not less than five million shillings AND/OR Imprisonmen: 1-5 years.</b> <b>*EOCCA, First Schedule para.14 - references s.105 but would have to fall within sub-paras (a-d) hunting, capturing, traps an animal, possession of weapon, possessions or dealing in trophies. If so, s.60(2) EOCCA applies - penalty imprisonment 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. fraudulently (or by fraud, misrepresentation of a material fact or by false pretence).</b>		Handwriting Expert. Evidence to show misrepresentation or falsity - eye witness, licencing officer, witness who can show what is false.	EOCCA jurisdiction for Corruption and Economic offences - WCA if over 1b TSh threshold. Evidence to show knowledge of falsity - can be circumstantial.
<b>2. (a) forges, alters or defaces any licence, permit, permit book, written permission or authority granted or purporting to have been granted under this Act; (b) presents any such forged licence, permit, permit book or authority; or (c) obtains any licence, permit, permission or authority.</b>		Seized fraudulent document(s), certificate of seizure and chain of custody. Handwriting/expert report on forged document. Licencing authority/Wildlife Officer to speak to falsity/fraud. Eye witness(es).	
<b>STATEMENT OF OFFENCE</b>			
<b>Fraudulently forging/altering or defacing a permit or authority contrary to section 105(a) of the Wildlife Conservation Act No.5 of 2009. OR Knowingly presenting a forged licence/permit/permit book or authority to another, contrary to section 105(b) of the Wildlife Conservation Act No.5 of 2009 OR Obtaining a licence/permit/permission or authority by fraud/misrepresentation/false pretense contrary to section 105(c) of the Wildlife Conservation Act No.5 of 2009.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date), at (location) fraudulently forged/altered/defaced a license/ permit book/permit/written permission or authority (No. and date of item) granted under the Wildlife Conservation Act No.5 by of 2009 by (doing what?) OR fraudulently presented to (who/what entity) a licence/permit/permit book, permission or authority (No. and date of item) which had been forged. OR obtained licence/permit/permission/authority by [fraud, misrepresentation of material fact or false pretense by (doing what).</b>			

## B. OFFENCES UNDER THE FORESTRY ACT 2002

<b>OFFENCE</b>			
<b>s.26(a) FA unlawful cutting down trees in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. ANY OF THE FOLLOWING: (a) Cut down, fell, dig up, remove any tree;</b>	'tree' includes palms, bamboos, canes, shrubs, bushes, climbers, forest seedlings, transplants, and the re-growth thereof of all ages and all kinds and any part;	Eye witness(es), Forestry Officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of timber, and any instrumentalities. Chain of custody paper trail. Expert evidence as to species of tree, and that within definition of "tree", etc.	
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Cutting down/felling/digging up for removing any tree in a forest reserve contrary to Section 26(a) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) cut down, fell, dig up, removed a (name species) tree.</b>			

<b>OFFENCE</b>			
<b>s.26(b) FA unlawful digging up wild plants in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), Locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. dig up or remove any protected wild plant;</b>	S.67(1) List of Wild Plants to be published by Minister in the Gazette. "protected wild plant" declared in GN under s.65 FA.	Eye witness(es), Forestry Officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities and if possible plant. Chain of custody paper trail. Expert evidence as to species of plant, and that protected wild plant, etc. GN Notice List of Wild Plants.	Consider preservation of plant/exhibit.
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Digging up or removing any protected wild plant contrary to Section 26(b) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) dug up/removed any protected wild plant, namely (name of plant).</b>			

<b>OFFENCE</b>			
<b>s.26(c) FA unlawful harvesting forest produce in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. harvest, take or remove any forest produce</b>	'forest produce' means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;	Eye witness(es), Forestry Officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the livestock, instrumentalities. Chain of custody paper trail. Expert evidence as to produce/species, and that falls within definition of "forest produce".	
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local auhtority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Harvesting/ taking or removing any forest produce contrary to Section 26(c) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) harvested/, took/removed forest produce, namely (what forest produce).</b>			

VERSION No.4 (February 2018)

<b>OFFENCE</b>			
<b>s.26(h) FA unlawful cultivation in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), Locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. clear, cultivate, break up for cultivation or for any other purpose, any land;</b>		Eye witness(es), Forestry Officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities and any crops. Chain of custody paper trail. Expert evidence as to species of plant, and that protected wild plant, etc.	
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Clearing, cultivating, breaking up for cultivation or for any other purpose, any land contrary to Section 26(h) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) cleared/cultivated/broke up land for cultivation or for any other purpose.</b>			

<b>OFFENCE</b>			
<b>s.26(i) FA unlawful harm to vegetation in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit – S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. cut, burn, uproot, damage or destroy any vegetation;</b>	"vegetation: undefined in Act.	Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities and other evidence. Chain of custody paper trail. Expert evidence as to species of vegetation.	
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Cutting, burning, uprooting, damaging or destroying any vegetation contrary to Section 26(i) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) cut/burned/uprooted/damaged/ destroyed vegetation, namely (type and amount of vegetation) OR sowed or planted crops/trees/other vegetation, namely (what type and how many).</b>			

<b>OFFENCE</b>			
<b>s.26(j) FA unlawful sowing or planting in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. sow or plant any crops, tress or other vegetation;</b>	'tree" includes palms, bamboos, canes, shrubs, bushes, climbers, forest seedlings, transplants, and the re-growth thereof of all ages and all kinds and any part; "crops" and "vegetation" undefined in Act.	Eye witness(es), Forestry Officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the crops, and instrumentalities. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local auhtority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>sowing or planting any crops, tress or other vegetation contrary to Section 26(j) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) sowed or planted crops/trees/other vegetation, namely (what type and how many).</b>			



<b>OFFENCE</b> <b>s.26(n) FA unlawful livestock in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b> <b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. allow livestock to enter, graze or depasture;</b>	"livestock" means means cattle, horses, donkeys, mules, pigs, sheep, goats and camels;	Eye witness(es), Forestry Officer(s) or other law enforcement officer(s), Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement of the suspect. Certificate of Seizure of the livestock, instrumentalities. Chain of custody paper trail.	Burden of proof reversed for livestock found grazing or depastured - presumption that this has been done with authority of owner and person in charge of livestock, if any. s.84(3) FA
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b> <b>Allowing livestock to enter, graze or depasture contrary to Section 26(n) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b> <b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) allowed livestock (type and amount) to enter/graze/depasture.</b>			

<b>OFFENCE</b>			
<b>s.26(r) FA unlawful collection of honey in Forest Reserve, with s.84(1)(b) FA</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National or Local Authority Forest Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. collect any honey barrel, hive or other receptacle for the purpose of collecting honey or beeswax;</b>		Eye witness(es), Forestry Officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities and honey. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing rights to do so.</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Collecting any honey barrel, hive or other receptacle for the purpose of collecting honey or beeswax contrary to Section 26(r) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) in (location, Forest Reserve name) collected honey in a barrel/hive/other receptacle for the purpose of collecting honey or beeswax (name).</b>			

<b>OFFENCE</b>			
<b>s.26(d) FA unlawful tourist activities in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, camps, etc.
<b>2. enter, perambulate for the purpose of tourism or camp ;</b>		Eye witness(es), Forestry Officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Entering/perambulating for the purpose of tourism or camp contrary to Section 26(d) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) [entered/perambulated for the purpose of tourism or camp], without a concession, licence, permit or existing right to do so.</b>			

<b>OFFENCE</b>			
<b>s.26(e) FA unlawful removal of rock, stones, etc. in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, etc. Also payment of costs to seize, manage or remove items.
<b>2. take or remove any rock, sand, stones, shells or soil;</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Taking/ or removing rock, sand, stones, shells or soil contrary to Section 26(e) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) [took/removed rock/sand/stones/shells/soil (what kind, how much or how many), without a concession, licence, permit or existing right to do so.</b>			

<b>OFFENCE</b>			
<b>s.26(f) FA unlawful mining activities in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, etc. Also payment of costs to seize, manage or remove items.
<b>2. undertake any mining activities;</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local auhtority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Undertaking mining activities contrary to Section 26(f) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) undertook mining activities, namely (what activities), without a concession, licence, permit or existing right to do so.</b>			

<b>OFFENCE</b>			
<b>s.26(g) FA unlawful occupation or residency in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. occupy or reside on any land;</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Occupying or residing on land contrary to Section 26(g) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) occupied/resided on land (where and for how long), without a concession, licence, permit or existing right to do so.</b>			

<b>OFFENCE</b>			
<b>s.26(k) FA unlawful sawpit or work place in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. cut or re-open any saw pit or work place;</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Cutting or re-opening any saw pit or work place contrary to Section 26(k) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) cut or re-opened a saw pit or work place , namely (describe), without a concession, licence, permit or existing right to do so.</b>			

VERSION No.4 (February 2018)

<b>OFFENCE</b> <b>s.26(l) FA unlawful building activities in Forest Reserve</b>			
<b>PENALTIES</b> <b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. erect any buildings or structures;</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b> <b>Erectng any buildings or structures contrary to Section 26(l) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b> <b>(Name of Accused) on or about the (date) at (location, Forest Reserve) erected a building(s)/structure(s), namely (what, how many, how big), without a concession, licence, permit or existing right to do so.</b>			



<b>OFFENCE</b>			
<b>s.26(m) FA unlawful construction of roads, path, waterways in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. construct any roads, paths, bridges, railways, waterways, runways;</b>	"Waterways" means, a river, canal or other route for travel by water	Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Constructing roads, paths, bridges, railways, waterways, runways contrary to Section 26(m) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) constructed a road(s)/path(s)/bridge(s)/ railway(s)/waterway(s)/runway(s), without a concession, licence, permit or existing right to do so.</b>			

<b>OFFENCE</b>			
<b>s.26(p) FA unlawful use of buildings in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit – S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. use any buildings or other structures for any purpose for which it was being used at the time of the declaration of reserve;</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	Evidence required of old use of building before Forest Reserve declared.
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Using any buildings or other structures for any purpose for which it was being used at the time of the declaration of reserve contrary to Section 26(p) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) used a building(s)/another structure(s) for a purpose for which it was being used at the time of the declaration of reserve (namely), without a concession, licence, permit or existing right to do so.</b>			

<b>OFFENCE</b>			
<b>s.26(q) FA unlawful building research activities in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. carry out any research for which a research permit is required;</b>	"research permit" means a research permit issued under the provisions of this Act to undertake research in a forest reserve or in connection with protected wild plants and protected wild animals	Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without a concession, licence, permit or existing right to do so</b>	"permit" means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Carrying out any research for which a research permit is required contrary to Section 26(q) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) carried out research, namely (describe research work) for which a research permit is required, without a concession, licence, permit or existing right to do so.</b>			

<b>OFFENCE</b>				
<b>s.26(o) FA hunting or fishing in a Forest Reserve (see also s.68 on listed wild animals)</b>				
<b>PENALTIES</b>				
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA		Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. hunt, fish, use or be in possessions of any trap, snare, net, bow and arrow, gun, poison or explosive substance used or capable of being used for the purposes of hunting or fishing</b>	Snare means, a trap for catching birds or animals, typically one having a noose of wire or cord; Explosive Substance is a reactive substance that contains a great amount of potential energy that can produce an explosion if released suddenly, usually accompanied by the production of light, heat, sound and pressure. "Possession" means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. "Actual possession" means physical occupancy or control over property. "Constructive possession" means control or dominion over a property without actual possession or custody of it.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	Consider alternative charges if guns and ammunition - FACA.
<b>3. Without a concession, licence, permit or existing right to do so</b>	permit means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.		Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>				
<b>Hunting/Fishing/Using or being in possessions of any trap, snare, net, bow and arrow, gun, poison or explosive substance used or capable of being used for the purposes of hunting or fishing in a Forest Reserve contrary to Section 26(o) of the Forestry Act, No.14 of 2002.</b>				
<b>MODEL CHARGES</b>				

**(Name of Accused) on or about the (date) at (location, Forest Reserve) hunted/fished/ used or was found in possessions of a trap/snare/net/bow and arrow/gun/poison/explosive substance used or capable of being used for the purposes of hunting or fishing.**

<b>OFFENCE</b>			
<b>s.26(s) FA activities prohibited by regulations in Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. In a National Forest or Local Authority Reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit – S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. Undertake any other activities that is prohibited by any regulations</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. without a concession, licence, permit or existing right to do so</b>	permit means a permit issued pursuant to Part VII of FA ; "existing rights" means the rights determined by the Minister or a local authority to be existing rights under s.24(9) of the Act and shall include all such incidental, ancillary subsidiary and derivative right and interests as are necessary to enable the existing rights to be enjoyed and exercised.	Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful activities prohibited by regulations in a Forest Reserve contrary to Section 26(s) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location, Forest Reserve) undertook (prohibited activity) which is prohibited by Regulation (no. date).</b>			

<b>OFFENCE</b>			
<b>s.84(1) (a) FA unlawful entry into Forest Reserve</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Within a forest reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. Entry</b>		Eye witnesses including Forestry Officer or arresting officer.	What were his intentions while there? What does he have with him? Has another section also been infringed?
<b>3. Without an existing right, permit or other lawful authority</b>		Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful entry into a forest reserve contrary to Section 84(1)(a) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location, Forest Reserve) entered (name) Forest Reserve about an existing right, permit or other lawful authority.</b>			

<b>OFFENCE</b>			
<b>s.84(1)(b) FA unlawful act prohibited by forest management or other agreement</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Within a forest reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. performs any act which is prohibited by a forest management or other agreement.</b>	"forest management plan" means the plans referred to in s.11 of the FA.	Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without an existing right, permit or other lawful authority</b>		Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Performing an act which is prohibited by a forest management or other agreement contrary to Section 84(1)(b) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location, Forest Reserve) performed (name act) which is prohibited by forest management agreement (No.xx dated xxx), without an existing right, permit or other lawful authority</b>			



<b>OFFENCE</b>			
<b>s.84(1)(c) FA unlawful obstruction of road, path or watercourse</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Within a forest reserve.</b>	declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. obstructs any existing road, path or water course</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, obstructionss, etc. Chain of custody paper trail.	
<b>3. Without an existing right, permit or other lawful authority</b>		Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Obstructing any existing road/path/watercourse in a forest reserve contrart to Section 84(1)(c) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location, Forest Reserve) obstructed an existing road/path/watercourse (add name or direction) by (how obstructed) without any existing right, permit or other lawful authority to do so.</b>			

<b>OFFENCE</b>			
<b>s.84(1)(d) FA unlawful acts on tree stumps</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Within a forest reserve.</b>	declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. cover any tree stump with brushwood or earth or any other means whatsoever conceals, destroys or removes such tree stump or any part of it</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	
<b>3. Without an existing right, permit or other lawful authority</b>		Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful covering/concealing/desotrying or moving of a tree stump or part of a tree stump in the forest reserve contrary to Section 84(1)(d) of the Forest Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location, Forest Reserve) covered/concealed/destroyed/removed the stump of a (type) tree by (how), without an existing right, permit or other lawful authority to do so.</b>			

<b>OFFENCE</b>			
<b>s.84(1)(e) FA unlawful interference with signs, fences, beacons or boundaries</b>			
<b>PENALTIES</b>			
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Within a forest reserve.</b>	Declared under s22 of FA	Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	
<b>2. Damages, defaces, alters, shifts, removes or interfere with any:</b> <b>a. Beacon</b> <b>b. Fence</b> <b>c. Boundary mark</b> <b>d. Notice</b> <b>e. Notice board</b>		Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>3. Without an existing right, permit or other lawful authority</b>		Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful damaging/defacing/altering/shifting/moreving/interference with a beacon/fence/boundary mark/notice/notice board within a forest reserve contrary to Secion 84(1)(e) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location, Forest Reserve) damaged/defaced/alterd/shifted/removed/interferred with (what, describe) without an existing right, permit or other lawful authority.</b>			

<b>OFFENCE</b>				
<b>s.84(2) FA unlawful possession of forest produce implement</b>				
<b>PENALTIES</b>				
<b>Fine: 30,000 sh - 1m sh AND/OR Imprisonment: max 2 years.</b>				
<b>[NB: s.95 eligible for compounding]</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Within or in the vicinity of any forest reserve.</b>	Declared under s22 of FA		Eye witness(es), forestry officer(s), locus in quo inspection with location, GPS if possible.	
<b>2. possession of any implement for cutting, taking, working or rendering any forest produce</b>	'forest produce" means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act; "Possession" means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. "Actual possession" means physical occupancy or control over property. "Constructive possession" means control or dominion over a property without actual possession or custody of it. See Penal Code s.2.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eye witness(es), Forestry officer(s) or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible .Confessional statement. Certificate of Seizure of the instrumentalities, collected items, etc. Chain of custody paper trail.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>3. without lawful excuse</b>	See possibility of exemption of parts or whole forest reserves GN. s.84(4) FA		Burden of proof on accused to show lawful s.84(2) FA	
<b>STATEMENT OF OFFENCE</b>				
<b>Unlawful possession of any implement for cutting/taking/working/rendering any forest produce contrary to Section 84(2) of the Forestry Act, No.14 of 2002.</b>				
<b>MODEL CHARGES</b>				
<b>(Name of the Accused) on or about the (date) at (location, Forest Reserve) was found in possession of a (name implement), an implement used for cutting/taking/working/rendering (name the produce), which is forest produce, without a lawful excuse.</b>				

<b>OFFENCE</b>			
<b>s.85 FA unlawful cutting, damaging or removal of protected tree (see also s.65 FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 50,000 sh - 1m sh AND/OR Imprisonment: max 1 year. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. fells, cuts, lops damages, removes or sells.</b>		Eye witnesses including Forestry Officer or arresting officer. Crime scene inspection report with photographic evidence	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any reserved tree or any part thereof</b>	"reserved tree" means a tree, class of tree or group of trees declared by the Minister to be reserved tree by order published in the Gazette under section 65 of FA	Forestry Officer to testify to "reserved tree". Seized reserved tree, certificate of seizure and chain of custody records.	
<b>3. on unreserved land</b>		Crime Scene Report with location.	
<b>4. without a licence, permit or other lawful authority under the FA</b>		Forestry Officer, confessional statement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful felling, cutting, lopping, damaging, removing or selling of a reserved tree or any part of it, contrary to Section 85 of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about (date) at (location) fell/cut/lopped/damaged/removed/sold part of/number (name of reserved tree), a reserved tree, without a licence, permit or other lawful authority.</b>			

<b>OFFENCE</b>			
<b>s.86(1)(a) FA picking or interfering with listed wild plants (see also s.67(4) FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000 sh - 1 m shillings AND/OR Imprisonment: 6 months - 2 years. [NB: s.95 eligible for compounding] *EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. (a) picks, plucks, takes samples or any part from or in any way interferes with or wilfully and intentionally poisons, damages or destroys in any way or by any means; .</b>		Forestry Officer or any other law enforcement officer involved in arrest or seizure, eye witnesses, transactional documentation	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any listed wild plant</b>	S.67(1) List of Wild Plants to be published by Minister in the Gazette. "protected wild plant" declared in GN under s.65 FA.	Forestry Officer or Expert Witness to testify to identification of listed wild plant. Seized plant with certificate of seizure and chain of custody records.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful picking, plucking sampling or interference with OR wilful or intentional poisoning/damaging or destroying a listed wild plant contrary to section 86 of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) picked/plucked/sampled/interfered/wilfully or intentionally damaged/poisoned/destroyed a listed wild plant, namely (kind and quantity of plant) without lawful excuse or authority to do so.</b>			

<b>OFFENCE</b>				
<b>s.86(1)(b) FA sale of listed wild plants (see also s.67(4) FA)</b>				
<b>PENALTIES</b>				
<b>Fine: 200,000 sh - 1 m shillings AND/OR Imprisonment: 6 months - 2 years. [NB: s.95 eligible for compounding] *EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. exposes for sale or purchase or has in his possession or control with the intention to offer for sale or purchase; .</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Forestry Officer or any other law enforcement officer involved in arrest or seizure, eye witnesses, transactional documentation	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any listed wild plant</b>	S.67(1) List of Wild Plants to be published by Minister in the Gazette. "protected wild plant" declared in GN under s.65 FA.		Forestry Officer or Expert Witness to testify to identification of listed wild plant. Seized plant with certificate of seizure and chain of custody records.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>			burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>				
<b>Unlawful possession or control with intention to sell, or sale/purchase a listed wild plant contrary to section 86 of the Forestry Act, No.14 of 2002.</b>				
<b>MODEL CHARGES</b>				
<b>(Name of the Accused) on or about the (date) at (location) /exposed for sale or purchase/had in his possession or control with the intent to offer for sale or purchase a listed wild plant, namely (kind and quantity of plant) without lawful excuse or authority to do so.</b>				

<b>OFFENCE</b>			
<b>s.86(1)(c) FA exporting listed wild plants (see also s.67(4) FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000 sh - 1 m shillings AND/OR Imprisonment: 6 months - 2 years. [NB: s.95 eligible for compounding]</b> <b>*EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. exports or attempts to export.</b>		Customs Officer, Forestry Officer or any other law enforcement officer involved in arrest or seizure, eye witnesses, transactional documentation	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any listed wild plant</b>	S.67(1) List of Wild Plants to be published by Minister in the Gazette. "protected wild plant" declared in GN under s.65 FA.	Forestry Officer or Expert Witness to testify to identification of listed wild plant. Seized plant with certificate of seizure and chain of custody records.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful export/import of a listed wild plant contrary to section 86 of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) exported or attempted to export a listed wild plant, namely (kind and quantity of plant) without lawful excuse or authority to do so.</b>			



<b>OFFENCE</b>				
<b>s.88 FA unlawful possession of forest produce</b>				
<b>PENALTIES</b>				
<b>Fine: max 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. takes, receives or is found in possession.</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Forestry officer or other law enforcement officer, eye witnesses, certificates of seizures if seized from the accused	Revocation/ Suspension of Permit – Sec 55. Stop Orders – Sec.57. See also s.94 on seizure and custody fo forest produce items related to this offence.
<b>2. forest produce with respect to which an offence has been committed</b>	'forest produce' means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;		Forestry Officer to testify to "forest produce" Seized forest produce, certificate of seizure and chain of custody.	See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. without any lawful authority or excuse, without being able to account for such possession or show he came by it innocently</b>			burden of proof on accused to prove lawful s.86	
<b>3.</b>				
<b>STATEMENT OF OFFENCE</b>				
<b>Unlawful taking, receiving or possession of forest produce contrary to Section 88 of the Forestry Act, No.14 of 2002.</b>				
<b>MODEL CHARGES</b>				
<b>(Name of the Accused) on or about the (date) at (location) took/received/was found in possession of (type and amount of forest produce), forest produce without any lawful authority or excuse and without being able to account for such possession or show how he came by it innocently.</b>				



<b>OFFENCE</b>			
<b>s.89(a)FA unlawful harvesting forest produce (see also ss.59-60 FA)</b>			
<b>PENALTIES</b>			
Fine: 200,000 sh - 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding] *EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. harvests</b>		Forestry Officer, or other law enforcement officer, eye witnesses, any crime scene inspection report with inventory, sketch/location and photographs when possible.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any forest produce harvested unlawfully</b>	'forest produce' means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;	Forestry Officer to testify to "forest produce" Seized forest produce, certificate of seizure and chain of custody.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86 on accused.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful harvesting of forest produce contrary to Section 89(a) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location), harvested (type and amount of forest produce) without lawful authority or excuse.</b>			

<b>OFFENCE</b>			
<b>s.89(b) FA unlawful movement of forest produce (see also ss.59-60 FA)</b>			
<b>PENALTIES</b>			
Fine: 200,000 sh - 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding] *EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. operates, or causes to be operated a vehicle to carry, haul, evacuate or transport,</b>		Forestry Officer or other law enforcement officer, eye witnesses, any crime scene inspection report with inventory, sketch/location and photographs when possible. Any associated documentation (transportation or haulage papers, etc.). Seize instrumentalities of crime - vehicle.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items. Seize instrumentalities of crime - vehicle.
<b>2. any forest produce harvested unlawfully</b>	'forest produce' means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;	Forestry Officer to testify to "forest produce" Seized forest produce, certificate of seizure and chain of custody.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful operation of a vehicle for hauling/carrying, evacuating or transporting forest produce contrary to Section 89(b) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location) operated or caused to be operated a vehicle (namely, a [type of vehicle]) to haul/carry/evacuate or transport (type and amount of forest produce) without lawful authority or excuse.</b>			

<b>OFFENCE</b>			
<b>s.89(c) FA unlawful movement by non-mechanical means of forest produce (see also ss.59-60 FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000 sh - 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b> <b>*EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. carries, hauls, or evacuates by non-mechanical means,</b> .		Forestry Officer, or other law enforcement officer, eye witnesses, any crime scene inspection report with inventory, sketch/location and photographs when possible.	Stop orders- Sec.57, suspension of permit – S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc.
<b>2. any forest produce harvested unlawfully</b>	'forest produce' means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;	Forestry Officer to testify to "forest produce" Seized forest produce, certificate of seizure and chain of custody.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful hauling/carrying, evacuating by non-mechanical means of forest produce contrary to Section 89(c) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location), hauled/carried/evacuated by non-mechanical means (type and amount of forest produce) without lawful authority or excuse.</b>			

<b>OFFENCE</b>			
<b>s.89(d) FA unlawful trade in forest produce (see also ss.59-60 FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000 sh - 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding] *EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. offers for sale, sells or buys, .</b>		Forestry Officer or other law enforcement officer, eye witnesses, any crime scene inspection report with inventory, sketch/location and photographs when possible. Any associated documentation (sale, export papers, etc.)	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any forest produce harvested unlawfully</b>	'forest produce' means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;	Forestry Officer to testify to "forest produce" Seized forest produce, certificate of seizure and chain of custody.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful offering for sale, selling or buying contrary to Section 89(d) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location), offered for sale, sold/bought (type and amount fo forest produce) without lawful authority or excuse.</b>			

<b>OFFENCE</b>			
<b>s.89(e) FA unlawful trade in forest produce (see also ss.59-60 FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000 sh - 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding] *EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. stocks.</b>		Forestry Officer or other law enforcement officer, eye witnesses, any crime scene inspection report with inventory, sketch/location and photographs when possible. Any associated documentation (warehousing, etc.)	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any forest produce harvested unlawfully</b>	'forest produce' means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;	Forestry Officer to testify to "forest produce". Seized forest produce, certificate of seizure and chain of custody.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful stock piling of forest produce contrary to Section 89(e) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location) stock piled (type and amount of forest produce) without lawful authority or excuse.</b>			

<b>OFFENCE</b>			
<b>s.89(f) FA unlawful marking of timber (see also ss.59-60 FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000 sh - 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding]</b> <b>*EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. not being an authorized grader,</b>		Forestry Officer, registration of authorised graders.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. marks any timber with a prescribed mark;</b>		Forestry Officer or other Law enforcement officer, eye witnesses, any crime scene inspection report with inventory, sketch/location and photographs when possible. "Seized timber, certificate of seizure and chain of custody. Instrumentalities.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful marking of timber contrary to Section 89(f) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location) not being authorised to do so, marked timber (type and amount of timber) with a prescribed mark [describe] without lawful authority or excuse.</b>			



VERSION No.4 (February 2018)

<b>OFFENCE</b>			
<b>s.89(g) FA unlawful trade in forest produce (see also ss.59-60 FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 200,000 sh - 1m shillings AND/OR Imprisonment: max 2 years. [NB: s.95 eligible for compounding] *EOCCA First Schedule, para.33 + EOCCA s.60(2) penalty - imprisonment of 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. without a valid export certificate, exports or enters for export</b> .	"export certificate" means an export certificate issued under s.58 of FA.	Forestry Officer, Customs Officer or other law enforcement officer, eye witnesses, any crime scene inspection report with inventory, sketch/location and photographs when possible. Any associated documentation (sale, export papers, etc.)	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. any forest produce harvested unlawfully</b>	"forest produce" means anything which is produced by or from trees or grows in a forest or is naturally found in a forest and includes bamboos, bark, bast, branchwood, canes, charcoal, earth, fibres, firewood, fruits, galls, gums, honey, latex, laths, leaves, litter, natural varnish, peat, plants. Poles, reads, resin, roots, rushes, sap, sawdust, seeds, slabs, timber, trees, thatch, wattles, wax, wild silk, withies, wood shes, wood oil, and any other living or inanimate object declared by notice in the Gazette to be forest produce for purposes of this Act;	Forestry Officer to testify to "forest produce" Seized forest produce, certificate of seizure and chain of custody.	EOCCA jurisdiction for Corruption and Economic offences - FA if over 1b TSh threshold.
<b>3. without any lawful authority or excuse</b>		burden of proof on accused to prove lawful s.86	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful exporting or entering for export of forest produce contrary to Section 89(g) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location), not having a valid export certificate exported (type and amount of forest produce) without lawful authority or excuse.</b>			

<b>OFFENCE</b> <b>s.90(a) FA counterfeiting offences</b>			
<b>PENALTIES</b> <b>Fine: 1m sh - 3m sh and/or Imprisonment: 1-2 years.</b> <b>[NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. counterfeits, alters, obliterates or defaces.</b>	Counterfeit means, made in exact imitation of something valuable or important with the intention to deceive or defraud. (Black's Law Dictionary)	Handwriting Expert or other Expert. Forestry Officer or authorised officer who can also show change or falsity. Eye witnesses.	STOP ORDER s.57. See also s.94 for seizures and custody of items seized in relation to this offence
<b>2. any stamp, mark, sign, licence, permit, authority, or receipt lawfully used or issued under FA, orders or notices issued under FA.</b>	Stamp means, an instrument for stamping a pattern or mark, in particular an engraved or ink block or die. (Blacks Law Dictionary)	Seized item, certificate of seizure and chain of custody records. Forestry Officer.	See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>MODEL CHARGES</b> <b>(Named of the Accused) on or about the (date) at (location) counterfeited/altered/obliterated/defaced (in what way) a stamp/mark/sign/licence/permit/authority/receipt/order/notice (No. title. Date issued by)</b>			
<b>STATEMENT OF OFFENCE</b> <b>Counterfeiting/altering/obliterating or defacing any stamp/mark/sign/licence/permit/authority or receipt used or issued under the Forestry Act, contrary to section 90(a) of the Forestry Act, No.14 of 2002.</b>			

<b>OFFENCE</b>			
<b>s.90(b) FA unlawful or fraudulent use or issue</b>			
<b>PENALTIES</b>			
<b>Fine: 1m sh - 3m sh and/or Imprisonment: 1-2 years.</b>			
<b>[NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. fraudulently or without due authority</b>		Forestry Officer or supervisor to show no authority or that false.	STOP ORDER s.57. See also s.94 for seizures and custody of items seized in relation to this offence
<b>2. uses or issues</b>		Forestry Officer, or other law enforcement officer. Eye witnesses.	
<b>3. any stamp., mark, sign, licence, permit, certificate, authority receipt intended to be used or issued under FA or any rules, orders or notices issued or made under FA</b>	Stamp means, an instrument for stamping a pattern or mark, in particular an engraved or ink block or die. (Blacks Law Dictionary)	Seized item, certificate of seizure and chain of custody records. Forestry Officer.	See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>STATEMENT OF OFFENCE</b>			
<b>Fraudulently/Without due authority, using or issuing a stamp/mark/sign/licence/permit/certificate/authority/receipt contrary to Section 90(b) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) fraudulently/without due authority used/issued a stamp/mark/sign/licence/permit/certificate/authority/receipt (No. title date) intended to be used or issued under the Forestry Act.</b>			

<b>OFFENCE</b>			
<b>s.90(c) FA unlawful marking of timber (see also s.62 FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 1m sh - 3m sh and/or Imprisonment: 1-2 years. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. marks</b>		Eye witnesses including Forestry Officer or arresting officer.	STOP ORDER s.57. See also s.94 for seizures and custody of items seized in relation to this offence
<b>2. any timber whether marked by an authorised grader or not</b>	"timber" means any wood or tree which has fallen or has been felled or cut off and all wood whether unsawn, hewn, sawn or machined, split, or otherwise cut up or fashioned and shall include lumber, flooring strips, shingles, and sleepers but does not include any article manufactured from such wood or firewood.	Seized item, certificate of seizure and chain of custody records. Forestry Officer. Arrest report or scene of crime inspection report with photographs	See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>3. with a mark so similar to any mark lawfully prescribed by FA that it may be or can be mistaken for such prescribed mark,</b>		Photographs. Forestry Officer or Expert Analysis	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful marking of timber with a mark so similar to a mark lawfully prescribed that it could be mistaken for a prescribed mark, contrary to Section 90(c) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) marked timber (type, amount) with a mark (describe) which is similar and could be mistaken for prescribed mark (description).</b>			

<b>OFFENCE</b>			
<b>s.91(1) FA firelighting (see also s.70(1)(a) FA)</b>			
<b>PENALTIES</b>			
<b>Fine: 50,000sh - 1 m sh AND/OR Imprisonment: max 1 year. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. lights or assists in lighting or uses, rekindles or adds fuel to any fire or causes any of these activities to take place; OR leaves unattended a fire to which he has lit, assisting in lighting or use or rekindled or added fuel before such fire is thoroughly extinguished; OR fails to comply with any lawful order issued under Part IX of FA.</b>	Fire means, combustion or burning, in which substances combine chemically give out bright light, heat and smoke. (Black's Law Dictionary)	Eye witnesses including Forestry Officer or other law enforcement officer(s). Crime scene Inspection Report with sketch, inventory of seized evidence or instrumentalities and photographs. Expert evidence/Forestry Officer as to damage or potential damage. Confessional statement within 4 hours of arrest.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>2. Without lawful authority or excuse</b>		Burden of proof on accused to show lawful	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawful firelighting contrary to Section 91(1) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location), without lawful authority or excuse, lit a fire/added fuel or rekindled a fire/left a fire which he lit unattended/failed to comply with a lawful order issued (by xx) under Part IX of the Forestry Act.</b>			

<b>OFFENCE</b>			
<b>s.91(2) FA wilfull unlawful fire setting (see also s.70(1)(b) FA)</b>			
<b>PENALTIES</b>			
<b>Imprisonment: - 14 years see S.321 of the Penal Code.</b>			
<b>[NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Wilfully.</b>	"wilfully" means voluntary and intentional, but not necessarily malicious. (Black's Law Dictionary)	Confessional statement. Eye witnesses. Circumstantial evidence?	
<b>2. Unlawfully</b>		Burden of proof on accused to show lawful authority or excuse.	
<b>3. sets fire to any forest reserve, forest plantation, standing trees, sapling or shrubs.</b>	Fire means, combustion or burning, in which substances combine chemically give out bright light, heat and smoke. (Blacks Law Dictionary) tree" includes palms, bamboos, canes, shrubs, bushes, climbers, forest seedlings, transplants, and the re-growth thereof of all ages and all kinds and any part;	Eye witnesses including Forestry Officer or other law enforcement officer(s). Crime scene Inspection Report with sketch, inventory of seized evidence or instrumentalities and photographs. Expert evidence/Forestry Officer as to damage or potential damage. Confessional statement within 4 hours of arrest.	Stop orders- Sec.57, suspension of permit –S.55. See also s.97 post conviction orders to cancel permit, forfeit forest produce, compensation orders, 10 x fees or royalties should have paid, removal orders for buildings, livestock, etc. Also payment of costs to seize, manage or remove items.
<b>STATEMENT OF OFFENCE</b>			
<b>Wilfully and lawfully setting fire to a forest reserve/forest plantation/standing trees/saplings/shrubs, contrary to Section 91(2) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) wilfully and unlawfully set fire to [forest reserve/forest plantation/standing trees/sapling/shrubs] (size and extent of fire and damage).</b>			

<b>OFFENCE</b>			
<b>s.92(a) FA unlawful uniform or badge</b>			
<b>PENALTIES</b>			
<b>Fine: 50,000 sh - 1m sh AND/OR Imprisonment: max 1 year. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Wear any uniform or badge or other mark issued by the Division to be worn by officers or staff.</b>	'Division" means the Division responsible for Forestry matters;	Forestry Officer, eye witnesses. Photographic evidence. Seized uniform/badge or mark, certificate of seizure and chain of custody records.	
<b>2. Without lawful authority or excuse</b>		Forestry officer. Burden of proof on accused to show lawful.	
<b>STATEMENT OF OFFENCE</b>			
<b>Unlawfully wearing a uniform/badge or mark issued by the Forestry Division contrary to Section 92(a) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) unlawfully wore a (type) uniform/badge/mark issued by the Forestry Division.</b>			

<b>OFFENCE</b>				
<b>s.92(b) FA unlawful possession of stamp or mark</b>				
<b>PENALTIES</b>				
<b>Fine: 50,000 sh - 1m sh AND/OR Imprisonment: max 1 year.</b>				
<b>[NB: s.95 eligible for compounding]</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Possession of (and date).</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Forestry Officer or other law enforcement officer. Certificate of seizure (who and where seized from). Confessional statement within 4 hours of arrest.	
<b>2. any stamp or mark used or intended to be used by the Division for making forest produce or anything having the appearance of such stamp or mark</b>	'Division' means the Division responsible for Forestry matters;		Seized stamp or mark, certificate of seizure and chain of custody records. Forestry Officer or other law enforcement officer involved in arrest and seizure.	
<b>STATEMENT OF OFFENCE</b>				
<b>Unlawful possession of a Forestry Division Forestry Produce stamp/mark contrary to Section 92(b) of the Forestry Act, No.14 of 2002.</b>				
<b>MODEL CHARGES</b>				
<b>(Name of the Accused) on or about the date) at (location) had in his possession a stamp/mark (which looked like one) used by the Forestry Division for marking forestry produce.</b>				



<b>OFFENCE</b>			
<b>s.92(c) FA false or incorrect statement</b>			
<b>PENALTIES</b>			
<b>Fine: 50,000 sh - 1m sh AND/OR Imprisonment: max 1 year.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. knowingly.</b>		Can be circumstantial evidence but have to show he knew false or incorrect. Confessional statement within 4 hours of arrest.	
<b>2. makes a false or incorrect statement, report or entry of any information that is required to be supplied to any officer</b>		document with false information, certificate of seizure and chain of custody records. Forestry officer or other officer to whom the false information was supplied. Evidence to show information false or incorrect.	
<b>STATEMENT OF OFFENCE</b>			
<b>Knowingly making a false or incorrect statement, report or entry of any information required to be supplied to a Forestry Officer, contrary to Section 92(c) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) knowingly made a false/incorrect statement/entry/report to Forestry Officer (name) when required to supply information to him.</b>			

<b>OFFENCE</b>			
<b>s.92(d) FA failure to comply with lawful demand</b>			
<b>PENALTIES</b>			
<b>Fine: 50,000 sh - 1m sh AND/OR Imprisonment: max 1 year. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. fails or refuses or wilfully neglects to comply.</b>		Forestry officer or other law enforcement officer. Eye witnesses. Confessional statement taken within 4 hours of arrest.	
<b>2. with any lawful demand or requirement made by, or to provide information that is required to be supplied to, any officer or member of staff of the Division</b>	"Division" means the Division responsible for Forestry matters;	Forestry Officer or member of staff of the Division, any written demand or requirement. Confessional statement taken within 4 hours of arrest.	
<b>3. without lawful authority or excuse.</b>		Burden of proof on accused to show lawful.	
<b>STATEMENT OF OFFENCE</b>			
<b>Failing/Refusing/Wilfully neglecting to comply with a lawful demand or requirement to supply information to a Forestry Officer of staff member of the Forestry Division, contrary to Section 92(d) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) failed/refused/wilfully neglected to comply with a lawful demand to provide information (about) to (name) Forestry Officer/Forestry Division Staff member without lawful authority or excuse.</b>			

<b>OFFENCE</b>			
<b>s.92(e) FA obstruction of officers carrying out their functions</b>			
<b>PENALTIES</b>			
<b>Fine: 50,000 sh - 1m sh AND/OR Imprisonment: max 1 year. [NB: s.95 eligible for compounding]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. obstructs, hinders, delays, threatens, intimidates or assaults.</b>	S.89A Penal Code: "'to intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property;"	Eye witnesses, Forestry Officer or other law enforcement officer. Person obstructed if different. Confessional statement taken within 4 hours of arrest. Evidence, if any other than eye witness testimony if assault (injuries - medical report, photographs), threats, etc. (in writing - email/text, telephone records).	
<b>2. any person in the execution of his powers and duties under FA, any rules, orders or notices under FA</b>		Person who was obstructed. Appointment or instructions to show acting in execution of duties and powers.	
<b>STATEMENT OF OFFENCE</b>			
<b>Obstructing/Hindering/Delaying/Threatening/Intimidating/Assaulting a person in the execution of his powers and duties under the Forestry Act, contrary to Section 92(e) of the Forestry Act, No.14 of 2002.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) obstructed/hindered/delayed/threatened/intimidated/assaulted (in which way) (name) who was executing his powers and duties as (title/job) under the Forestry Act/under an order/notice (no, date issued by) under the Forestry Act.</b>			

**C. OFFENCES UNDER THE NATIONAL PARKS ACT**

<b>OFFENCE</b>			
<b>s.16(1) and (2), read together with s.23(1) and (2) NPA [Cap 282 R.E. 2002] hunting, capturing, killing or wounding an animal or fish in a National Park</b>			
<b>PENALTIES</b>			
<b>For First Schedule, Part I animals, Imprisonment 3 - 7 years. In addition, discretionary fine: not exceeding 500,000 sh.</b> <b>For First Schedule Part II animals, Imprisonment: 2 - 5 years. In addition discretionary fine not exceeding 500,000sh.</b> <b>For First Schedule Part III animals, Imprisonment: 1 - 3 years. In addition, discretionary fine not exceeding 200,000 sh.</b> <b>For all other animals, read with s.21 Fine: not exceeding 500,000sh AND/OR Imprisonment: not exceeding 1 year. [BUT see s.29: Fine is 10,000sh.]</b> <b>*EOCCA First Schedule para.14(a) + s.60(2) penalty for unlawfully capturing, hunting or trapping: 20-30 years imprisonment.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. hunted, captured, killed, wounded or molested OR disturbed an egg or nest in control of</b>	"hunt" includes any unnecessary act towards or conduct in respect of any animal calculated to or tending to terrify or infuriate that animal; [NOTE: different definition from WCA]	Eye witness(es) including Rangers, Park wardens and any other law enforcement officer. Scene of Crime Inspection Report including photographic evidence where possible. Interview of the suspect (within 4 hours of arrest). Seizure, certificate of seizure and chain of custody records for any instrumentalities, weapons or evidence indicating hunting, etc.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF. Save for unavoidable circumstances, Certificate of Seizure should be signed by at least two independent witnesses. I/O to ensure chronological documentation and/or paper trail giving a detailed account of the movement and status of the seized exhibits from the point of seizure, custody, control, transfer, analysis, tendering in court and disposition of the seized exhibits. s.29(2) forfeiture of weapons, traps, and other instrumentalities
<b>2. an animal or fish (provided it is not a domestic animal or egg lawfully introduced into the National Park)</b>	"Animal" includes any animal live or dead, whether vertebrate or invertebrate or any portion thereof.	Eye witness including Rangers, Park Wardens, etc. Expert evidence if species needs identification. Seizure of the animal, egg or derivatives thereof hunted or killed. Certificate of Seizure of animal. Chain of custody paper trail. Valuation of Trophy (NOTE: sentence not tied to value.)	Trophy valuation Certificate must be prepared as soon as possible. Prosecutor may move the Court to make a disposal order of the animal which is subject to speedy decay pending trial.
<b>3. within a National Park</b>	"National Park" Means any area of land constituted, or included within a National Park by a proclamation under section 3 of 4 or declared to be a National Park under section 5 of the of the National Parks Act	Proclamation and map. Park Ranger or Warden to speak to this. Crime Scene Report with location including GPS if possible.	Consider EOCCA jurisdiction for Corruption and Economic offences, EOCCA, s.3(3) and paragraph 14 First Schedule.
<b>4. No permit in writing signed by an authorized officer.</b>	"Authorized officer" means any person authorized in writing by the Board of Trustees of the Tanzania National Parks established under section 8 of the National Parks Act to perform the functions of an Authorized officer	Authorized officer(s) to testify that the suspect had no written permit	

**STATEMENT OF OFFENCE**

**1. Hunting/capturing/killing/ wounding or molesting any animal/disturbing any egg or nest / being in possession or control of any animal or egg within National Park OR removing an animal/eggs from a National Park Contrary to section 16(1) and (2) of the National Parks Act, [Cap 282 R.E 2002].**

**MODEL CHARGES**

- 1. (Name of Accused), on (date) at (place), while in [Name of the National Park], hunted/captured/killed/wounded/molested, an animal namely; (Name of animal), valued at (value), in the said National Park, without written authorization of the Authorized officer.**
- 2. (Name of Accused), on (date) at (place), while in [Name of the National Park], disturbed the eggs or a nest of an animal/bird namely; (Name of animal/bird), valued at (value), in the said National Park, without written authorization of the Authorized officer.**
- 3. (Name of Accused), on (date) at (place), while in [Name of the National Park], was found in possession or control of an animal/egg(s) of an animal namely; (Name of animal), valued at (value), without written authorization of the Authorized officer.**
- 4. (Name of Accused), on (date) at (place), removed an animal namely; (Name of animal) or the eggs of a bird namely; [Name of the Bird], valued at (value), from the confines of [Name of the National Park], without written authorization of the Authorized officer.**

<b>OFFENCE</b>			
<b>s.22 NPA read with s.21 or s.29 NPA Mining in a National Park without written notice</b>			
<b>PENALTIES</b>			
<b>Read with s.21 FOR AN INDIVIDUAL - Fine: not exceeding 500,000sh AND/OR Imprisonment: not exceeding 1 year. FOR A COMPANY Fine: Not exceeding 1m sh. [But see s.29 Fine is 10,000sh]</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. holder of a mining rights in, over, under or in respect of the land comprised in a National Park.</b>	1. "Mining right" mean any right, title, interest of authority granted under the Mining Act or the Petroleum Exploration and Production Act	Documents relating to the issue of said mining rights permit or written authority from Director of Wildlife. Interview of the suspect including the transferee within four hours after arrest. Witness statements from the relevant officials from the Ministry responsible with Minerals and Mining rights.	Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of license, permit, written permission or other written authority.
<b>2. entry into a National Park for purposes of exercising such mining right.</b>	"national park" means any area of land constituted, or included within, a national park by proclamation under section 3 or 4 or declared to be a national park under section 5.	Statements from the Authorized officers officer (s) Park Rangers and Wardens. Crime Scene Inspection report, with photographs, location indling GPS and inventory of any seized instrumentalities or evidence.	I/O to make sure that all instrumentalities are seized and properly stored as exhibits. AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF and wherever circumstances permits the seizure must be in the presence of two independent witnesses who must also sign the certificate of seizure. I/O to ensure chronological documentation and/or paper trail giving a detailed account of the movement and status of the seized exhibits from the point of seizure, custody, control, transfer, analysis, tendering in court and disposition of the seized exhibits.
<b>3. Absence of a written notice to the trustee and the Minister</b>	"Minister" means the Minister responsible for National Parks. "Trustee" means the Trustees of the Tanzania National Parks established under section 8 of the National Parks Act.	Witness statements from the relevant officials from the Ministry responsible with Minerals and Mining rights.	
<b>4. Non compliance with any condition imposed by the minister to the said person.</b>		Mining rights permit or written authority, including conditions attached. Witnesses to speak to conditions.	
<b>STATEMENT OF OFFENCE</b>			
<b>Mining in a National Park contrary to section 22(1),(2) and (3) of the National Parks Act, [Cap 282 R.E 2002]</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused), on (date) at (place) being the holder of mining / exploration license /permit/ (No. of Permit) issued by the (Name of office of person issuing the mineral right), entered in the [Name of the National Park], for purposes of carrying out Mining [exploration] activities, without issuing a written notice to the Trustee or the Minister responsible with Minerals or [in contravention of Minerals].</b>			

<b>OFFENCE</b>			
<b>ss.17(1)(a) and (b) read with s.24(1)(a) and (b) NPA possessing weapons or constructing traps in a National Park</b>			
<b>PENALTIES</b>			
<b>Fine: not exceeding 100,000sh AND/OR Imprisonment: not exceeding 2 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. in a National Park</b>	"national park" means any area of land constituted, or included within, a national park by proclamation under section 3 or 4 or declared to be a national park under section 5	Statements from authorized officer [Park Rangers and Wardens] including location of crime scene/arrest of the accused. Scene of Crime report with location/GPS if possible. Proclamation of National Park and boundaries/plan.	CONSIDER charges under other legislations such as FACA or EOCCA if arms and ammunition involved.
<b>2. (a) digging, laying or constructing any pitfall, net, trap, snare, or other devices under whatsoever capable of killing, capturing or wounding any animal OR (b) carrying of or having in possession or under control any weapon for purposes of hunting, killing, wounding or capturing of an animal.</b>	"animal" includes any animal alive or dead, whether vertebrate or invertebrate or any portion thereof. "hunt" includes any unnecessary act towards or conduct in respect of any animal calculated to or tending to terrify or infuriate that animal; [NOTE: different definition from WCA]	Statements from authorized officer [Park Rangers and Wardens]. Confessional statements from the suspects after arrest. Seized weapons, snares, traps, related to commission of the offence - including certificates of seizure. Photographs of the scene of crime and all items seized at the scene.	Application for forfeiture orders. AO/IO should ensure that Certificate of Seizure is prepared and duly filed in the PCF and where circumstances permits the search and seizure must be witnessed by two independent witnesses who must also sign the certificate of seizure. I/O to ensure chronological documentation and/or paper trail giving a detailed account of the movement and status of the seized exhibits from the point of seizure, custody, control, transfer, analysis, tendering in court and disposition of the seized exhibits.
<b>3. absence of a written permit by an authorized officer</b>		Burden of proof with accused. National Park Officer	
<b>STATEMENT OF OFFENCE</b>			
<b>1. Digging, laying or constructing any pitfall, trap, net, snare, capable of killing, capturing or wounding any animal OR 2. carrying or having in possession or under control weapon intended to be used for purposes of hunting, killing, wounding or capturing of an animal contrary to section 24(1) (a)/(b) of the National Parks Act [Cap 282 R.E 2002]</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place), while in [Name of the National Park], dug, laid, or constructed a pitfall, net, trap, snare, capable of killing, capturing or wounding an animal, without a written permit from the authorized officer. OR (Name of Accused), on the (date) at (place) while in [Name of the National Park], carried or was found in possession or in control of a weapon namely; [Name of the weapon], which was intended to be used for purposes of hunting, killing, wounding or capture of an animal.</b>			

<b>OFFENCE</b>			
<b>s.30 NPA read with s.21 or s.29 NPA Killing or wounding an animal in defence of life or property in a National Parks without reporting</b>			
<b>PENALTIES</b>			
<b>S.21 or S.29? Fine: not exceeding 10,000sh or 500,000sh AND/OR Imprisonment: not exceeding 1 year.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Killing or wounding in defence of human life or in defence of property.</b>	It's not self defence if the behaviour of the animal necessitating the taking of such measures is the result of molestation or deliberate provocation by or with the knowledge and consent of the person concerned; OR if the person, at the time self defence became necessary, was committing an act in contravention of any provision of this Act or of any regulation made thereunder.	Eye witnesses including Park Warden or Ranger or other law enforcement officer. Confessional statement taken within 4 hours of arrest. Expert evidence as to cause of death/manner of death in case it indicates circumstances other than self defence.	Consider what the accused was doing at the time of the killing/wounded - does it constitute another offence? Consider manner of death and the scene of the crime, does it support self defence?
<b>2. of an animal</b>	"animal" includes any animal alive or dead, whether vertebrate or invertebrate or any portion thereof.	Eye witnesses. Expert Evidence on cause of death or species of animal. Seized animal. Certificate of seizure and chain of custody records. Crime scene inspection report with location, photographs and inventory.	
<b>3. in a national park and</b>	"national park" means any area of land constituted, or included within, a national park by proclamation under section 3 or 4 or declared to be a national park under section 5	Scene of Crime Inspection Report with location and GPS. Eye witnesses. Proclamation with plan/boundaries. Confessional statement.	
<b>4. failing to report the wounding or killing at the earliest possible moment to the nearest officer or Trustee, including what animal has been wounded or killed, what time, date place, as well as the wounds inflicted and any other information which might help locate and identify it.</b>		Park ranger or warden to provide evidence of failure to report. Confessional statement.	
<b>5.</b>			
<b>STATEMENT OF OFFENCE</b>			
<b>Failure to report the wounding or killing of an animal in defence of human life or property within a National Park contrary to Section 30 of the National Parks Act [Cap 282 R.E 2002]</b>			
<b>MODEL CHARGES</b>			



**(Name of Accused) on or about the (date) at (place) having wounded/killed an animal, namely a (name animal), in self defence within [name of National Park], failed to report this at the earliest possible moment to the nearest officer who was at (place).**

**D. OFFENCES UNDER THE ENVIRONMENTAL MANAGEMENT ACT**

<b>OFFENCE</b>			
<b>s.98 EMA Failure to comply with requirement for new EIA - read with s.191 EMA</b>			
<b>PENALTIES</b>			
<b>Fine: 10,000 sh - 50M sh AND/OR Imprisonment: 3 months - 7 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Any person holding Environmental Impact assessment certificate.</b>	"Environmental Impact Assessment" means a systematic examination conducted to determine whether or not a program, activity or project will have any adverse impacts on the environment.	EIA Certificate. Confessional Statement taken within 4 hours of arrest. Officers from the National Environmental Management Council (NEMC)	
<b>2. required by the council to conduct a fresh Environmental Impact Study under s.97 EMA</b>	"the council"- means the National Environmental Management Council established under section 16 of the Environmental Management Act, 20004.	Officials [experts] from NEMC. Official paperwork/correspondence on requirement to conduct new EIS. Cautioned statement of the suspects.	Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items.
<b>3. fails to submit environmental impact statement within prescribed time</b>		Officials from the NEMC to testify to failure to submit within prescribed time. If also relevant, officials from the Tanzania National Parks where the alleged project is claimed to have been undertaken required steps. Locus in quo inspection along with photographic evidence where possible of the site where the said project is alleged to take place.	Technically this offence is a failure to conduct and submit new survey in a specified timeframe. If work or the project has continued or started without the new survey, also consider leading evidence regarding that - even if not an element to this offence. Prosecution may move the Court to the place where the said Environmental Impact study was to be undertaken where possible.
<b>STATEMENT OF OFFENCE</b>			
<b>Failure to comply with directions of the Council in relation to EIM contrary to section 98 of the Environmental Management Act, No.20 of 2004.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on the (date) at (place), failed or neglected to comply with the directives of the National Environmental Management Council, which required the said [name] to carry out a fresh Environmental Impact Study in the [Name the Project] to be carried in the [Name the National Park].</b>			

<b>OFFENCE</b>			
<b>s.187(1)(a) EMA 2004 Discharge of dangerous materials</b>			
<b>PENALTIES</b>			
Fine: 3M -50M sh AND/OR Imprisonment: not exceeding 12 years. PLUS: may direct that person to pay the full cost of cleaning up the polluted environment and of removing the pollution OR clean up the polluted environment and remove the pollution to the satisfaction of the Council. PLUS: may direct the polluter to meet the cost of injury or effect of the pollution to any third parties though adequate compensation, resoration or restitution. PLUS: s. 193(4) community service in the protection of the environment.			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. discharge of any dangerous materials, substances, oil, oil mixtures</b>	"Dangerous material and dangerous substance" means substances or materials prescribed in the Regulations passed by the Minister terms of section 76(2) to be subject of control under EMA.	Eye witness(es), Park Rangers and Park Wardens, scene of crime inspection reports, photographic evidence where possible. Interview of the suspect within four hours after arrest. Instrumentalities seized from the scene of crime. Report from the Chief Government Chemist. Report on what steps required to clean up and remove materials/damage, as well as estimated costs.	AO/IO should ensure that samples of the alleged dangerous material or substance are taken to the chief government chemist for analysis. I/O to ensure that the report of the samples is obtained. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items relating to the commission of the offence. Prosecutor may move the Court to make a disposal order of said dangerous material or substance in order to avert further catastrophe to the environment. If necessary the said dangerous material or substance must be stored in a safe place and carefully handled to avoid any contamination of the said exhibit or posing any danger to the environment or people handling the exhibits. In collection of the samples and packing the I/O must whenever the circumstances permit ensure that two independent witnesses and the suspects witnesses the exercise s.193 forfeiture of instrumentalities (substances, equipment, appliances).
<b>2. into land, water, air or aquatic environment</b>	"Aquatic environment" Environment includes "the physical factors of the surroundings of human beings including air, land, water, climate, sound, light, odour, taste, micro-organism, the biological factors of animals and plants, cultural resources and the social economic factor of aesthetics and include both the natural and the built environment and the way they interact.	Scene of Crime Inspection Report wit location and GPS, photographic evidence. Eye witnesses. Confessional statement.	
<b>3. Contrary to the provisions of the EMA.</b>		EM Council	
<b>STATEMENT OF OFFENCE</b>			
Discharging dangerous materials, substance, oil, oil mixtures into land, water, air, or aquatic environment contrary to section 187(1)(a) of the Environmental Management Act, No.20 of 2004. OR Pollution of the Environment contrary to section 187(1)(b) of the Environmental Management Act, No.20 of 2004.			
<b>MODEL CHARGES</b>			

VERSION No.4 (February 2018)

(Name of Accused) on the (date) at (place/National Park) discharged a dangerous material namely [name of the material or substance], into the [name of the National Park] or water, or air or aquatic environment within the [Name of the National Park]' in contravention of [Citation of the relevant section of the law violated]. Or (Name of Accused) on the (date) at (place/National Park) polluted the Environment of [Name of the National Park], in contravention of [insert the provision of the law contravened].

<b>OFFENCE</b> <b>s.178(1)(b)(c) EMA Pollution</b>			
<b>PENALTIES</b> <b>Fine: 3M -50M sh AND/OR Imprisonment: not exceeding 12 years. PLUS: may direct that person to pay the full cost of cleaning up the polluted environment and of removing the pollution OR clean up the polluted environment and remove the pollution to the satisfaction of the Council. PLUS: may direct the polluter to meet the cost of injury or effect of the pollution to any third parties through adequate compensation, resoration or restitution. PLUS: s. 193(4) community service in the protection of the environment.</b>			
Elements to Prove	Definitions	Potential Sources of Evidence	Associated Offences and other important issues to consider
<b>1. pollutes the environment or discharges a pollutant into the environment.</b>	Pollution means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the the environment by discharging, emitting, or depositing of wastes so as to adversely affect any beneficial use, to cause a condition which is hazardous to public health, safety or welfare, or to animals , birds, wildlife, fish or aquatic life or to plants or to cause contravention of any condition, limitation or restriction which is the subject to a licence under this act. Environment includes "the physical factors of the surroundings of human beings including air, land, water, climate, sound, light, odour, taste, micro-organism, the biological factors of animals and plants, cultural resources and the social economic factor of aesthetics and include both the natural and the built environment and the way they interact.	Eye witness(es) , Park Rangers and Park Wardens. Scene of crime inspection reports. Photographic evidence where possible. Samples taken/exhibits seized with certificates of seizure. Interview of the suspect within four hours after arrest. Instrumentalities seized from the scene of crime. Report from the Chief Government Chemist. Report on what steps required to clean up and remove materials/damage, as well as estimated costs.	AO/IO should ensure that samples of the polluted material (earth, water, etc.) are taken to the chief government chemist for analysis. I/O to ensure that the report of the samples is obtained. Regard must be had to chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items relating to the commission of the offence. In collection of the samples and packing the I/O must whenever the circumstances permit ensure that two independent witnesses and the suspects witnesses the exercise. s.193 forfeiture of instrumentalities (substances, equipment, appliances).
<b>2. contrary to the provisions of EMA.</b>		EM Council.	
<b>STATEMENT OF OFFENCE</b> <b>Polluting the environment/Discharging a pollutant into the environment contrary to Section 178(1) of the Environmental Management Act No.20 of 2004.</b>			
<b>MODEL CHARGES</b> <b>(Name of the Accused) on or about (date) at (location) polluted the environment by (describe act)/discharged d(escribe pollutant and estimated amount) into the environment (add any other description necessary about where discharge e.g. waterway, etc), contrary to the Environmental Management Act.</b>			

<b>OFFENCE</b>				
<b>s.188(a), (b) and (c) EMA disturbing habitat/biodiversity</b>				
<b>PENALTIES</b>				
<b>Fine: not exceeding 10M sh AND/OR Imprisonment: not exceeding 5 years. PLUS: s. 193(4) community service in the protection of the environment.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. trades, possesses, or disturbs the habitat of</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. See Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eye witness(es), park rangers and wardens who saw the suspects committing the act. Photographic evidence where possible. Cautioned statements from the suspects.	Prosecutor must guide the Director to apply ancillary powers such suspension or cancellation of license, permit, written permission or other written authority whenever the law permits.
<b>2. a component of a biological diversity</b>	Biological diversity means " the variability among living organisms from all soruces including terrestrial ecosysmtes, aquatic ecosystems and the ecological complexes of which they are part; the include diversity within species, among species and of ecosystems"		Seizure of the animal biodiversity products found in possession of the accused/suspects. Valuation reports/ certificates. Experts from the Forestry services and the Environmental Management Council.	AO/IO should ensure that Certificate of Seizure is prepared and duly filed in PCF. Where possible, Certificate of Seizure should be signed by at least two independent witnesses. I/O to ensure chronological documentation of paper trail, showing the seizure, custody, control, transfer, analysis and disposition if any of all seized items. Need to have a report on the identification of the species of Flora or Fauna involved in the commission of the offence. Prosecutor may move the Court to make a disposal order of the Flora or Fauna which is subject to speedy decay pending trial whenever necessary. Prosecutor must move the court to forfeit subject matter of the offence including instrumentalities.
<b>3. in contraventions of the guidelines and measures.</b>			EM Council, guidelines/measures	

**STATEMENT OF OFFENCE**

**Trading in a component of a biological diversity contrary to S.118(a) of the Environmental Management Act 2004. OR possession of a component of a biological diversity contrary to section 188(b) of the Environmental Management Act, No.20 of 2004 OR disturbing the habitat of a component of a biological diversity contrary to section 188(c) of the Environmental Management Act, No.20 of 2004**

**MODEL CHARGES**

**(Name of Accused) on the (date) at (place/National Park) was found in possession of a component of a biological diversity namely [name of the biological diversity concerned [common and scientific name], valued at [insert value], in contravention of [name the guideline contravened].**

**(Name of Accused) on the (date) at (place/National Park) disturbed a component of a biological diversity namely [name of the biological diversity concerned [common and scientific name], valued at [insert value], by [name the act constituting the disturbance] in contravention of [name the guideline contravened].**

**E. OFFENCES UNDER THE FIREARMS AND AMMUNITION CONTROL ACT**

<b>OFFENCE</b>				
<b>s.20 FACA unlawful possession of firearm (see also s.10(1), (2))</b>				
<b>PENALTIES</b>				
<b>Imprisonment: max 5 years. *EOCCA First Schedule para.31(a) and s.60(2) penalty 20-30 years imprisonment.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. possession of (and date).</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Law enforcement officer. Certificate of Seizure. Eye witnesses.	EOCCA, s.3(3)(b) jurisdiction of corruption and economic crimes Division of High Court automatic for FACA offences falling within EOCCA First Schedule para.31.
<b>2. a firearm or firearm part</b>	Firearm means, all small arms, light weapons, muzzle loading guns and antique firearm except armaments. "Small arms" includes light machine guns, submachine guns, machine pistols, full automatic rifles, assault rifles and semi automatic rifles. "Light weapons" include portable weapons designed for use by several persons serving as crew, any machine gun, automatic cannons, howitzers motors of less than 100mm calibre, grenade launchers, anti tank weapons, recoilless guns, shoulder fire rockets, aircraft weapons and launchers. "Antique firearm" means a firearm manufactured before 1 January 1990. "Firearm part" means the slide, bolt or breech-block of a firearm.		Seized firearm, Certificate of Seizure, Chain of Custody Records. Ballistics/Export Report.	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>3. without a dealer's, manufacturer's or gunsmith's licence or without an export, import, on-transit or transporter's permit or is authorised to do so under any other written law.</b>	"Dealer" means, any person authorized under FACA to trade in firearms and ammunitions. "Manufacturer" means a person who engages himself in the making or processing of any firearm, ammunition or any part thereof into components by any process, the conversion of any kind of explosive into another kind and the alteration, testing or repairing of any explosive. "Gunsmith" means, a person authorized in terms of the Act to repair a firearm. "Permit" means, a document issued to an applicant to own, import, export, manufacture, deal or do any act licenced under the Act. "licence" means a document issued to an applicant to own, import, export, manufacture, deal or do any act licenced under FACA		Licensing/permit issuing officers. Law enforcement officer (failure to produce on request).	
<b>STATEMENT OF OFFENCE</b>				
<b>Unlawful possession of a firearm or firearm part without a licence, permit or authority, contrary to the Firearms and Ammunitions Control Act, No.2 of 2015.</b>				



**MODEL CHARGES**

**(Name of the Accused) on or about the (date) at (location) was in possession of a firearm, namely (type) without a permit, licence or authority.**

<b>OFFENCE</b>			
<b>s.19(4) FACA failure to present firearm for marking</b>			
<b>PENALTIES</b>			
<b>Fine: max 10m sh AND/OR Imprisonment: max 5 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Failure to present firearm to Registrar for marking.</b>		Eyewitness(es), Exhibits Officers, Arresting Officer, Investigating Officer, Evidence from Registrar of Firearms.	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA
<b>2. within the prescribed time periods</b>		Registrar	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>STATEMENT OF OFFENCE</b>			
<b>Failure to present a firearm to the Registrar for marking within the prescribed time period, contrary to Section 19(4) of the Firearms and Ammunitions Control act, No.2 of 2015.</b>			
<b>MODEL CHARGES</b>			
<b>(name of the Accused) on or about the (date) at (location) failed to present his (type of firearm) for marking by (date).</b>			

<b>OFFENCE</b>			
<b>s.19(5) FACA altering or erasing firearm identification mark</b>			
<b>PENALTIES</b>			
<b>Fine: max 10m sh AND/OR Imprisonment: max 5 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Erase, alter or in any other way tamper with.</b>		Expert Witness, Exhibits Officers, eye witness(es), suspect statement.	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA
<b>2. the manufacturer's serial number or any other identification code on a firearm</b>	Firearm means, all small arms, light weapons, muzzle loading guns and antique firearm except armaments. "Small arms" includes light machine guns, submachine guns, machine pistols, full automatic rifles, assault rifles and semi automatic rifles. "Light weapons" include portable weapons designed for use by several persons serving as crew, any machine gun, automatic cannons, howitzers motors of less than 100mm calibre, grenade launchers, anti tank weapons, recoilless guns, shoulder fire rockets, aircraft weapons and launchers. "Antique firearm" means a firearm manufactured before 1 January 1990.	Eyewitness(es), Exhibits Officers, Arresting Officer, Investigating Officer, Expert witness e.g. handwriting expert, ballistics expert, Evidence from Registrar of Firearms.	Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>3. with intention to change its identity</b>		Ballistics expert, investigating officer, Registrar of Firearms	
<b>STATEMENT OF OFFENCE</b>			
<b>Erasing, altering or tampering with the manufacturer's serial number or identification code on a firearm, contrary to Section 19(5) of the Firearms and Ammunition Control Act, No.2 of 2015.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location) erased/alterd/tampered with (by what means) the manufacturer's serial number/identification code on (type of firearm).</b>			

<b>OFFENCE</b> <b>s.21 FACA (read with s.60 FACA) unlawful possession of ammunition</b>				
<b>PENALTIES</b> Fine: max 15m sh AND/OR Imprisonment: max 10 years (except where penalty provided for similar offence in any other relevant law. *EOCCA First Schedule para.31(a) and s.60(2) penalty 20-30 years imprisonment.				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. possession of (and date).</b>	<p>"Possession" means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. "Actual possession" means physical occupancy or control over property. "Constructive possession" means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;</p>	<p>Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.</p>	<p>Eye witnesses, arresting officer, investigating officer, confessional statement, certificate of seizure and exhibits officer.</p>	<p>Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA. Post conviction cancellation or suspension of permit and forfeiture of firearms and ammunition for a period the court sees fit s.60(2) FACA.</p>
<b>2. any ammunition</b>	<p>"Ammunition" means a primer or complete cartridge including the cartridge case unfired primer, propellant, bullets, and projectiles that are used in the firearm and anything which the Minister may, by notice published in the Gazette, declare to be an ammunition.</p>		<p>Eye witness(es), Certificate of Seizure, Arresting officers who seized the ammunition or other law enforcement officer(s). Sketch plan of the scene of crime to be drawn by police officer, with photographic evidence where possible. Confessional statement. Certificate of Seizure of the instrumentalities, etc. Chain of custody paper trail.</p>	<p>Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.</p>
<b>3. without a dealer's/gunsmith's licence or an export/import/transporter's permit or not</b>			<p>Burden of proof on accused.</p>	

authorised under any other  
written law.

**STATEMENT OF OFFENCE**

Unlawful possession of ammunition without a licence, permit or authority contrary to Section 21 of the Firearms and Ammunition Control Act, No.2 of 2015.

**MODEL CHARGES**

(Name of the Accused) on or about the (date) at (location) was in possession of ammunition, namely (type) without a permit, licence or authority.

<b>OFFENCE</b>				
<b>s.22 FACA (read with s.60 FACA) unlawful possession of more ammunition than permit</b>				
<b>PENALTIES</b>				
<b>Fine: max 15m sh AND/OR Imprisonment: max 10 years (except where penalty provided for similar offence in any other relevant law.)</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Holder of a firearms licence.</b>			Evidence from Registrar of Firearms, Arms Licence showing number of allowed ammunitions.	
<b>2. possession of</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. See also Penal Code s.2.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Evidence from respective authorised arms & ammunition dealer who sold the ammunition (paperwork and testimony), Exhibits Officers, Arresting Officer, Investigating Officer, eye witness(es)	Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>3. more ammunition than licenced to keep</b>	excludes ammunition bought and discharged at accredited shooting range s.22(2). Ammunition means a primer or complete cartridge including the cartridge case unfired primer, propellant, bullets, and projectiles that are used in the firearm and anything which the Minister may, by notice published in the Gazette, declare to be an ammunition.		Registrar	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA
<b>STATEMENT OF OFFENCE</b>				
<b>Unlawful possession of ammunition in excess of permit, contrary to Section 22 of the Firearms and Ammunition Control Act, No.2 of 2015.</b>				
<b>MODEL CHARGES</b>				
<b>(Name of the Accused) on or about the (date) at (location) had in his possession (amount) of (type of ammunition), which exceeded the amount allowed in his permit (no, date, issued by).</b>				

<b>OFFENCE</b> <b>s.23 FACA (read with s.60 FACA)</b>				
<b>PENALTIES</b> <b>Fine: max 15m sh AND/OR Imprisonment: max 10 years (except where penalty provided for similar offence in any other relevant law.)</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. acquisition, disposal, possession or use of.</b>	<p>“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object.</p> <p>“Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;</p>	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Evidence from respective authorised arms & ammunition dealer who sold the ammunition (paperwork and testimony), Exhibits Officers, Arresting Officer, Investigating Officer, eye witness(es)	Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>2. prohibited or restricted specified class of ammunition</b>	GN Notice. Ammunition means a primer or complete cartridge including the cartridge case unfired primer, propellant, bullets, and projectiles that are used in the firearm and anything which the Minister may, by notice published in the Gazette, declare to be an ammunition.		Expert Witness (ballistics), Exhibits Officers, suspect statement.	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA
<b>STATEMENT OF OFFENCE</b> <b>Possessing/acquiring/disposing of/using a prohibited or restricted class or type of ammunition, contrary to Section 23 of the Firearms and Ammunition Control Act, No.2 of 2015.</b>				
<b>MODEL CHARGES</b> <b>(Name of the Accused) on or about the (date) at (location) was in possession of/acquired/disposed of/used (amount) of (type of ammunition) which is a prohibited/restricted class/type of ammunition.</b>				

<b>OFFENCE</b>				
<b>s.61 FACA (read with s.60 FACA) (See also s.59 FACA) safe keeping of firearms and ammunition</b>				
<b>PENALTIES</b>				
<b>Fine: max 2m sh AND/OR Imprisonment: max 1 year.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. lawful possession of (and date).</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eyewitness, Arresting Officer, Investigating Officer, Evidence from Registrar of Firearms.	
<b>2. a firearm or ammunition</b>			Exhibits Officer, Investigating Officer, Expert Witness (ballistics) if necessary, Certificate of Seizure	Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>3. failure to keep it in safe custody</b>	See s.59 FACA - take reasonable precaution to prevent the firearms or ammunition from falling into the possession, control or custody of unauthorised persons, and complying with security measures prescribed by the Registrar. GN.		eye witness(es) (as to storage conditions, or someone in possession who shouldn't have been), suspect statement, investigating officer. Registrar of Firearms for evidence of safe custody/security conditions [Burden of proof if not in possession, lost, not in locked cabinet, etc.]	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA
<b>STATEMENT OF OFFENCE</b>				
<b>Failure to keep a firearm or ammunition in safe custody, contrary to Section 61 of the Firearms and Ammunition Control Act, No.2 of 2015.</b>				
<b>MODEL CHARGES</b>				
<b>(Name of the Accused) on or about the (date) at (location) being in the lawful possession of (type of firearm/ammunition) under permit (no. date, issued by), failed to keep it in safe custody (by .... resulting in .....)</b>				



<b>OFFENCE</b>				
<b>s.62 FACA failure to report loss of firearm of ammunition</b>				
<b>PENALTIES</b>				
Fine: not less than 5m sh AND/OR Imprisonment: 12 [does not state whether months or years, presumably months].				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences/important issues to consider</b>
<b>1. lawful possession of a firearm or ammunition.</b>	“Possession” 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of all of them.	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Eyewitness, Arresting Officer, Investigating Officer, Evidence from Registrar of Firearms.	Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>2. which becomes lost, stolen or destroyed</b>	If prove 1 , if failure to produce firearm or ammunition upon request and failre to show reasonable grounds for that, presumption lost, stolen or destroyed		Eye witness(es) (as to storage conditions, or someone in possession who shouldnt have been), suspect statement, investigating officer. R [See burden of proof if failure to product without reason - shifts to presumption that lost, stolen or destroyed.	Search and Seizure- S.53 FACA. Forfeiture – ss.56-57 FACA
<b>3. failure to report in person within 7 working days after becoming aware of loss, including clearly stating particulars, time, place and circumstances of loss as required.</b>	As above, prove that failure to report.		Representative of local police station, Registrar of Firearms, Investigating Officer	
<b>STATEMENT OF OFFENCE</b>				
Failure to report the loss/theft or destruction of lawfully held firearm or ammunition within 7 days, contrary to Section 62 of the Firearms and Ammunition Control Act, No.2 of 2015.				
<b>MODEL CHARGES</b>				

VERSION No.4 (February 2018)

(Name of the Accused) on or about the (date) at (location) having been in the lawful possession of (type of firearm/ammunition) under permit (no. date, issued by) which was lost/stolen/destroyed, failed to report this in person within 7 days of being becoming aware of it.

**F. OFFENCES UNDER THE PENAL CODE**

<b>OFFENCE</b>			
<b>s.96 Penal Code Abuse of Office</b>			
<b>PENALTIES</b>			
<b>Imprisonment: 3 years. *EOCCA, s.60(2) and First Schedule para.38 - penalty imprisonment 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Employed in public service.</b>		Proof of employment in the public office (contract, personnel record, pay roll, bank account), documentary evidence of the nature of his office and his duties/roles/responsibilities, (contract and HR officer)	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for Penal Code offences falling within EOCCA First Schedule para.38.
<b>2. does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another</b>		electronic evidence, witness statements, financial investigation to ascertain gain if any (Bank records,assets etc), investigating officer, exhibits officer, certificate of seizure for records. Telephone/computer seized and analysis/report on contents.	
<b>3. for purposes of gain</b>		financial investigation to ascertain gain if any (Bank records,assets etc - with certificate of seizure for records, witness from bank to authenticate records/transaction), FIU report and officer	
<b>STATEMENT OF OFFENCE</b>			
<b>Abuse of public office, contrary to Section 96 of the Penal Code.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) being employed in public service as (job title), abused the authority of his office by doing/directing to be done (what act) (how prejudicial to the rights of others).</b>			

<b>OFFENCE</b>			
<b>s.97 Penal Code False Certificates by Public Officers</b>			
<b>PENALTIES</b>			
<b>Imprisonment: 2 years AND/OR fine. (s.35 Penal Code)</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. being authorized or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected.</b>		Employment Contract, HR officer to confirm his duties & roles etc), witnesses, investigating officer	
<b>2. gives a certificate</b>		Documentary evidence (Hunting Permits/Licences/Trophy Dealer's Licences/, Contracts, procurement paperwork) plus any certificates of seizure. Eye witness(es), Investigating Officer, Forensic Evidence (Document Examination Expert)	
<b>3. which is, to his knowledge, false in any material particular</b>		suspect statement, witness from work about the certification process (why the accused would know it was false). Forensic Evidence - document analysis/: report and testimony.	May be to infer knowledge from changes to certificate or a colleague who can evidence that the accused must have know it was a false certificate.
<b>STATEMENT OF OFFENCE</b>			
<b>Giving a certificate knowing it to be false in a material particular, contrary to Section 97 of the Penal Code.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location), as (job title) being authorised to grant (type of certificate), gave a certificate (type, no, date) which he knew was false in (what regard).</b>			

<b>OFFENCE</b>				
s.312 Penal Code possession or control over property which cannot satisfy the court was lawfully obtained.				
<b>PENALTIES</b>				
<b>Imprisonment: not exceeding 3 years.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. in possession of, or conveying in any manner, or in control of.</b>	“Possession” means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. “Actual possession” means physical occupancy or control over property. “Constructive possession” means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Records from BRELA. Officer from Commission of Ethics. Witnesses and neighbours - holidays, school fees, rental/mortgage properties, FIU report of asset tracing, motor vehicles. Confessional statement. Arresting officer, exhibits officer, certificates of seizure	Ensure enagement of FIU and PCCB (if relevant) asap to aid in the investigation. AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015. AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions for evidence.
<b>2. any thing or any property</b>			FIU report of asset tracing, motor vehicles. FIU Officer. Bank Records or purchase transactions, certificate or registration of title (cars, houses)	
<b>3. having regard to all the circumstances, may be reasonably suspected of having been stolen or otherwise unlawfully acquired</b>	"unlawfully acquired" means acquired in circumstances which constitute a criminal offence under any written law and also' means acquired—(a) as consideration of any sale, barter or other disposition of any property so unlawfully acquired; or (b) by way of purchase with funds, the whole or any part of which was so unlawfully acquired. □ □		Pay slips/pay roll records. Employer/supervisor. Bank accounts. List of assets declared at start of employment. Investigating officer.	
<b>4. fails to satisfy the Court that he did not steal or otherwise unlawfully acquire the property</b>			Burden of proof on defence.	
<b>STATEMENT OF OFFENCE</b>				
Possession or control of property or an item reasonably suspected to be stolen or acquired unlawfully without being able to satisfy the court that it was lawfully acquired, contrary to Section 312 of the Penal Code.				
<b>MODEL CHARGES</b>				

VERSION No.4 (February 2018)

(Name of the Accused) on or about the (date) at (location) was in possession/control or conveyed (type of property or thing) which having regard to the circumstances (namely) was reasonably suspected to have been obtained unlawfully, requiring him to satisfy the court as to its lawful origin.

<b>OFFENCE</b>			
<b>s.335 Penal Code Forgery (read with s.337 and 339 (official document))</b>			
<b>PENALTIES</b>			
<b>Imprisonment: 7 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Making a false document.</b>	(a) makes a document which is false or which he has reason to believe is untrue; (b) alters a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document; (c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorized would have altered the effect of the document; (d) signs a document— (i) in the name of any person without his authority whether such name is or is not the same as that of the person signing; (ii) in the name of any fictitious person alleged to exist whether the fictitious person is or is not alleged to be of the same name as the person signing; (iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person; (iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he	Documentary evidence and certificate of seizure; Exhibits Officer, Investigating Officer, eye witnesses, forensic Evidence (Document Examination Expert)	
<b>2. With the intent to defraud.</b>	An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.	Witness(es), Confessional statement. Certificate of Seizure of forged document. Chain of custody paper trail. Handwriting Examination Report	
<b>STATEMENT OF OFFENCE</b>			
<b>Forgery/Making a false document with intent to defraud, contrary to Section 335, read with Sections 337 and 339, of the Penal Code.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) (act falling under s.337) with the intention of defrauding (who?).</b>			

<b>OFFENCE</b>			
<b>s.342 Penal Code Uttering a False Document</b>			
<b>PENALTIES</b>			
<b>Imprisonment: 7 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. knowingly and fraudulently.</b>	"knowingly" used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used	Confessional statement; witnesses; investigating officer	May be to infer knowledge or fraud.
<b>2. uttering a false document</b>	"utter" includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with or act upon the thing in question; "document" in this division of this Code does not include a trade mark or any other sign used in connection with articles of commerce though they may be written or printed.	eye witnesses, false document and certificate of seizure, forensic evidence - analysis of false document: report and testimony; investigating officer, any relevant associated transactional documents.	Need to show false document - may have to do this through witnesses, or through forensic analysis to show alternation, may need customs officer to show custom declaration did not match contents of container, etc.
<b>STATEMENT OF OFFENCE</b>			
<b>Knowingly and fraudulently uttering a false document, contrary to Section 342 of the Penal Code.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location), knowingly and fraudulently, used/presented to (who) (type of document, no., date. Title) which was false.</b>			



<b>OFFENCE</b>			
<b>s.344 Penal Code getting a document executed through false or fraudulent representations</b>			
<b>PENALTIES</b>			
<b>Imprisonment: 7 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. by means of any false and fraudulent representations as to the nature, contents or operation of a document</b>		Eye witness(es), investigating officer, confessional statement.	
<b>2. procures another to sign or execute the document,</b>	"document" in this division of this Code does not include a trade mark or any other sign used in connection with articles of commerce though they may be written or printed.	Eye witness(es), investigating officer, confessional statement, signed or executed document, certificate of seizure, expert evidence on handwriting and document analysis.	
<b>STATEMENT OF OFFENCE</b>			
<b>Procuring another to sign or execute a document by means of false and fraudulent representations, contrary to Section 344 of the Penal Code.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) procured (who) to sign/execute (title of document, type of document, date, reference no.) by falsely and fraudulently representing that (what in relation to the nature/contents/operation of the document).</b>			

**G. OFFENCES UNDER THE PREVENTION AND COMBATING CORRUPTION ACT**

<b>OFFENCE</b>			
<b>s.13 PCCA Abuse of Public Position</b>			
<b>PENALTIES</b>			
<b>Imprisonment: &lt; 6 months AND/OR a fine: &lt; 1m Tsh. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. public official.</b>		Documentary evidence (Contracts, procurement paperwork, his duties & roles etc). Certificate of Seizure, HR Officer/Employer, pay roll records and bank statements. Witnesses.	AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015 AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather evidence.
<b>2.intentionally</b>		Witness(es). Confessional statement	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21
<b>3. abused his position position in the performance or failure to perform or act in violation of the law</b>	"public official" means any person holding a legislative, executive, judicial, administrative, political, military, security, law enforcement, and local government authority or any other statutory office and includes: (a) any person performing a public function or providing a public service; and (b) any other person natural or legal so defined in any other written law.	Documentary evidence (if transactional), eye witness(es), investigating officer, electronic evidence (and witness to certify/authenticate), computer/telephones seized and analysed, with report, certificates, exhibits officers, experts. Forensic Evidence (Document Examination Expert). Record of money transfers (MPESA, bank transfers).	AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015 AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather relevant evidence.
<b>4. the said failure or violation was done when discharging his functions or use of position.</b>	"advantage" - a gift or any property movable or immovable, loan, fee, reward or favour and includes valuable consideration of any kind, discount, commission, rebate, bonus, deduction or percentage and employment or services or an agreement to give employment or render services in any capacity.	Eye witness(es), documentary evidence or electronic evidence to show timing or nature of transaction or act, personnel records	
<b>5. For the purposes of obtaining and undue advantage for himself or any other person or entity</b>		Eye-witness(es), investigating officer, FIU report and officer, bank records or assets.	FIU engagement to trace and identify assets and financial records. PCCB engagement and Joint Investigation Plan. OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Post conviction s.40 forfeiture orders
<b>STATEMENT OF OFFENCE</b>			
Intentionally abusing the position of public official for the purpose of obtaining an undue advantage for himself or any other person or entity, contrary to Section 13 of the Preventing and Combating Corruption Act No.11 of 2007.			
<b>MODEL CHARGES</b>			

VERSION No.4 (February 2018)

(Name of the Accused), on or about the (date) at (location), while discharging or using his position (title of job, function or service) as a public official, intentionally abuse his position by (describe what he did or did not do) in violation of the law, for the purposes of obtaining an due advantage, namely (describe advantage) for (him/name of other person or entity).

<b>OFFENCE</b>			
<b>s.15 PCCA corrupt transaction</b>			
<b>PENALTIES</b>			
Fine: 500,000sh - 1m sh AND/OR Imprisonment: 3-5 years. If agent, order to pay principal amount or value of any advantage received OR part to principal and residue (or part) to be confiscated to the Government. OR for any accused, order the amount or value of any advantage be confiscated to the Government.			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Solicited, accepted or obtained or attempted to obtain from any other person OR gave, promised or offered a person any advantage.</b>	"advantage" - a gift or any property movable or immovable, loan, fee, reward or favour and includes valuable consideration of any kind, discount, commission, rebate, bonus, deduction or percentage and employment or services or an agreement to give employment or render services in any capacity.	Witness(es), electronic evidence, treated/numbered bank notes money, Phone call trap or Sms log, CCTV footage. Certificate of Seizure money or property. Record of money transfers (MPESA, Bank transfers etc). Chain of custody paper trail. Informer. Investigating officer, arresting officer, seizure/crime scene officer. Confessional statement.	AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015. AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather relevant evidence. FIU engagement to trace and identify assets and financial records. PCCB engagement and Joint Investigation Plan. OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Post conviction s.40 forfeiture orders.
<b>2. as an inducement to or reward for or otherwise on account of any agent</b>	"agent" includes- (a) any person in the employment of whether under a contract of service, a contract for services or otherwise, whether permanent or temporary, whether paid or unpaid, and whether full-time or part-time and whether such person is a natural person or body of persons or acting for another; (b) a trustee; (c) an administrator or an executor; (d) a public official;	Documents to establish "agent" - employment contract, appointment as trustee or official, etc. with certificate of seizure and chain of custody.	[PCCA s.35 if prove advantage in relation to public official or , presumption that it was as an inducement or reward unless proved otherwise. DOES THIS APPLY TO MORE THAN s.18?] Valuation of advantage received and any property held by accused.
<b>3. to do or forbearing to do or having done or forborne to do anything in relation to principal's affairs or business.</b>	"principal" includes an employer, a beneficiary under a trust, a trust estate as though it were a person, any person beneficially interested in the estate of a deceased person as though it were a person, and, in relation to a public official, the authority or body of persons in which the public office is held;	Certificate of seizure of business records/documents, CCTV, witness, ALL showing induced business/transaction	Consider forged permits or procuring execution of documents by false pretence.
<b>STATEMENT OF OFFENCE</b>			
Corrupt transaction contrary to section 15(a) of the Preventing and Combating Corruption Act No.11 of 2007.			
<b>MODEL CHARGES</b>			
(Name of the accused) on or about the (date) at (location) solicited/accepted/obtained/attempted to obtain/gave/offered/promised (money/advantage) from/to (whom) to induce (agent name, agent title and where agent) to (action in relation to principal's business/affairs e.g. issue a hunting licence).			

<b>OFFENCE</b> <b>s.22 PCCA Use of fraudulent documents</b>			
<b>PENALTIES</b> <b>Fine: max 7m sh AND/OR Imprisonment: max 5 years. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years</b>			
Elements to Prove	Definitions	Potential Sources of Evidence	Associated Offences and other important issues to consider
<b>1. knowingly/with knowledge of its intention to mislead the principal.</b>	“principal” includes an employer, a beneficiary under a trust, a trust estate as though it were a person, any person beneficially interested in the estate of a deceased person as though it were a person, and, in relation to a public official, the authority or body of persons in which the public office is held; Penal Code Art.2 "knowingly" used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used"	Eye witness/informer	Charges under PCCA (other than s.15) required consent of DPP. Engagement of FIU and PCCB in joint investigation. OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Post conviction s.40 forfeiture orders
<b>2. gives to any agent or as a agent uses</b>	“agent” includes- (a) any person in the employment of whether under a contract of service, a contract for services or otherwise, whether permanent or temporary, whether paid or unpaid, and whether full-time or part-time and whether such person is a natural person or body of persons or acting for another; (b) a trustee; (c) an administrator or an executor; (d) a public official;	Eye witness/informer. Employment contract or appointment record of "agent". Supervisor or principal of agent. Auditor. Investigator. Any associated business records/transaction, certificate of seizure and chain of custody paper trail.	Remind court that in corruption cases mores evidence is circumstantial, and direct evidence is rare. Art.28 of UNCAC.
<b>3. a document which relates to his principal's business</b>	receipt, account, voucher, pro forma invoice, electronically generated data, minute sheet	False document. Certificate of seizure. Chain of Custody paper trail. Investigating officer who seized records. Employer/supervisor/principal.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21
<b>4. and is false or erroneous or defective in any material particular</b>		Expert witnesses including document analysis or handwriting expert report/testimony. Employer/supervisor/principal. Auditor.	
<b>STATEMENT OF OFFENCE</b> <b>Knowingly gave or used false, erroneous or materially defective document with knowledge of intent to mislead principal contrary to section 22 of the Preventing and Combating Corruption act No.11 of 2007.</b>			
<b>MODEL CHARGES</b> <b>(Name of the Accused) on or about the (date) at (location) knowingly/with knowledge of intent to mislead (principal), [gave to (agent, title, where)]/ as (agent, title, where) used] (identify document, date, title, reference no.) which falsely/incorrectly showed/stated (error/defect/falsity)</b>			

<b>OFFENCE</b>			
<b>s.27 PCCA possession of unexplained property or wealth</b>			
<b>PENALTIES</b>			
<b>Fine: max 10m sh AND/OR Imprisonment: max 7 years. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years</b> <b>AND confiscation order of any pecuniary gain or property in ownership of the accused or of an amount or value not exceeding its amount or value, subject to conditions court sees fit.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. Public official.</b>		Employment or appoint record, certificate of seizure and chain of custody paper trail. Employer/supervisor. Confessional statement.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21. OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Post conviction s.40 forfeiture orders
<b>2. maintains standard of living above that which is commensurate with OR owns property disproportionate to his present or past lawful income.</b>	s.27(2) "having regard to the closeness or relationship to the accused and other circumstances, there is reason to believe that any person is or was holding property in trust for or otherwise on behalf of the accused or has acquired such property as a gift from the accused, such property shall, in the absence of evidence to the contrary, be presumed to be in the control of the accused"	Pay slips/pay roll records. Employer/supervisor. Bank accounts. List of assets declared at start of employment. Records from BRELA. Officer from Commission of Ethics. Witnesses and neighbours - holidays, school fees, rental/mortgage properties, FIU report of asset tracing, motor vehicles. Confessional statement.	s.27(5) Application for post-conviction confiscation must be made within 28 days by the Director General
<b>3, without satisfactory explanation to the court.</b>		Burden to proof shifts to accused and requires to be done before the court.	Any potential defence in confessional statement should be investigated in advance.
<b>STATEMENT OF OFFENCE</b>			
<b>Possession of unexplained property/wealth contrary to section 27(1) of the Preventing and Combating Corruption act No.11 of 2007.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) between (dates) being a public official of the United Republic of Tanzania, namely (position), [maintained a standard of living, (detail) which is not commensurate with/owned property disproportionate to] his present or past income (of xxx).</b>			

<b>OFFENCE</b>			
<b>s.30 PCCA aiding and abetting corruption</b>			
<b>PENALTIES</b>			
<b>Fine: max. 2m sh AND/OR Imprisonment: max 2 years. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. knowingly or intentionally.</b>		Likely to be circumstantial. Consider also confessional statement, emails, telephone records, etc. for indication of knowledge or intent.	OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Post conviction s.40 forfeiture orders
<b>2. facilitating or offering assistance or facilitation</b>	may include receiving or giving bribe money on behalf of someone else. See Penal Code s.22(b) "does or omits to do any act for the purpose of enabling or aiding" and (c) "aids or abets" See Modes of Criminal Responsibility Guidance below for the elements for aiding and abetting.	witnesses including informer, investigating officer, bank records, seized money, CCTV/video/audio recording, phone TAPs or records, confessional statement, certificates of seizure and chain of custody records.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21
<b>3. a corruption offence</b>		Full proof of primary offence - see section for that offence.	
<b>STATEMENT OF OFFENCE</b>			
<b>Aiding and abetting an offence under the Preventing and Combatting Corruption Act No.11 of 2007, contrary to section 30 of the Preventing and Combatting Corruption Act No.11 of 2007.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the accused) on or about (date) at (location) knowingly and intentionally facilitated or assisted (through what act) the commission of an offence under the Preventing and Combatting Corruption Act by (name), namely (describe and include all elements of corruption offence).</b>			

<b>OFFENCE</b>			
<b>s.31 PCCA abuse of position</b>			
<b>PENALTIES</b>			
<b>Fine: max 5m AND/OR Imprisonment: max 3 years. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. intentionally.</b>		Likely to be circumstantial. Consider also confessional statement, emails, telephone records, etc. for indications of intent.	Engage PCCB and FIU as soon as possible. OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Post conviction s.40 forfeiture orders
<b>2. act or omission in violation of law</b>		Witnesses including informer, investigating officer, CCTV/video/audio recording, mobile phone TAPs or records, business records, electronic data or records, confessional statement, certificates of seizure and chain of custody records.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21
<b>3. in course of discharging functions or using/abusing position</b>	"position"? Nothing about public official or position?	Employment or appoint record, business or transaction records, emails/paperwork, certificate of seizure and chain of custody paper trail. Employer/supervisor. Confessional statement.	
<b>4. for purpose of obtaining an undue advantage for himself or another person</b>	"advantage" - a gift or any property movable or immovable, loan, fee, reward or favour and includes valuable consideration of any kind, discount, commission, rebate, bonus, deduction or percentage and employment or services or an agreement to give employment or render services in any capacity.	Witnesses including informer, investigating officer, bank records, seized money, CCTV/video/audio recording, phone TAPs or records, confessional statement, certificates of seizure and chain of custody records. FIU Report and officer (testimony).	
<b>STATEMENT OF OFFENCE</b>			
<b>Abuse of position contrary to section 30 of the Preventing and Combatting Corruption Act No.11 of 2007.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location) in the course of discharging his functions as (position), (act or omission in violation of the law) for the purposes of obtaining (advantage) for (himself/name person).</b>			



<b>OFFENCE</b>			
<b>s.32 PCCA conspiracy to commit corruption</b>			
<b>PENALTIES</b>			
<b>Fine: max 5m AND/OR Imprisonment: max 3 years. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. An agreement between the accused and another person.</b>		Telephone records, emails, bank records, CCTV/audio/video recordings, plus certificates of seizure and chain of custody paperwork. Witnesses, including informers, insiders and eye witnesses to movements, meetings and planning. Investigating officers. Confessional statement.	Agreement can be inferred. Engage PCCB and FIU as soon as possible. Co-ordination, synchronicity, opportunity, modus operandi, etc. OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Post conviction s.40 forfeiture orders. EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21
<b>2. to commit an offence under the PCCA</b>		Records to show elements possible depending on offence, for e.g. employment contract or appointment if one party a public official.	Don't have to prove offence committed but do need to ensure the elements of the offence were covered in the agreement/planning/conspiracy.
<b>STATEMENT OF OFFENCE</b>			
<b>Conspiracy to commit an offence under the Preventing and Combatting Corruption Act, contrary to section 32 of the Preventing and Combatting Corruption Act No.11 of 2007.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) conspired with (name) to commit corruption, namely (agreed to ensure covers elements necessary for that offence).</b>			

<b>OFFENCE</b>			
<b>s.52(3) PCCA Victimisation of Witnesses</b>			
<b>PENALTIES</b>			
<b>Fine: max 500,000 sh AND/OR Imprisonment: max 1 year. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. victimisation</b>	"victimisation" means an act - (a) which causes injury, damage or loss; (b) of intimidation or harassment; (c) of discrimination, disadvantage or adverse treatment in relation to person's employment; or (d) amounting to threats of reprisals	witnesses including complainant/discloser, eye witness, investigating officer, email or telephone records, business records or correspondence, certificates of seizure and chain of custody records. Confessional statement.	OBTAIN s.38 freezing order even before charge of all assets, moneys, properties owing to accused in whoever's hands. Applies to related offences. Post conviction forfeiture order if any proceeds.
<b>2. of a person who has made a disclosure under s.52(2) to a member that a person, public official, body corporate or public body is or has been involved in an act of corruption.</b>		Discloser/victim, person to whom disclosure made, any disclosure statement made.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21
<b>STATEMENT OF OFFENCE</b>			
<b>Victimisation of a person who made a disclosure of corruption contrary to section 52(3) of the Preventing and Combatting Corruption Act No.11 of 2007.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location) victimised through (act e.g. threatening, dismissing from employment, intimidation) (name of discloser), who had disclosed corruption by (name) to (name) on or about the (date).</b>			

**H. OFFENCES UNDER THE ANTI-MONEY LAUNDERING ACT 2006**

<b>OFFENCE</b> <b>s.12(a), (c) and (d) AMLA dealing in proceeds of crime</b>			
<b>PENALTIES</b> <b>If individual, Fine: 100,000 sh - 500,000 OR Imprisonment: 5-10 years. *EOCCA First Schedule para.22, s.60(2) imprisonment: 20-30 years</b> <b>If body corporate, Fine: 500m sh - 1b sh OR be ordered to pay the amount equivalent to three times the market value of the property, whichever amount is greater.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. s.12(a) directly or indirectly engages in a transaction involving property which is proceeds of predicate offence OR (c) conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, or (d) acquires, possesses, uses or administers property,.</b>	"predicate offence" s.3 AMLA includes b) terrorism including terrorist financing, d) participating in an organised criminal group and racketeering, e) illicit trafficking in stolen or other goods, h) corrupt practice, o) forgery, t) poaching, x) environmental crimes, etc.	Not a requirement to prove the predicate offence for an AMLA offence. Bank statements and transactions, other property transaction documents, together with certificates of seizure and chain of custody records. Informer, bank officer, financial investigator (report and testimony), expert evidence (auditor or forensic accountant), confessional statement	FIU engagement. MLA for any bank account or transactional documents from another jurisdiction, together with witness statements and authentication.
<b>2. knew or ought to have known proceeds of predicate offence</b>		May have to prove knowledge by inference, circumstantial evidence. Or may be direct from communications, statements, confessional statement, eye witnesses.	EOCCA, s.3(3)(b) jurisdiction of corruption and economic crimes Division of High Court over all AMLA offences falling within EOCCA First Schedule para.22.
<b>STATEMENT OF OFFENCE</b> <b>Money laundering contrary to section 12(a)/(c)/(d) of the Anti-Money Laundering Act No.12 of 2006.</b>			
<b>MODEL CHARGES</b> <b>(Name of Accused) on or about the (date) at (location) , knowing or ought to have knowing that the property was proceeds of crime, [acquired/possessed/used/administered/engaged in a transaction involving..../concealed, disguised or impeded discovery of information relating to... (details of property) which are the proceeds of a predicate offence, namely (crime).</b>			

<b>OFFENCE</b>			
<b>s.12(b) AMLA movement of proceeds of crime to conceal illicit origin</b>			
<b>PENALTIES</b>			
<b>If individual, Fine: 100,000 sh - 500,000 OR Imprisonment: 5-10 years. *EOCCA First Schedule para.22, s.60(2) imprisonment: 20-30 years</b> <b>If body corporate, Fine: 500m sh - 1b sh OR be ordered to pay the amount equivalent to three times the market value of the property, whichever amount is greater.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. converts, transfers, transports or transmits property,.</b>		Bank statements and transactions, other property transaction documents, together with certificates of seizure and chain of custody records. Informer, bank officer, financial investigator (report and testimony), expert evidence (auditor or forensic accountant), confessional statement	FIU engagement. MLA for any bank account or transactional documents from another jurisdiction, together with witness statements and authentication.
<b>2. knew or ought to have known proceeds of predicate offence</b>	"predicate offence" s.3 AMLA includes b) terrorism including terrorist financing, d) participating in an organised criminal group and racketeering, e) illicit trafficking in stolen or other goods, h) corrupt practice, o) forgery, t) poaching, x) environmental crimes, etc.	Not a requirement to prove the predicate offence for an AMLA offence.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21
<b>3. for purpose of concealing or disguising illicit origin of proceeds or of assisting any person who is involved in the commission of such offence to evade the legal consequences of his actions;</b>		FIU officer. May have to show by inference or absence of any other reasons for the transaction/movement.	
<b>STATEMENT OF OFFENCE</b>			
<b>Money laundering contrary to section 12(b) of the Anti-Money Laundering Act No.12 of 2006.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of Accused) on or about the (date) at (location) , knowing or ought to having known that the property was the proceeds of crime, converted/transferred, transported or transmitted (property), and for the purposes of concealing its illicit origins/assisting (person) to evade legal consequences</b>			

<b>OFFENCE</b> <b>s.12(e) AMLA other modes of liability for money laundering</b>			
<b>PENALTIES</b> <b>If individual, Fine: 100,000 sh - 500,000 OR Imprisonment: 5-10 years.</b> <b>*EOCCA First Schedule para.22, s.60(2) imprisonment: 20-30 years</b> <b>If body corporate, Fine: 500m sh - 1b sh OR be ordered to pay the amount equivalent to three times the market value of the property, whichever amount is greater.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. participates in, associates with, conspires to commit, attempts to commit, aids and abets, or facilitates and counsels</b>	For aiding and abetting, see Penal Code s.22(b) "does or omits to do any act for the purpose of enabling or aiding" and (c) "aids or abets". See also Guide to Modes of Liability in RRG.	Bank statements and transactions, other property transaction documents, together with certificates of seizure and chain of custody records. Informer, bank officer, financial investigator (report and testimony), expert evidence (auditor or forensic accountant), confessional statement of principal. confessional statement of accused, witnesses.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for PCCA offences falling within EOCCA First Schedule para.21 FIU engagement. MLA for any bank account or transactional documents from another jurisdiction, together with witness statements and authentication.
<b>2. the commission of an offence under s.12(a)-(d) of AMLA</b>	See appropriate section for the underlying crime.	See elements for that offence.	
<b>STATEMENT OF OFFENCE</b> <b>Participating in/associating with/ conspiring to commit/attempted , aiding and abetting/facilitating and counseling money laundering contrary to section 12(e) of the Anti-Money Laundering Act No.12 of 2006.</b>			
<b>MODEL CHARGES</b> <b>(Name of the accused) on or about the (date) at (location), with the [knowledge or intent requirement for form of commission/mode of liability], [participated in/associated with/conspired to/attempted to/aided and abetting/facilitated and counselled] money laundering by (act or omissions constituting form or mode of commission).</b>			

<b>OFFENCE</b> <b>s.17 AMLA other modes or forms of commisson of money laundering</b>			
<b>PENALTIES</b> <b>If individual, Fine: max 1- 500,000 sh OR Imprisonment: max 5 years. *EOCCA First Schedule para.21, s.60(2) imprisonment: 20-30 years</b> <b>If body corporate, Fine: max 10m sh or three times the market value of the property, whichever amount is greater.</b>			
Elements to Prove	Definitions	Potential Sources of Evidence	Associated Offences and other important issues to consider
<b>1. reporting person.</b>	"reporting person" means -(a) banks and financial institutions; (b) cash dealer; (c) an accountant, real estate agent, dealer in precious stones work of artf or metals; (d) a regulator; (e) customs officer; (f) attorneys, notaries and other independent legal professionals when: (I) assisting clients in preparing or executing transactions involving: (aa) the purchase or sale of real property or commercialenterprises; (bb) management of funds, securities or other assets which belong to a client; (cc)the opening or management of bank accounts, saving accounts or portfolios; (dd) the organization of contributions required to create, manage or direct corporations or legal entities; (ee) the creation, management or direction of corporations or legal entities; and (ff) the buying or selling of business entities; (II) acting on behalf of a client in any financial or real estate transaction; (g) auctioneers; and (h) any other person who the Minister may, by notice published in the Gazette, specify.	Documentary evidence (contract of employment or services, personnel records, licence), certificate of seizure, investigating officer, HR officer or Employer or professional licensing body.	Need to establish person's role as well as official title.
<b>2. suspects or has grounds to suspect that funds are proceeds or linked to predicate offence OR has knowledge of a fact or an activity that may be an indication of money laundering or predicate offence.</b>		Records, transaction, communications, information, informant, colleague, eye witness, investigating officer. Computer, email and telephone analysis report, print-outs and expert testimony.	Can be difficult to know knowledge - aim to establish "grounds to suspect". AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015. AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather relevant evidence. FIU engagement if necessary to show why grounds to suspect.
<b>3. fails to EITHER take reasonable measures to ascertain the purpose and details of the (proposed) transaction OR to report to the FIU</b>	the origin and ultimate destination of the funds or property involved, and the identity and address of any ultimate beneficiary	FIU Officer. Computer and telephone records to show inaction, eye witnesses, colleagues.	

by any secure means, both within 24  
hours of forming suspicion.

**STATEMENT OF OFFENCE**

**Failure to investigate or report suspicious funds, transaction, fact or activity indicating the existence of proceeds of crime or money laundering, contrary to section 17 of the Anti-Money Laundering Act No.12 of 2006.**

**MODEL CHARGES**

**(Name of the accused) on or about the (date) at (location), as (title, role, organisation) a reporting person under the Anti-Money Laundering Act, having reason to suspect money-laundering or proceeds of crime, failed to investigate and/or report suspicious transactions/funds, namely (information about the transaction) to the FIU within 24 hours.**

**I. OFFENCES UNDER THE ECONOMIC CRIMES CONTROL ACT**

<b>OFFENCE</b>			
<b>EOCCA Sch1, para (4)(a) with s60(2) leading an organised crime</b>			
<b>PENALTIES</b>			
<b>*EOCCA First Schedule para.4, s.60(2) imprisonment: 20-30 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. intentionally or wilfully</b>		Inference through knowledge and actions – consider documentary evidence, handwriting expert evidence, eyewitness and insider witnesses, surveillance evidence.	
<b>2. organises, manages, directs, supervises or finances</b>	2.A person shall not be convicted of an offence under this paragraph on the basis of accountability as an accomplice unless he aids or participates in the contravention of this paragraph in one of the ways specified. "criminal racket" means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an offence under this Act.	Have to show organising or financing through insider evidence, eye witness evidence, investigating officers, surveillance officers, surveillance logs. Photographic evidence when possible. Documentary evidence showing signatures, money transfers, instructions or any form of managing. Consider confession and statements, Insider witnesses, Business records, exports and customs records, and a handwriting expert. Involve FIU for bank transactional records.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for offences falling within EOCCA First Schedule para.4.
<b>3. a criminal racket</b>	"criminal racket" means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an offence under this Act. "combination" means persons who collaborate in carrying out and furthering the activities or purposes of a criminal racket even though such persons may not know each other's identity or the membership combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation;	In addition to proving the underlying crime (see elements of the relevant crimes), establish all possible connections, interactions, communications, transactions through transactional documentary, electronic and surveillance evidence, investigating officers, computer/telephone/surveillance expert analysis, FUI bank transactional and records evidence. Logistics logs, movement. Eye witnesses, investigating officers, surveillance officers, surveillance logs. Photographic evidence when possible.	AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015. AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather relevant evidence. FIU engagement. MLA for transactional evidence, company records and bank transactions and records in other countries.
<b>STATEMENT OF OFFENCE</b>			
Organising/managing/directing/supervising/financing a criminal racket contrary to s.60(2) and Sch1 para.(4) of the Economic and Organised Crimes Control Act No.13 of 1984.			
<b>MODEL CHARGES</b>			
(Name of the accused) on or about the (dates) at (locations), (describe the acts undertaken) and thereby intentionally or wilfully organised/managed/ directed/supervised/financed a criminal racket, namely (describe the persons and crimes involved).			



<b>EOCCA Sch1, para (4)(b) with s60(2) inciting violence, fraud or intimidation to further an organised crime</b>			
<b>OFFENCE</b>			
<b>PENALTIES</b>			
<b>*EOCCA First Schedule para.4, s.60(2) imprisonment: 20-30 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. knowingly</b>		Show knowledge of criminal racket and likely outcome of actions - signatures, confessional statements, insider witnesses, surveillance, records.	
<b>2. incites or induces others to engage in violence or fraud or intimidation</b>	2.A person shall not be convicted of an offence under this paragraph on the basis of accountability as an accomplice unless he aids or participates in the contravention of this paragraph in one of the ways specified. "criminal racket" means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an offence under this Act.	Evidence communication - how induced or incited. Consider insider evidence, eye witness evidence, Investigating officers, surveillance officers, surveillance logs. Medical evidence if violence used. Photographic evidence when possible. Documentary evidence for fraud showing signatures, money transfers. Consider confessional statements, business records, exports and customs records, and a handwriting expert. Involve FIU for bank transactional records.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for offences falling within EOCCA First Schedule para.4.
<b>3. for the purposes of promoting or furthering the objects of a criminal racket</b>	"criminal racket" means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an offence under this Act. "combination" means persons who collaborate in carrying out and furthering the activities or purposes of a criminal racket even though such persons may not know each other's identity or the membership combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation;	In addition to proving the underlying crime (see elements of the relevant crimes), establish all possible connections, interactions, communications, transactions through transactional documentary, electronic and surveillance evidence, investigating officers, computer/telephone/surveillance expert analysis, FUI bank transactional and records evidence. Logistics logs, movement. Eye witnesses, investigating officers, surveillance officers, surveillance logs. Photographic evidence when possible. Show connection between incitement/inducing and crime/one of the criminal racket's objectives.	AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015. AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather relevant evidence. FIU engagement. MLA for transactional evidence, company records and bank transactions and records in other countries.
<b>STATEMENT OF OFFENCE</b>			
<b>Inciting or inducing violence, fraud or intimidation for purposes of a criminal racket contrary to s.60(2) and Sch1 para.(4) of the Economic and Organised Crimes Control Act No.13 of 1994.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the accused) on or about the (dates) at (locations), knowingly incited or induced (name of persons) to (describe violence/fraud/intimidation) against (victim) for the purposes of promoting or furthering the objects of a criminal racket, namely (describe the persons and crimes involved).</b>			

<b>OFFENCE</b>			
<b>EOCCA Sch1, para (4)(c) with s60(2) assisting an organised crime</b>			
<b>PENALTIES</b>			
<b>*EOCCA First Schedule para.4, s.60(2) imprisonment: 20-30 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. knowingly</b>		Knowledge and intention can be implied through level of involvement, signatures on key documents, presence when offence occurring or where criminal racket being organised.	
<b>2. furnishes advice, assistance or direction in the conduct, financing, execution or management of the business or affairs of</b>	2.A person shall not be convicted of an offence under this paragraph on the basis of accountability as an accomplice unless he aids or participates in the contravention of this paragraph in one of the ways specified.	Have to show how assisted through insider evidence, eye witness evidence, investigating officers, surveillance officers, surveillance logs. Photographic evidence when possible. Documentary evidence showing signatures, money transfers, instructions or any form of assistance. Consider confessionals statements, Insider witnesses, Business records, exports and customs records, and a handwriting expert. Involve FIU for bank transactional records.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for offences falling within EOCCA First Schedule para.4.
<b>3. a criminal racket</b>	"criminal racket" means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an offence under this Act. combination" means persons who collaborate in carrying out and furthering the activities or purposes of a criminal racket even though such persons may not know each other's identity or the membership combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation;	In addition to proving the underlying crime (see elements of the relevant crimes), establish all possible connections, interactions, communications, transactions through transactional documentary, electronic and surveillance evidence, investigating officers, computer/telephone/surveillance expert analysis, FIU bank transactional and records evidence. Logistics logs, movement. Eye witnesses, investigating officers, surveillance officers, surveillance logs. Photographic evidence when possible.	AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015. AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather relevant evidence. FIU engagement. MLA for transactional evidence, company records and bank transactions and records in other countries.
<b>4. with intent either to reap profit or other benefit from such act or to promote or further the criminal objectives of the criminal racket.</b>		Show profit or intended profit, or just a connection between the assistance and one objective of the criminal racket. Bank account records, insider witnesses, surveillance records, confessional statements.	
<b>STATEMENT OF OFFENCE</b>			

**Advising, assisting or directing in the business or affairs of a criminal racket with intent to profit or further the racket, contrary to s.60(2) and Sch1 para.(4) of the Economic and Organised Crimes Control Act No.13 of 1984.**

**MODEL CHARGES**

**(Name of the accused) on or about (dates) at (locations) knowingly (describe advice/assistance/direction in the conduct, financing, execution or management of the business or affairs) of a criminal racket, namely (describe the persons and crimes involved), with the intent to profit/benefit by (describe) or to promote or further the criminal objectives of the criminal racket.**

<b>EOCCA Sch1, para (4)(d) with s60(2) involvement of public official in an organised crime</b>			
<b>OFFENCE</b>			
<b>PENALTIES</b>			
<b>*EOCCA First Schedule para.4, s.60(2) imprisonment: 20-30 years</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. being a public official, and in violation of his official duty, or not being a public official but in collusion with such a public official,</b>	"public official" means any person holding any office, whether appointive or elective, in the Government of the United Republic or any agency of the United Republic	Employment contract, appointment letter or personnel records to show public official. If collusion, need to show acting together - connection to public official: phone records, business or transaction records, meetings.	PCCB involvement.
<b>2. intentionally promotes or furthers the objectives of</b>		Connection between accused's inducing, commission or omission and the criminal racket. knowledge and intention can be inferred from circumstances, including presence, involvement and acts. Insider witnesses, documentary evidence showing involvement/knowledge, surveillance evidence.	EOCCA, s.3(3)(a) jurisdiction of corruption and economic crimes Division of High Court over threshold of 1 billion TSh for offences falling within EOCCA First Schedule para.4.
<b>3. a criminal racket</b>	"criminal racket" means any combination of persons or enterprises engaging, or having the purpose of engaging, whether once, occasionally or on a continuing basis, in conduct which amounts to an offence under this Act. "combination" means persons who collaborate in carrying out and furthering the activities or purposes of a criminal racket even though such persons may not know each other's identity or the membership combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation;	In addition to proving the underlying crime (see elements of the relevant crimes), establish all possible connections, interactions, communications, transactions through transactional documentary, electronic and surveillance evidence, investigating officers, computer/telephone/surveillance expert analysis, FUI bank transactional and records evidence. Logistics logs, movement. Eye witnesses, investigating officers, surveillance officers, surveillance logs. Photographic evidence when possible. Then	AO/IO must ensure proper collection and preservation of electronic evidence to meet tests listed under section 18 of the Cybercrimes Act, No. 14 of 2015. AO/IO should consult relevant Service Providers such as Telecommunication companies, commercial banks and financial institutions to gather relevant evidence. FIU engagement. MLA for transactional evidence, company records and bank transactions and records in other countries.
<b>4. by inducing or committing any act or omission.</b>	2.A person shall not be convicted of an offence under this paragraph on the basis of accountability as an accomplice unless he aids or participates in the contravention of this paragraph in one of the ways.		
<b>STATEMENT OF OFFENCE</b>			
<b>Intentionally promoting or furthering a criminal racket as a public official or in collusion with a public official contrary to s.60(2) and Sch1 para.(4) of the Economic and Organised Crimes Control Act No.13 of 1984.</b>			
<b>MODEL CHARGES</b>			
<b>(Names of the accused) on or about the (dates) at (locations) being a public official, namely (job title/public role) in violation of his official duty/in collusion with a public official, namely (name public official), (describe act, omission or inducement) and thereby intentionally promoted/furthered the objectives of a criminal racket, namely (describe the persons and crimes involved).</b>			

<b>OFFENCE</b>			
<b>EOCCA Sch1, para(12) using firearms while committing another offence</b>			
<b>PENALTIES</b>			
<b>EOCCA First Schedule para.12 + s60(2) imprisonment 20-30 years.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. in the commission of any offence, other than assault or robbery or any other offence punishable with death or imprisonment of life,</b>	Firearm means, all small arms, light weapons, muzzle loading guns and antique firearm except armaments. "Small arms" includes light machine guns, submachine guns, machine pistols, full automatic rifles, assault rifles and semi automatic rifles. "Light weapons" include portable weapons designed for use by several persons serving as crew, ay machine gun, automatic cannons, howitzers motors of less than 100mm calibre, grenade launchers, anti tank weapons, recoilless guns, shoulder fire rockets, aircraft weapons and launchers. FACA	See elements for that offence.	EOCCA s.3(3)(a) for offence over threshold of 1b Tsh in para(12) First Schedule - jurisdiction of Corruption and Economic Crimes Division of High Court.
<b>2. uses a firearm or any explosive materials</b>		Firearm/explosives (or photographs/report/disposal/certification/admission on to record), Certificate of Seizure, Exhibits Officer, Expert Evidence (ballistics.explosives), eye witnesses, arresting officer/investigating officer	Firearms and Ammunition to be stored in Armoury, bagged and tagged as exhibits with assigned exhibit code and separate from other cases or police firearms.
<b>STATEMENT OF OFFENCE</b>			
<b>Using firearms or explosives in the commission of another offence, contrary to s.60(2) and Sch.1 para.12 of the Economic and Organised Crimes Control Act No.13 of 1984.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the accused) on or about the (date) and (location) used (describe type/amount of firearm/explosive) in the commision of a crime, namely (describe the crime)</b>			

**J. OFFENCES UNDER THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT**

<b>OFFENCE</b>			
<b>East African Community Customs Management Act s.200(a) Importing prohibited and restricted goods</b>			
<b>PENALTIES</b>			
<b>Imprisonment: Less than five years and/or a fine equal to fifty percent of the dutiable value of the goods involved.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. imports or carries coastwise.</b>	"import" means to bring or cause to be brought into the Partner States from a foreign country;	Customs Officer, arresting officer, eye witnesses, confessional statement, customs records/declarations. S.223(e) declaration in customs log book prima facie evidence of record	See also s.84 and s86 of WCA with higher fines and potential punishment, especially if EOCCA applied. Note:s.223(b) an averment by the Commissioner about an act done is prima facie evidence of a fact.
<b>2. (ii) any prohibited goods, whether or not the goods are unloaded; OR (ii) any restricted goods contrary to any condition regulating the importation or carriage coastwise of such goods, whether or not the goods are unloaded</b>	"restricted goods" means any goods the importation, exportation, transfer, or carriage coastwise, of which is prohibited, save in accordance with any conditions regulating such importation, exportation, transfer, or carriage coastwise, and any goods the importation, exportation, transfer, or carriage coastwise, of which is in any way regulated by or under the Customs laws. "prohibited goods" means any goods the importation, exportation, or carriage coastwise, of which is prohibited under this Act or any law for the time being in force in the Partner States; "goods" includes all kinds of articles, wares, merchandise, livestock, and currency, and, where any such goods are sold under this Act, the proceeds of such sale; See Schedule 2 Restricted Good (3), (6)-(18), (22) CITES.	s.223(a) onus of showing origin or lawful import on accused. S.223(c) a certificate of a Government Chemist or Analyst or of a Partner State s is prima facie evidence of contents. Goods. Certificate of seizure, customs officer/seizing officer, chain of custody records, photographs and seizure/scene of crime report.	S.210 and 211 Forfeiture powers for goods and vehicles
<b>STATEMENT OF OFFENCE</b>			
<b>Importing prohibited or restricted good contrary to s.200(a) the East African Community Customs Management Act No.1 of 2005.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of of the Accused) on or about the (date) and (location) imported/carried coastwise (description and amount of goods), being prohibited goods/restricted goods contrary to regulatory condition (describe).</b>			

<b>OFFENCE</b>			
<b>East African Community Customs Management Act s.200(c)Exporting prohibits or restricted goods</b>			
<b>PENALTIES</b>			
<b>Imprisonment: Less than five years and/or a fine equal to fifty percent of the dutiable value of the goods involved.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. exports, carries coastwise, or puts on board any aircraft, vehicle or vessel, or brings to any Customs airport, Customs area, or place, to be put on board, for exportation or for use as stores or for carriage coastwise-.</b>	"export" means to take or cause to be taken out of the Partner States; "stores" goods for use in aircraft, vessels and trains engaged in international transport for consumption by passengers and crew and goods for sale on board	Customs Officer, arresting officer, eye witnesses, confessional statement, customs records/declarations. S.223(e) declaration in customs log book prima facie evidence of record	See also s.84 and s86 of WCA with higher fines and potential punishment, especially if EOCCA applied. Note:s.223(b) an averment by the Commissioner about an act done is prima facie evidence of a fact.
<b>2. (ii) any prohibited goods; OR (ii) any restricted goods contrary to any condition regulating the exportation use as stores, or carriage coastwise, of such goods</b>	"stores" goods for use in aircraft, vessels and trains engaged in international transport for consumption by passengers and crew and goods for sale on board. "restricted goods" means any goods the importation, exportation, transfer, or carriage coastwise, of which is prohibited, save in accordance with any conditions regulating such importation, exportation, transfer, or carriage coastwise, and any goods the importation, exportation, transfer, or carriage coastwise, of which is in any way regulated by or under the Customs laws. "prohibited goods" means any goods the importation, exportation, or carriage coastwise, of which is prohibited under this Act or any law for the time being in force in the Partner States; "goods" includes all kinds of articles, wares, merchandise, livestock, and currency, and, where any such goods are sold under this Act, the proceeds of such sale; See Schedule 2 Restricted Good (3), (6)-(18), (22) CITES.	s.223(a) onus of showing origin or lawful import on accused. S.223(c) a certificate of a Government Chemist or Analyst or of a Partner State s is prima facie evidence of contents. Goods, certificate of seizure, customs officer/seizing officer, chain of custody records, photographs and seizure/scene of crime report.	S.210 and 211 Forfeiture powers for goods and vehicles
<b>STATEMENT OF OFFENCE</b>			
<b>Exporting/carrying coastwise/putting on board/ brining to a place to export/put on board prohibited or restricted good contrary to s.200(c) of the East African Community Customs Management Act No.1 of 2005.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of of the Accused) on or about the (date) and (location) [exported/carried coastwise/put on board (name and describe vessel, aircraft, vehicle)] (description and amount of goods), being prohibited goods/restricted goods contrary to regulatory condition (describe). OR (Name of Accused) on or about the (date) and (location) brought (describe goods and amount) to (name customs airport, customs area or place) to put it on board (name and describe vessel, aircraft, vehicle)/for exportation/use as stores/for carriage coastwise.</b>			

<b>OFFENCE</b>				
<b>East African Community Customs Management Act s.200(d) acquiring, possessing and concealing prohibits, restricted or uncustomed goods</b>				
<b>PENALTIES</b>				
<b>Imprisonment: Less than five years and/or a fine equal to fifty percent of the dutiable value of the goods involved.</b>				
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Case Law</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. acquires, has in his or her possession, keeps or conceals, or procures to be kept or concealed,.</b>	"Possession" means 1. the fact of having or holding property in one's power; the exercise of dominion over property 2. the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. "Actual possession" means physical occupancy or control over property. "Constructive possession" means control or dominion over a property without actual possession or custody of it. Penal Code s.2 (a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person; (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;	Simon Ndikulyaka vs Republic, Cr. Appeal No 231/2014 which expounded on element of actual possession and constructive possession and elements to be proved to prove possession.	Customs Officer, arresting officer, eye witnesses, confessional statement, customs records/declarations. S.223(e) declaration in customs log book prima facie evidence of record	See also s.84 and s86 of WCA with higher fines and potential punishment, especially if EOCCA applied. Note:s.223(b) an averment by the Commissioner about an act done is prima facie evidence of a fact.
<b>2. any goods which he or she knows, or ought reasonably to have known, to be (i) prohibited goods; or (ii) restricted goods which have been imported or carried coastwise contrary to any condition regulating such importation or carriage coastwise; or (iii) uncustomed goods,</b>	"restricted goods" means any goods the importation, exportation, transfer, or carriage coastwise, of which is prohibited, save in accordance with any conditions regulating such importation, exportation, transfer, or carriage coastwise, and any goods the importation, exportation, transfer, or carriage coastwise, of which is in any way regulated by or under the Customs laws. "prohibited goods" means any goods the importation, exportation, or carriage coastwise, of which is prohibited under this Act or any law for the time being in force in the Partner States; "goods" includes all kinds of articles, wares, merchandise, livestock, and currency, and, where any such goods are sold under this Act, the proceeds of such sale; See Schedule 2 Restricted Good (3), (6)-(18), (22) CITES.		s.223(a) onus of showing origin or lawful import on accused. S.223(c) a certificate of a Government Chemist or Analyst or of a Partner State s is prima facie evidence of contents. Goods, certificate of seizure, customs officer/seizing officer, chain of custody records, photographs and seizure/scene of crime report.	s.210 and 211 Forfeiture powers for goods and vehicles
<b>STATEMENT OF OFFENCE</b>				
<b>Acquiring/Possessing/Keeping/Concealing/Procuring to keep or conceal prohibited, restricted or uncustomed goods, contrary to s200(d) of the East African Community Customs Management Act No.1 of 2005.</b>				
<b>MODEL CHARGES</b>				



**(Name of the Accused) on or about (date) at (location) acquired/possessed/kept/concealed/procured for keeping or concealing (description of goods including amount) in the knowledge/when he ought to have known that these goods were prohibited/restricted/uncustomed goods.**

<b>OFFENCE</b>			
<b>East African Community Customs Management Act s.202 importing or exporting concealed goods</b>			
<b>PENALTIES</b>			
<b>Imprisonment: Less than five years and/or a fine equal to fifty percent of the dutiable value of the goods involved.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. imports or exports</b>	"import" means to bring or cause to be brought into the Partner States from a foreign country; "export" means to take or cause to be taken out of the Partner States;	Customs Officer, arresting officer, eye witnesses, confessional statement, customs records/declarations. S.223(e) declaration in customs log book prima facie evidence of record	See also s.84 and s86 of WCA with higher fines and potential punishment, especially if EOCCA applied. Note:s.223(b) an averment by the Commissioner about an act done is prima facie evidence of a fact.
<b>2. any goods (a) which are concealed in any way; (b) which are packed in any package, whether or not together with other goods in a manner likely to deceive any officer; (c) which are contained in any package of which the entry or application for shipment does not correspond with such goods,</b>	"goods" includes all kinds of articles, wares, merchandise, livestock, and currency, and, where any such goods are sold under this Act, the proceeds of such sale;	s.223(a) onus of showing origin or lawful import on accused. S.223(c) a certificate of a Government Chemist or Analyst or of a Partner State s is prima facie evidence of contents. Goods, Certificate of seizure, customs officer/seizing officer, chain of custody records, photographs and seizure/scene of crime report.	S.210 and 211 Forfeiture powers for goods and vehicles
<b>STATEMENT OF OFFENCE</b>			
<b>Importing or Exporting concealed goods in contrary to s.202 of the East African Community Customs Management Act No.1 of 2005.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the Accused) on or about the (date) at (location) imported/exported (describe goods including amount) which (describe how concealed or packed to deceive officer)/did not match the entry on the (describe shipping declaration/customs paperwork).</b>			

<b>OFFENCE</b>			
<b>East African Community Customs Management Act s.203(a) making false or incorrect entries on customs matters</b>			
<b>PENALTIES</b>			
<b>Imprisonment 3 years OR fine &lt; \$10,000.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. in any matter relating to the Customs.</b>		Customs Officer or declaration	Note:s.223(b) an averment by the Commissioner about an act done is prima facie evidence of a fact.
<b>2. makes any entry which is false or incorrect in any particular,</b>		Customs Officer, arresting officer, eye witnesses, confessional statement, customs records/declarations. Handwriting expert. Document Analyst. Eye witnesses. S.223(e) declaration in customs log book prima facie evidence of record	S.210 and 211 Forfeiture powers for goods and vehicles
<b>STATEMENT OF OFFENCE</b>			
<b>Making false or incorrect entries for a customs matter contrary to S.203(a) of the East African Community Customs Management Act No.1 of 2005.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the accused) on or about the (date) at (location) made an entry on (describe document on which entry made) which was false or incorrect, namely (describe incorrect or false information) and related to (customs matter).</b>			

<b>OFFENCE</b>			
<b>East African Community Customs Management Act s.203(b) Making false or incorrect customs documentation</b>			
<b>PENALTIES</b>			
<b>Imprisonment 3 years OR fine &lt; \$10,000.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. in any matter relating to the Customs.</b>		customs officer or declaration	Note:s.223(b) an averment by the Commissioner about an act done is prima facie evidence of a fact.
<b>2. makes or causes to be made any declaration, certificate, application, or other document;</b>		Customs Officer, arresting officer, eye witnesses, confessional statement, customs records/declarations. Handwriting expert. Document Analyst. Eye witnesses. S.223(e) declaration in customs log book prima facie evidence of record	S.210 and 211 Forfeiture powers for goods and vehicles
<b>3. which is false or incorrect in any particular;</b>			
<b>STATEMENT OF OFFENCE</b>			
<b>Making a false or incorrect customs declaration/application/certification/documentation contrary to s.203(b) of the East African Community Customs Management Act No.1 of 2005.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the accused) on or about the (date) at (location) made/caused to be made a declaration/certification/application/document, namely (describe declaration/etc.) which relate to a (customs matters) and which was false or incorrect in that (describe incorrect or false information).</b>			

<b>OFFENCE</b>			
<b>East African Community Customs Management Act s.203(h) Counterfeiting, falsifying or knowingly using a falsified or counterfied document for customs</b>			
<b>PENALTIES</b>			
<b>Imprisonment 3 years OR fine &lt; \$10,000.</b>			
<b>Elements to Prove</b>	<b>Definitions</b>	<b>Potential Sources of Evidence</b>	<b>Associated Offences and other important issues to consider</b>
<b>1. in any matter relating to the Customs.</b>		Customs officer or declaration	Note:s.223(b) an averment by the Commissioner about an act done is prima facie evidence of a fact.
<b>2. counterfeits or in any way falsifies, or knowingly uses when counterfeited or in any way falsified,</b>		Customs Officer, arresting officer, eye witnesses, confessional statement, customs records/declarations. Handwriting expert. Document Analyst. Eye witnesses. S.223(e) declaration in customs log book prima facie evidence of record	S.210 and 211 Forfeiture powers for goods and vehicles
<b>3. any documents required or issued by, or used for the purpose of the Customs</b>			
<b>STATEMENT OF OFFENCE</b>			
<b>Counterfeiting, falsifying or knowingly using countefieted or falsified documentation for customs contrary to s.203(h)of the East African Community Customs Management Act No.1 of 2005.</b>			
<b>MODEL CHARGES</b>			
<b>(Name of the accused) on or about the (date) at (location) counterfeited/falsified [used] a customs document, namely (described document and how it had bee countefeited/falsified) [knowing that it had been counterfeited or falsified].</b>			

## GUIDE TO ANCILLARY POWERS

If any assets need to be confiscated, forfeited or disposed of, please contact AFRS at DPP HQ: Tel. +252 22 21133315.

<i>Legislation</i>	<i>Persons</i>	<i>Power</i>	<i>Where should go</i>
<b><i>Disqualification or Licence Revocation Orders</i></b>			
WCA s.39	Director/Minister	Order, by Gazette Notice, categories of people including those with convictions under WCA as illegible for hunting licences	
WCA s.66	Director	Cancel, vary or suspend any licence, certificate or permit, written permission or authority for good cause (including conviction by court of law)	
WCA s.67	Director	Disqualification following conviction under wildlife protection legislations in Tanzania and similar legislation in any country and cancellation under S.66	
WCA s.119(2), s.120(3)	Director	Registration of all wildlife convicted offenders	
Forest Act s.56	Director	Where appears breach of permit, Compliance Order, then revocation of permit, with steps to rectify the breach and compensation	
Forest Act s.97(1)(a)	Court	Revocation of licence/permit – based on conviction.	
FACA s.60(2)	Court	If conviction under s.60(1) cancel or suspend permit for time period court sees fit.	
<b><i>Inspection or Production Orders</i></b>			
FACA s.48	Firearms Registrar	Inspection request (firearms, ammunition, permit and records)	
POCA S.31A	Inspector Gen. of Police or Director of Criminal Invest or Police officer above rank of Asst. Superintendent of Police	Upon suspicion on reasonable grounds, Freezing Order can be issue against bank account and seizure of any document therein for a period of seven days	
POCA S.63A	Inspector Gen. of Police or Director of Criminal Invest or Police officer above rank of Asst. Superintendent of Police	Production order- of inspection and production of relevant entries of the bank account	

VERSION No.4 (February 2018)

<b>Legislation</b>	<b>Persons</b>	<b>Power</b>	<b>Where should go</b>
POCA s.58	Court (police officer application)	Production order – if someone convicted, or is reasonably suspected of having committed, a serious offence and a police officer has reasonable grounds for suspecting that any person has possession or control of any property-tracking document in relation to that offence. <sup>2</sup>	
POCA s.65	Court (DPP application)	Bank account monitoring order: directing a financial institution to give information to the Inspector-General of Police about financial transactions conducted through an account held by a particular person with that financial institution.	
<b><i>Seizure or Freezing Powers and Orders</i></b>			
WCA, s.78(4)	Officer	If not satisfied that trophy or manufactured trophy was obtained lawfully, can retain pending further investigation.	
WCA s.106(1)(c)	Authorised Officer	seize any animal, livestock, game meat, trophy, weapon, licence, permit or other written authority, vehicle, vessel or aircraft in the possession or control of any person.	Government
Forest Act s.93	Forest Officer or Police Officer	prevent the movement of, seize and detain any such forest produce or livestock in respect of which there is reason to believe that an offence has recently been committed against this Act together with any boats, aeroplanes, vehicles, machinery, tools, equipment or implements used or likely to have been used in the commission of such offence and report, any such seizure of any such property to the nearest magistrate.	s.94 brought to nearest police station or reserve manager
EMA s.110(7)	Council	Discharge of Hazardous substance, seize production, storage, transporting facility, motor vehicle or vessel until mitigation measures taken	
EMA s.183	Environmental Inspector	Seize documents, any vessel, vehicle, aircraft or equipment reasonably believed to have been used in the commission of an offence under this Act	
FACA s.53(1)(2)	Authorised Officer	Search and seize firearms or ammunition if reasonable belief unlawfully possessed, also seizure where executing a search warrant. CPA provisions apply.	

<sup>2</sup> "property-tracking document" means a document relevant for–

- . (a) identifying, locating or quantifying the property of a person who committed a serious offence;
- . (b) identifying or locating any document necessary for the transfer of the property of a person who committed a serious offence;
- . (c) identifying, locating or quantifying tainted property in relation to a serious offence; or
- . (d) identifying or locating any document necessary for the transfer of tainted property in relation to a serious offence.”

VERSION No.4 (February 2018)

<b>Legislation</b>	<b>Persons</b>	<b>Power</b>	<b>Where should go</b>
EOCCA s.22	Police officer	Seize anything believed to be connected/will be used for committing a crime or as an evidence. Without warrant if reasonable grounds to do so and and that any delay would result in the removal or destruction of that thing or danger to life, or property (but report to Magistrate asap)	
EOCCA s.59	Attorney General	is satisfied that any person has in his possession or to his credit any property or advantage involved in or arising out of the commission ... of an economic offence, notice directing not to transfer, dispose of or part with the possession of the sum of money, property or other advantage specified in the notice	
EOCCA s.24	Inspector General of Police	Order the search of the house or property who has absconded and apply for the seizure of the premises or property of the absconded person	
CPA s.25	Police officer	stop, search and detain:- (a) any vessel, boat, aircraft or vehicle in or upon which there is reasonable cause to suspect that there are- (i) any stolen goods; (ii) any things used or intended to be used in the commission of an offence; (iii) without lawful excuse, any offensive weapons, an article of disguise or any article prohibited under any law; (b) any person who is reasonably suspected of having or conveying in any manner any of the articles mentioned	
CPA s.27	Police officer	may take from the person arrested any offensive weapons which he has about his person.	deliver to the court or officer before which or whom the person arrested has to be produced
CPA s.41, 44	Police officer of warrant, lawful arrest, court order or stopped under s.42	may search the person of the clothing that is being worn by or property in the immediate control of, a person and may seize anything relating to an offence that is found in the course of the search.	
CPA s.42	Police officer	(a) search a person suspected by him to be carrying anything concerned with an offence, or (b) enter upon any land, or into any premises vessel or vehicle, an or in which he believes on reasonable grounds that anything connected with an offence is situated, and may seize any such thing that he finds in the course of that search, or upon the land or in the premises, vessel or vehicle as the case may be- (i) if the police officer believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence; and (ii) the search or entry is made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Part.	
CPA s.42 (2)(3)	Police officer	on reasonable grounds that a person is carrying an offensive weapon or anything connected with an offence may stop that person and seize any such weapon or thing that is found on the person. Also in vessel or vehicle	



VERSION No.4 (February 2018)

<b>Legislation</b>	<b>Persons</b>	<b>Power</b>	<b>Where should go</b>
PCCA s.38	Court (application by DPP)	Where charged with corruption or any related offences, freezing order – belonging or due to accused. May include the sale, transfer or disposal of any property by the accused where the court is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming interest in the property.	
AMLA s.23	Customs	seize the whole amount of the unreported cash or bearer negotiable instruments,	
POCA s.31	Police officer	Seizure of any property reasonably believed to be tainted property. See also s.34.	
POCA s.31A	Inspector General of Police or Director of Criminal Investigations (instructs police officer of Assist. Super-intendant or above)	If reasonably suspects commission of a serious offence, a predicate offence or money laundering to freeze a bank account and seize any document from that bank or financial institution for seven days during which leave of the court for continued seizure shall be obtained.	
POCA s.32	Magistrate (police officer application)	Search and seizure warrant “tainted property”. <sup>3</sup> Note s.33 emergency applications by telephone	
POCA s.37	Magistrate (police officer under MLA Act)	Search and seizure any tainted property or anything associated with foreign offence	
POCA s.62	Police officer (with consent)	Search and seizure reasonable grounds property tracking document	
POCA s.63	Court (police officer application)	Search and seizure warrant for property tracking document	
<b><i>Forfeiture, Confiscation or Disposal Powers and Orders</i></b>			
WCA s.84(2)	Court	Trophy exported, re-exported or imported in contravention of this Part or the provisions of CITES shall be confiscated.	S.85 “property of the government”
WCA s.88	Director subject to instructions from Minister in consultation with Minister of Finance	Disposal of all government trophies	
WCA s.101	Court	Disposal Order at any stage in proceedings where speedy decay, destruction or depreciation	Disposal of the Director

<sup>3</sup> “tainted property”, in relation to a serious offence, means-

- . (a) any property used in, or in connection with, the commission of the offence;
- . (b) any proceeds of the offence; or
- . (c) any property in the United Republic which is the proceeds of a foreign serious offence in respect of which an order may be registered in terms of Part VI of the Mutual Assistance Act;

and when used without reference to a particular offence means tainted property in relation to an arrestable offence;”

VERSION No.4 (February 2018)

<b>Legislation</b>	<b>Persons</b>	<b>Power</b>	<b>Where should go</b>
WCA s.106(7)	Director or Authorised Officer	Where an owner or a person in control of a seized property fails to appear or absconds and abandons his property for a period of thirty days, the Director or an authorized officer shall confiscate the seized property.	
WCA, s.111	Court	Forfeiture: (a) an animal, livestock or trophy in respect of which the offence was committed; (b) a weapon in the possession or under the control of the accused at the time when the offence was committed, whether or not there is any evidence to show that the weapon was actually employed by the accused in the commission of the offence; (c) an article or thing used for the storage, processing, preparation, cooking or otherwise dealing with an animal, game meat or trophy in relation to which the offence was committed; (d) a vehicle, vessel, aircraft, tent, camping equipment or other article or thing in respect of which the court is satisfied that it was used or employed in the commission of the offence or for the conveyance or storage of an animal, game meat or trophy in relation to which the offence was committed or for the conveyance or comfort of the accused while engaged in the commission of the offence; and (e) in case of a conviction for an offence in relation to a government trophy, a vehicle, vessel or an aircraft in which the government trophy was found.	s.91 25% into Tanzania Wildlife Protection Fund
NPA s.29(2)	Court	Conviction based forfeiture: any animal, weapon, explosive, trap, poison, vehicle or other instrument or article made use of by such person in the course of committing the offence.	Government
NPA s.29(2) and (3)	Trustees officer or servant	Destruction of domestic animal found in NP or any vegetation introduced in a NP	
Forest Act S.94(3)	Forest Reserve Manager	If perishable, order sell or destroy	Proceeds retained under s.94(2)
Forest Act s.94(4)	Director or authorised officer	Where the owner or a person in control of a seized property fails to appear or absconds and abandons his property for a period of thirty days, “may dispose of such property sale it.”	Proceeds to cover costs and remaining amount into Tanzania Forest Fund
Forest Act s.97(1)(b)	Court	Forfeiture of any forest product – based on conviction.	Tanzania forest fund s.79. (But see s.97(3) sale or paid to Director - general revenue of government.)

VERSION No.4 (February 2018)

<b>Legislation</b>	<b>Persons</b>	<b>Power</b>	<b>Where should go</b>
EMA, s.110(8)	Council application to Court	Disposal of seized items under s.110(7) if mitigation measures not taken within prescribed time.	
EMA s.193	Court	Conviction based or offence committed even without conviction, forfeiture and disposal substances, equipment and appliances used in commission of offence	Government
FACA s.56	Court	Order forfeiture of firearms or ammunition connected to commission of an offence	Government
FACA s.57(1)	Court	If no apparent owner, court may forfeit to government	Government
FACA s.57(2)	Court	Destruction Order of firearms or ammunition which have been forfeited	
FACA s.30(2)	Inspector General of Police application to resident magistrate (Chambers summons with affidavit)	forfeiture of firearms or ammunition stored for more than 18 months or where fees unpaid for 2 months	
FACA s.60(2)	Court	If conviction under s.60(1) forfeit firearm or ammunition for time period court sees fit.	
EOCCA s.23(1)	Inspector General of Police or Court	Disposal Order for seized goods or put into evidence (can be destruction, disposal or other)	
EOCCA s.23(3)	Court	Forfeiture of anything seized which is believed to be connected/will be used for committing a crime or as an evidence	Proceeds to Consolidated Fund
EOCCA s.60	Court	Upon conviction, confiscation and forfeiture of all instrumentalities and proceeds of economic offence	government
EOCCA s.23	Inspector General of Police	Order disposal or destruction of the seized property if it is about to decay or for any reasonable reason (can be destroyed, disposed or dealt with the manner the IGP specifies)	
Penal Code, s.30	Court	forfeiture of the property which lieu of, any penalty which may be imposed, the court may order the forfeiture to the Republic of any property which has passed in connection with the commission of the offence, or if the property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property and payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine	
CPA s.351	Court	any property which was in his possession or under his control at the time of his apprehension- (a) has been used for the purpose of committing or facilitating the commission of any offence; or (b) was intended by him to be used for that purposes, that property shall be liable to forfeiture and confiscation	Unless otherwise directed, when sold proceeds to Consolidated Fund

VERSION No.4 (February 2018)

<i>Legislation</i>	<i>Persons</i>	<i>Power</i>	<i>Where should go</i>
		and any property so forfeited under this section shall be disposed of as the court may direct.	
CPA s.353(1)	Court	If exhibit tendered into evidence not claimed within 12 months of final disposal of case, can be disposed of, sold or destroyed	Proceeds to general revenue of Republic
CPA s.353(2)	Court	If tendered or put into evidence, Speedy decay – may order at any stage of the proceedings disposal or sale. If sale, proceeds to be held for 12 months then subject to S.353(1)	
PCCA, s.27(4)(5)	Court (through application by the Director within 28 days of conviction)	s.27 unexplained wealth conviction, order the confiscation of any pecuniary gain or found to be in the ownership of the accused; and of an amount or money value not exceeding the amount or value of pecuniary gain or property the acquisition of which was not explained to the satisfaction of the court. Can cover taking possession and disposal by government.	
PCCA s.40	Court (DPP application within 6 months of conviction)	Confiscation of proceeds of corruption “any property that is derived or obtained by a person from the commission of corruption offences”.	Treasury Registrar to be named as owner
POCA s.9	Court (AG application within 6 months of conviction)	For “serious offences” a forfeiture order against any property that is tainted property in respect of the offence; or a pecuniary penalty order against the person in respect of any benefit derived by the person from the commission of the offence. (See s.12 for absconded persons)	Forfeited to United Republic. Treasury Registrar to be named as owner s.15. Pecuniary order payable to Treasury Registrar
POCA s.25	Automatic	if at the expiration of six months from the day of conviction a restraining order issued in respect of the property of a person convicted of a specified offence is still in force, the property shall be forfeited to the United Republic. (subject to s.43(3) application)	Vests with Treasury Registrar
<b><i>Prohibition, Restraining or Stop Notices/Orders</i></b>			
EMA, s.113	Council	Imminent risk of serious pollution, prohibition notice	
EMA s.195	Council	Prevention Order	
EMA s.196, 197	Council	Protection Order and Emergency Protection Order	
EMA s.198	Council	Environment Compliance Order	
EOCCA s.61(4)	Court	Preliminary/Interlocutory Orders: restraining orders, prohibitions, or order injunctions pending any proceedings	
EOCCA s.58	Attorney General	Prohibit transferring of advantage or property involved in economic offence by issuing notice to any person including third parties not involved in the crime so long as he is satisfied that any person has in his	

VERSION No.4 (February 2018)

<b>Legislation</b>	<b>Persons</b>	<b>Power</b>	<b>Where should go</b>
		possession or to his credit any property or advantage involved in or arising out of the commission by any person of an economic offence.	
EOCCA s.58	“Minister”	Prohibition notice to prohibit transfer of advantage or property involved in economic offence (to any person including third parties not involved in the crime) so long as he is satisfied that any person has in his possession or to his credit any property or advantage involved in or arising out of the commission by any person of an economic offence. It will be done after the Attorney General’s notice of prohibition (six months) expires. The notice of the Minister lasts as prescribed in the notice	
Forest Act s.56	Director	Where appears breach of permit, Compliance Order, then revocation of permit, with steps to rectify the breach and compensation	
Forest Act s.57	Director	Stop Order for protected trees	
POCA s.38/s.39	Court (AG application)	Restraining order – convicted or charged with serious offence <sup>4</sup> – prevent disposal or transfer, or taken into protective safe custody. See s.43 for associated orders.	AG to apply to register restraining order with appropriate registrar
POCA s.53	Court (AG application)	Interim restraining order based on foreign specified offences <sup>5</sup> (30 days)	
<b><i>Compensation or restoration Orders</i></b>			
Forest Act s.97(1)(c)	Court	Order compensation to forest reserve manager payment of damage	Forest Reserve Manager
Forest Act s.97(1)(d)	Court	If government property damaged, compensation to director or local authority CEO	See s.97(3) sale or paid to Director - general revenue of government.)
Forest Act s.97(1)(e)	Court	10 x royalties lost as result of offence or fees which would have been payable if permitted to forest reserve manager	Forest Reserve Manager
Forest Act s.97(1)(f)	Court	Order removal of buildings, enclosures, huts, crops or livestock within designated period (if occupying, cultivating or grazing offence)	Deemed to be owned by government (Director can dispose of them). See s.97(3)

<sup>4</sup> “Serious offence” means money laundering and includes a predicate.

<sup>5</sup> “specified offence” means-

- . (a) serious narcotic drugs and psychotropic substances offence;
  - . (b) money-laundering contrary to section 71;
  - . (c) any other offence which the Minister may, by order published in the Gazette, prescribe as such, subject to approval by resolution of the National Assembly;
  - . (d) conspiracy to commit, or aid, abet, counsel or procure the Commission of an offence referred to in paragraphs (a), (b) or (c);
- (e) assisting another person to dispose of the proceeds of an offence referred to in paragraph (a); or attempting to commit an offence referred to in paragraphs (a), (b) or (c);

VERSION No.4 (February 2018)

<b>Legislation</b>	<b>Persons</b>	<b>Power</b>	<b>Where should go</b>
			sale or paid to Director - general revenue of government.
Forest Act s.97(1)(g)	Court	Costs incurred in seizure, management, storage or removal	Forest Reserve Manager
EMA, s.115	Council	Restoration Order	
EMA s.187(2) and (3)	Court	May order full cost of clean-up or removal of pollutant or to do that. May also order compensation, restitution or restoration order to anyone effected or injured.	
EMA s.199	Council	Cost order if fail to comply with another order an Council has to take steps instead	
EOCCA s.61(1)	Court	compensation, divestment, order dissolution of enterprise (where the convicted has an interest/property and was used in committing a crime), order restitution of any public property or interest-if the convicted person caused is likely to cause injury or loss to another person	
Penal Code, s.31. CPA s.348	Court	Compensation Order to pay injured victim (conviction based).	
Penal Code, s.32, CPA s.345	Court	Order to pay costs of prosecution (conviction based)	
<b><i>Witness Protection Powers and Orders</i></b>			
EOCCA s.53	Inspector General on own motion or after consultation with DPP	on reasonable grounds that there is any danger or real possibility of danger of interference with any case under this Act through interference with or threats of harm to any witness or potential witness - arrange for the provision of security for the witness or potential witnesses concerned and, if necessary, the family or families of that witness or potential witness or witnesses.	
Whistleblower & Witness Protection Act, 2015 s. 11	Competent Authority	Either on application by a witness or upon receiving information that a witness may be subjected to dismissal, suspension, harassment, discrimination or intimidation by his employer, or danger on life or property of witness – CA can issue appropriate directions to institutions capable of rendering protection to witness.	
AML A s.22	Court (application by AG)	Witness and victim protection measures including video testimony, concealed identity	

## MODES OF CRIMINAL LIABILITY AND ALTERNATIVE FORMS OF COMMISSION

Note: Tanzanian law provides for criminal responsibility for people involved in a crime other than just the physical perpetrator of the material elements of the crime. These forms (or modes) of criminal liability can be found in the Penal Code.

The distinction between principal or accessory liability is no longer recognised in Tanzania as all accessories are now arraigned under section 22 of the Penal Code [Cap.16 R.E 2002] as principal offenders (SITA d/o ZATTO AND OTHERS v. R. (1957) EA. 308). Multiple offenders can be charged jointly and severally. The role of offenders in the commission of crime should be demonstrated at the time of tendering evidence.<sup>6</sup>

There are also different forms of the crime which are criminalised in the specialist legislation, e.g. attempt, conspiracy or accessory after the fact – while some of these may be confused with modes of liability, they are usually considered by the court to be different crimes in themselves, meriting or requiring additional or different charges.

### A. MODES OF CRIMINAL LIABILITY PROVIDED IN THE PENAL CODE

The Penal Code places physical perpetration, aiding and enabling, aiding and abetting, and counselling and procuring on an equal footing as principal forms of commission. “S.22 enumerates persons who are principal offenders to an offence. The section does not say that the charge against an abettor or aider will not hold unless and until the actual perpetrator should first be charged. This is because those listed in s.22 are principal offenders it matters not whether they are abettors or aiders or actual perpetrators. They will not be charged specifically as aiders or abettors... All persons enumerated in that section are principal offenders as such they can be jointly or separately charged and convicted.”<sup>7</sup>

#### 1. Physical perpetration (s.22(a))

Section 22, “When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing, namely:-(a) Every person who actually does or makes the omission which constitutes the offence.”

The elements to prove for this mode of liability are:

- i. an act or omission which constitutes the material element of the offence; and
- ii. intent to commit the crime, which includes knowledge of the probable result of actions.<sup>8</sup>

#### 2. Aiding and Abetting (s.22(b) and (c))

Section 22, “When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing, namely:-

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<sup>6</sup> See DPP v. ACP.Abdallah Zombe & 8 Others, Criminal Appeal. No.358 of 2013 CAT DSM.

<sup>7</sup> See DPP v. ACP.Abdallah Zombe & 8 Others, Criminal Appeal. No.358 of 2013 CAT DSM.

<sup>8</sup> See Penal Code, s.10(2) and s.200(a) and (b). [Note: the transferred malice doctrine in English law. Where the intention is directed towards one person but actually occurred against another, that intent is said to be “transferred”. R. v. Pembliton (1874) 2 L.R.2 C.C.R. 119 and R. v. Latimer (1886) 17 Q.B.D. 359. See Tanzanian case: Saidi Hemed v. R [1987] T.L.R. 117(A).]

- (b) Every person who does or omits to do any act for the purposes of enabling or aiding another person to commit the offence;
- (c) Every person who aids and abets another person in committing an offence.”<sup>9</sup>

The elements to prove for this mode of liability are:

- i. enabling, aiding, or abetting another (act or omission);
- ii. to commit an offence;
- iii. for s.22(b) “for the purposes of enabling” is an intent requirement: intent to enable a crime. For s.22(c), requires knowledge that act or omissions aids or abets a crime. An accused must know the essential elements of the crime, and that it will probably occur. Note: it is not necessary for the accused to share an intent to commit the crime.<sup>10</sup>

### Some Key Principles for Aiding and Abetting:

- 1. Aiding and abetting can occur before or during a crime.<sup>11</sup>
- 2. It can be done by an act or omission.
- 3. It includes any act or omission which renders practical assistance, help, encouragement or moral support.<sup>12</sup>
- 4. The aider and abettor does not need to be present at the crime scene.<sup>13</sup>
- 5. No case law requires any causative link between the aid or encouragement and the crime.<sup>14</sup>
- 6. Mere presence at the crime scene may not amount to aiding and abetting<sup>15</sup> unless:
  - the person has a duty of preventing the commission of crime. S.47 of the Criminal Procedure Act, Cap.20 R.E 2002, every police officer may intervene for the purpose of preventing, and shall to the best of his ability prevent, a breach of peace or the commission of any arrestable offence. Failure of a police officer to intervene to prevent a crime may therefore constitute aiding and abetting by omission.<sup>16</sup>

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<sup>9</sup>Note: While there is no case law which clarifies the difference between these two forms of assisting or encouraging a crime, it may be that (b) suggests a remoteness from the crime scene with an elevated intent requirement; and that (c) suggests presence at the crime scene with a lower knowledge threshold for *mens rea*. See *Bowker v. Premier Drug Co. Ltd* [1928] 1 K.B. 217.] *R. v. ACP. ABDALLAH ZOMBE AND 12 OTHERS, CRIMINAL SESSIONS CASE NO.26 OF 2006*; *Sita d/o Zatto and others v. R* (1957) EA 308.

<sup>10</sup> See *Republic v. Ashakali Merli & Another* [1975 LRTN.3 HC Tanzania]. See also *Blakely and Sutton v. Chief Constable of West Mercia* [1991] RTR 405, per McCullough J, p.415J; and *Johnson v. Youden* [1950] 1 KB 544, p.546 per Lord Goddard CJ. L Wolfe in *Gillick v. West Norfolk and Wisbech Area Health Authority* [1984] QB 581, p.595D-E, [1986] AC 112, pp.190D, 194F (HL) Lords Scarman and Bridge. Only needs to know a crime would probably be committed; *Carter v. Richardson* [1974] RTR 314.

<sup>11</sup> Aiding and abetting after a crime is usually charged as the separate crime of being an accessory after the fact. If assistance after a crime is known and relied upon during the crime, it may also be aiding and abetting.

<sup>12</sup> *R v. Briscoe*, 2010 SCC 13, [2010] 1 S.C.R. 411, at 414 (Canada): The *actus reus* of aiding or abetting is “doing (or, in some circumstances, omitting to do) something that assists or encourages the perpetrator to commit the offence. While it is common to speak of aiding and abetting together, the two concepts are distinct, and liability can flow from either one. Broadly speaking, “[t]o aid under s. 21(1)(b) means to assist or help the actor... . To abet within the meaning of s. 21(1)(c) includes encouraging, instigating, promoting or procuring the crime to be committed”. <http://www.canlii.org/en/ca/scc/doc/2010/2010scc13/2010scc13.html>

<sup>13</sup> According to the case of *Damiano Petro & Jackson Abraham v. Republic* (1980) TLR 260.

<sup>14</sup> KJM Smith, pp.55-93

<sup>15</sup> In the case of *Zuberi S/O Rashid* (1957) E.A 455 the Court said re s.22(b) and (c):- “...that, it is not sufficient to constitute a person a principal in the second degree that he should tacitly acquiesce in the crime, or that he should fail to endeavour to prevent the crime or to apprehend the offenders, but that it is essential that there should be some participation in the act, either by actual assistance or by countenance or encouragement”.

<sup>16</sup> In a recent Court of Appeal case, an accused who was in a senior role, issued orders and was present at the crime scene (described by the Court as “the architect”) was convicted on appeal under s.22(1)(b) enabling a murder (without the physical perpetrator being convicted).” *Director of Public Prosecutions v. ACP. Abdalah Zombe and 8 Others, Criminal Appeal No 358 of 2013 CAT of DSM (Unreported)* <http://www.wavuti.com/2016/09/copy-judgment-of-court-of-appeal-dpp-vs.html>



- in cases or circumstances in which the law recognises the duty to actively dissociate oneself from what is about to be done by the intending principal(s), passivity could amount to abetment if it is made to lead the actual committers believe that the motive for non-interference was a desire to effect encouragement.<sup>17</sup>

7. The elements of aiding and abetting by omission are:

- the omission or failure to prevent the offence;
- the law or circumstances of the crime imposed a duty on the accused to intervene, prevent the crime or at least to dissociate himself from what was being done or was about to be done;
- the accused had the power to prevent the commission of the offence, and
- the accused knew his failure to act assisted the offence.<sup>18</sup>

### 3. **Counselling and Procuring** (s.22(d))

Section 22 (d) any person who counsels or procures any other person to commit the offence, in which case he may be charged either with committing the offence or with counselling or procuring its commission.<sup>19</sup> s.24 “When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel. In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.”

The elements to prove for this mode of liability are:

- counselling or procuring another to commit an offence;<sup>20</sup>
- commission of an offence (even if different from the one counselled but a probable consequence of that counselling);
- that the principal offender was acting upon the counselling or there was a link between the counselling and the crime<sup>21</sup>; and

<sup>17</sup> See *James v. Shadrack Mkungilwa & Another Criminal Appeal No.214 of 2010 CAT* at Iringa. Also as approved in *Makokoi Chandema v. Hassam Mtete*, Criminal Appeal No.143 of 1999 CAT (Mbeya) Unreported p.7: ‘Hawkins J in *Coney* (1882) 8 QBD 534 at 557 which was cited with approval by Megaw L.J. in *Clarkson* (1971) 55 Cr App R 445 at 449:- “But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, although he might reasonably be expected to prevent and had the power so to do, or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged and so aided and abetted.” See also “constructive presence”: Archbolds’s Criminal Pleading and Practice-37<sup>th</sup> Edition-para 4124, p.136 Smith and Hogan 8<sup>th</sup> Edition. R v. Clarkson, 55 Cr App R 445, Ct-MAC.

<sup>18</sup> **JF ALFORD TRANSPORT LTD JAMES ALFORD PETER ALEX PAYNE, R v. [1997] EWCA Crim 654 (7th March, 1997):** “In our judgment nothing turned on actual presence. What mattered was knowledge of the principal offence, the ability to control the action of the offender, and the deliberate decision to refrain from doing so. We accept that in the context of the present case it would have to be proved that the defendant under consideration intended to do the acts which he knew to be capable of assisting or encouraging the commission of the crime, but he need not have intended that the crime be committed. As Devlin J said in *NCB v Gamble* (1959) 1 QB 11 at 23 :- “If one man deliberately sells to another a gun to be used for murdering a third, he may be indifferent whether the third man dies and interested only in the cash profit to be made out of the sale, but he can still be an aider and abettor.”

<sup>19</sup>[Note: While this provision suggests the possibility of charging this as a separate offence, in practice it is charged as the principal offence and evidence led as to counselling and procuring as a mode of liability.] CAP 16 RE: 2002, section 22 (1) (a-c), also see *REPUBLIC V ACP. ABDALLAH ZOMBE AND 12 OTHERS, CRIMINAL SESSIONS CASE NO.26 OF 2006*

<sup>20</sup> English case, Attorney General’s Reference No.1 of 1975 [1975] 3 WLR 11: “To procure means to produce by endeavour. You procure a thing by setting out to see that it happens and taking the appropriate steps to produce that happening. We think that there are plenty of instances in which a person may be said to procure the commission of a crime by another even though there is no sort of conspiracy between the two, even though there is no attempt at agreement or discussion as to the form which the offence should take.”

<sup>21</sup> Per Lord Widgery CJ in *A-G’s Reference (No 1 of 1975)* [1975] QB 773 at p. 779F; *R v. Calhaem* [1985] QB 808.

- iv. Shared intent that the crime is committed or knowledge that crime is probable consequence of counselling.

An accused may be convicted of counselling and procuring the commission of a crime even if he is not present at the scene of the crime.

#### 4. Common purpose/enterprise

Section 23, “When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose each of them is deemed to have committed the offence.”

Court of Appeal in DPP v. Zombe, “On the other hand s.23 of the code creates another scenario altogether vis – a – vis s.22 of the code in that the parties to the crime must have first intended to commit an offence. But in the execution of that plan they committed another offence which was in the ordinary cause of events was a probable result, then in such situation the parties are taken to have a common intention. For example, A and B had decided to steal by force using a gun. In the process of stealing, A who had a gun killed C. In terms of s.23 of the Code, B is deemed to have common intention of killing C. The two sections therefore are quite distinct..”<sup>22</sup>

Elements to prove for this mode of liability:

- a. Two or more persons (both charged together);
- b. Common intent to pursue unlawful purpose;
- c. In conjunction/concert with one another (intent element) (no requirement to prove prior agreement);
- d. Pursuit/prosecution of such purpose; and
- e. Offence committed which accused knows is a probable consequence of pursuing common purpose.<sup>23</sup>

## B. MODES OF CRIMINAL LIABILITY INCLUDED IN SPECIALIST LEGISLATION

**EOCCA Sch.1 para 4:** criminal racket includes (a) **organising, managing, directing, supervising or financing**, (b) **inciting or inducing** violence or fraud, (c) **furnishing advice, assistance or direction** in conduct, financing, execution or management, (d) involvement of public official.

**AMLA s.12(e)** different acts/elements which constitute money laundering plus “(e) **participates in, associates with, conspires to commit, attempts to commit, aids and abets, or facilitates and counsels** the commission of any of the acts described in paragraphs (a) to (d) of this section, commits offence of money laundering.”

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<sup>22</sup>Director of Public Prosecutions v. ACP. Abdalah Zombe and 8 Others, Criminal Appeal No 358 of 2013 CAT at DSM(Unreported). See also Ibrahim Yusuf Calist, Bonge and 3 Others v. R, Criminal Appeal No.204 of 2011, CAT at DSM.

<http://www.wavuti.com/2016/09/copy-judgment-of-court-of-appeal-dpp-vs.html>

<sup>23</sup> Kileo Bakari & 4 Others v. The Republic Criminal Appeal No.82 of 2013 (CAT at Tanga) unreported; Diamon Malekela v Republic Criminal Appeal No.205 of 2005 (CAT at DSM). See also Damian Petro’s case and Archbold’s Criminal Pleading and Practice-37<sup>th</sup> Edition.

**s.14(1) a director, manager, controller or partner, or concerned in the management of its affairs** of body corporate, is deemed to have committed the offences of the body corporate (unless can show without consent or connivance AND took all such diligence to prevent as ought to in his function/capacity).[Even if body corporate not convicted.]

**s.14(3) through agent or officer** (without his knowledge or consent and he took all reasonable precautions to prevent the doing of, or omission to do, such an act).

**EMA s.201 directors, partners or any one concerned in management of business** is deemed to have committed the offences of the body corporate (unless can show without consent or connivance AND took all such diligence to prevent as ought to in his function/capacity).

#### **EACCMA 2004**

s.208 “**208.** A person who **aids, abets, counsels or procures** the commission of an offence under this Act shall be deemed to have committed such offence and shall be liable to the penalty prescribed for such offence under this Act.”

### **C. OTHER CHARGES/CRIMES WHICH MAY BE CHARGED IN THE ALTERNATIVE TO PRINCIPAL CRIMES**

**NOTE:** *These should not be confused with modes of liability. They are crimes in their own right and require to be charged as separate crimes.*

#### **1. Attempt: ss.380-382 Penal code**

“(1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such extent as to commit the offence, he is deemed to attempt to commit the offence.

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.”

- If attempt to commit an offence attracting sentences of 14 years or more, or death penalty, 7 years imprisonment, unless another penalty provided in law s.382.
- If attempt to commit an offence, 2 years imprisonment, unless another penalty provided in law, s.381.

The elements to prove for this crime are:

- a. Intention to commit an offence, AND
- b. Some overt act which begins execution, but does not fulfil or complete the crime.

#### **2. Neglect to prevent an offence Penal Code s.383**

“Every person who, knowing that a person designs to commit or is committing an offence, fails to use all reasonable means to prevent the commission or completion thereof, is guilty of an offence.”

The elements to prove this crime are:

- a. Knowing that a person designs to commit or is committing an offence; and
- b. Fails to use all reasonable means to prevent commission or completion.

### 3. **Conspiracy Penal Code ss.384-386A**

s.384: “Any person who conspires with another to commit any offence, punishable with imprisonment for a term of three years or more, or to do any act in any part of world which if done in Tanzania would be an offence so punishable, and which is an offence under the laws in force in the place where it is proposed to be done, commits an offence. Imprisonment 7 years or less if the offence itself attracts less than 7 years.”

S.385 if conspires as above but in relation to an offence punishable by less than three years.

S.386 conspiring to do other acts which are harmful.

The elements to prove for this crime are:

- a. Conspiring with another
- b. To commit an offence (in Tanzania or elsewhere): (Note: the crime does not have to be committed).<sup>24</sup>

While the case law is mixed, the most recent Court of Appeal judgment recognises that conspiracy and the principal offence are separate crimes with separate elements and BUT states that **THEY CANNOT BOTH BE CHARGED AT ONCE**.<sup>25</sup>

### 4. **Accessory After the Fact s.387 Penal code**

“387. A person who receives or assists another who is, to his definition of knowledge, guilty of an offence, in order to enable him to escape a punishment; is said to become an accessory after the fact to the fact offence.”

- If accessory to crime punishable by more than 3 years: liable to imprisonment for 7 years. s.388
- If less than 3 years, commits an offence. s.389

The elements to prove for this crime are:

- a. Assist or receive a person;
- b. Who is guilty of an offence;
- c. Knowing they are guilty of an offence;
- d. With view to/for purpose of enabling him escape punishment.<sup>26</sup>

DPP appeal brief: “Accessory after the fact to murder is an independent offence. It is not a degree or level of participation in committing murder. The conviction of accessory after the fact to murder cannot be dependent on the conviction or presence of the murderer in court. The guilt or innocence of the accused is determined by the evidence; not by the absence, presence or conviction of the perpetrator. The classification of accessories was abolished to avoid unjustified acquittal on the ground that the principal or perpetrator is not convicted. The offence of accessory after the fact to murder was retained in the Penal Code as an independent offence; not as a degree of participation in committing murder.”<sup>27</sup>

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<sup>24</sup> JOHN PAUL@SHIDA AND ANOTHER v. REPUBLIC, CRIMINAL APPEAL NO. 335 OF 2005, COURT OF APPEAL OF TANZANIA at TANGA.

<sup>25</sup> JOHN PAUL@SHIDA AND ANOTHER v. REPUBLIC, CRIMINAL APPEAL NO. 335 OF 2005, COURT OF APPEAL OF TANZANIA at TANGA.

<sup>26</sup> See ANDREA NICODEM v. R (1969) H.C.D 265) emphasising need to prove element d.

<sup>27</sup> *Director of Public Prosecutions v. ACP. Abdalah Zombe and 8 Others, Criminal Appeal No 358 of 2013 Court of Appeal of Tanzania at Dar es Salaam (Unreported).*

**5. Solicitation and Incitement s.390 Penal Code**

“s.390. Any person who solicits or incites another to commit an offence, commits an offence notwithstanding that the solicitation or incitement has no effect.”

The elements to prove for this crime are:

- a. Solicits or incites another to commit an offence
- b. NO effect needed. This is NOT a result crime.

**D. ALTERNATIVE CRIMES/CHARGES IN SPECIALIST LEGISLATION:**

**PCCA s.30** Any person who **aids or abets** another person in commission of an offence under this Act commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both. [*Note: usually a mode of liability and not a separate crime, but the wording suggests otherwise.*]

**s.32** Any person who **conspires** with another person to commit an offence under this Act commits a like offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

## GUIDE TO DEFENCES APPLICABLE IN WILDLIFE AND FOREST CRIMES

***Note:** The burden of proof usually rests with the prosecutor to prove the material facts or elements which establish beyond reasonable doubt that the accused “committed” an offence. If insufficient evidence is led, or if the evidence is not judged to be credible or reliable, or if technical requirements for obtaining or preserving that evidence are not met, then the court could/should find the accused not guilty. This could occur at the end of the prosecution case upon a no-case-to-answer submission, or at the end of the defence case, whether or not they led any defence evidence or argued any positive defence to the charges.*

*Only positive defences are included in this guidance. Clearly it is also open to the defence to argue that one or more elements of a charged offence or mode of criminal liability has not been proved. It is up to the investigator and prosecutor to assess the sufficiency, credibility and reliability of their evidence, and ensure each material element is proved beyond reasonable doubt.*

### **General Defences available under the Penal Code**

#### *i. Independent of exercise of will or by accident*

s.10 “Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.” (But NOTE: unless an explicit element of the offence, intention of result and motive both immaterial.)

#### *ii. Mistake of Fact*

s.11 “an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.”<sup>28</sup>

#### *iii. Insanity*

s.13 “A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission. But a person may be criminally responsible for an act or omission although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.” See the case of *R v. Thomson Msumali* whereby a son with epilepsy killed his father.<sup>29</sup>

#### *iv. Intoxication*

s.14(2) “Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know what he was doing and — (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.” Includes a state produced by narcotics or drugs s.14(5).

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<sup>28</sup> *R. v. Seleman Hassan* (1969) A.C.D n.250

<sup>29</sup> (1969) H.C.D. 26



v. *Immaturity*

s.15 “A person under the age of seven years is not criminally immature responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.” See the case of *R v Thomas Mfaume*,<sup>30</sup> for example, the accused, 10 years of age, kindled a fire to warm himself while grazing cattle. The fire spread and burned the complainant’s house. The accused was convicted of negligently causing with fire or omitting to take precautions against the danger of fire, and to pay a compensation of Two Thousand and Five Hundred and Forty shillings. It was held that: s. 15 of the Penal Code provides that a person under the age of 7 years is not responsible for any act or omission, but that a person under the age of 12 years is not criminally responsible unless at the time of the act, he had the capacity to know that he should not commit the act.

vi. *Compulsion*

s.17 “A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses but threats of future injury do not excuse any offence.”<sup>31</sup>

vii. *Defence of Self, Another or Property*

s.18 “Subject to s.18A, a person is not criminally liable to an act done in the exercise of the right to self-defence or the defence of another or the defence of property.” S.18A “every person has the right— (a) to defend himself or any other person against any unlawful act of assault or violence to the body; or (b) to defend his own property or any property in this lawful possession, custody or under his care or the property of any other person against any unlawful act of seizure or destruction or violence. BUT s.18B(1) “In exercising the right of self-defence or in defence of another or defence of property, a person shall be entitled only to use such reasonable force as may be necessary for that defence. ”If excessive force used, criminally liable.

viii. *Defence of Alibi*

This defence is a positive defence to a constituent element of a crime – that the accused has positive evidence to show that he was somewhere else or in such circumstances such as to make it impossible for him to have fulfilled/undertook one of the requisite elements of the crime. It is only really applicable if the charges or prosecution case hinges on the accused’s presence at a particular place at a particular time.

Ss.194(4) of the CPA and 42 of the EOCCA requires that a notice of alibi should be given to the Court and prosecution before hearing the case or at preliminary hearing of the case. If not given at the mentioned time, the accused must furnish the prosecution with particulars of alibi before close of the prosecution case.

## **Positive Defences Available Under Relevant Legislation**

### **1. Wildlife Conservation Act 2009**

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<sup>30</sup> (1967) H.C.D. n. 18

<sup>31</sup> Ramadhani Salum v. R, Criminal Appeal No.5 of 2014, CAT Mwanza. The compulsion must continue throughout the commission of the crime. The compulsion level must be proportional to the crime – for murder, it must be under pain or fear of instant death or grievous bodily harm.

*Killing an animal: DEFENCE s.73/s.75 in defence of human life or livestock.* Requirements: (a) remove from such animal any skin, ivory, horn, tooth or any other trophy; (b) report the fact and the circumstances of such killing to the nearest officer; (c) hand over to such officer any trophy removed from such animal, which trophy shall be the property of the Government; and (d) where required by such officer, show him the damage caused and the place of such killing. S.75 requires the accused to satisfy the court that it was “an accident beyond his control and that he had taken all reasonable precautions to avoid such accident”.

THIS DEFENCE DOES NOT APPLY IF (a) the behaviour of the animal necessitating such killing is the result of molestation or deliberate provocation by or with the knowledge of the person killing such animal; or (b) the person killing such animal or the person whose life is being defended was, when such defence became necessary, committing an act which constitutes an offence under this Act. ALSO does not apply to (i) the use of stakes in pitfalls, snare or of any other method which is likely to result in undue cruelty to animals or to endanger human life; (ii) the killing of any national game without the written authority of the Director previously sought and obtained.

*Killing a scheduled animal: DEFENCE s.63(1)/s.75 by accident* BUT must as soon as practicable afterwards (a) remove any skin, ivory, horn, tooth or any other trophy, (b) report the fact and circumstances to the nearest wildlife ranger, park warden, park ranger or village game scout within 3 working days, (c) hand over any trophy removed, AND (d) where required, show the place or site where the animal was killed.

THIS DOES NOT APPLY TO A LICENCE, PERMIT OR WRITTEN AUTHORITY HOLDER which allows hunting of the species killed.

*s.65 Illegal methods of hunting: DEFENCE s.65(3) if lawful killing of dangerous animal:* illegal methods shall not apply if it relates to s.72 – lawful killing of a dangerous animal when wounded by a licence-holder.

BUT THIS DOES NOT APPLY TO (1)(a)(ii) “any poison, bait, poisoned bait, poisoned weapon, stakes, net, gin, trap, set gun, pitfall, missile, explosives, ball, ammunition, snare, hide, spear, fence or enclosure;” and (2)(b) “drag, cut or display any dead animal in the vicinity of any lodge, hotel, zoo or camp frequented by visitors.”

*s.17 Illegal Possession of weapon in a game reserve: DEFENCE s.17(3)* taking into account all circumstances, was **not meant for hunting or harming animals**.

*s.20(2) illegal prospecting or mining in a game reserve: DEFENCE s.20(3) involves oil, gas or uranium and complies with requirements* under (3)(i)-(iv) Environmental Impact Assessment, protection cost paid, concession fee paid and Government is the initiator.

*s.79(1) possession of trophy without certificate of registration: DEFENCE s.79(1)(a)* since commencement has lawfully obtained certificate of registration, or (b) that 90 days has not expired between acquiring the trophy and the institution of proceedings/seizure.

## **2. National Parks Act**

*Killing or injuring an animal (other acts which might fall within “reasonable measures”): DEFENCE s.30: defence of human life or property.* Requirements: “(2) Any person who,



in any circumstances whatsoever, kills or wounds an animal in a national park, shall make a report at the earliest possible moment to the nearest officer of the Trustees. (3) Such report shall state what animal has been killed or wounded, the time, date and place of the killing or wounding, the nature of the wounds inflicted, together with any other information that might help to locate and identify it. (4) Any person who kills or wounds an animal and who fails to report the same at the earliest possible moment in the manner required.”

THIS DEFENCE DOES NOT APPLY (a) “if the behaviour of the animal necessitating the taking of such measures is the result of molestation or deliberate provocation by or with the knowledge and consent of the person concerned”, or (b) “when such defence became necessary, [the person] was committing an act in contravention of any provision of this Act or of any regulation made thereunder.” *This means, e.g. it must have been a lawful entry onto the National Park and they must not have been carrying weapon with intention to hunt, kill, wound or capture an animal.*

s.31 – **S.75 WCA accident defence applies.**

### **3. Forest Act 2002**

s.70/s. 91 *Setting fires* **DEFENCE s.74 when life, person or property is in danger of loss or injury** from approaching fire, can set alight and burn vegetation as “counter firing” to prevent such loss or injury.

“**DEFENCE**”s.95(7) if offence has already been compounded.

### **4. Environmental Management Act 2004**

**DEFENCE s.203(1) all due diligence** “took all reasonable precautions and exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person having regard to all surrounding circumstances.”

### **5. Firearms and Ammunition Control Act 2015**

No explicit positive defence.

### **6. PCCA**

Note for s.27(1) offence of unexplained wealth/property of a public official, a potential defence would be for the accused to provide the court with a satisfactory explanation on how he acquired the property or maintains that standard of living.

### **7. EOCCA**

**s.58 All Penal Code defences apply.**

### **8. East African Customs**

“**DEFENCE**” s.219(d) if already been compounded.

### **9. AMLA**

*Note: one element of all s.12 forms of money laundering is knowledge: "know or ought to know or ought to have known" that the criminal property represents a benefit from proceeds of crime. The prosecution must prove this knowledge.*

**DEFENCE s.14** The director, manager or any person in-charge of the management of the corporate body may raise the following defences under section 14 that:

1. “ the offence was committed without his consent or connivance; and

2. he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to the circumstances pertaining to commission of the offence.” See also s.14(3) for agents or officers.

*s.20 tipping off* **DEFENCE: s.20(3)** “the person did not know or did not have reasonable grounds to suspect that, the disclosure was likely to prejudice any investigation of money laundering or a predicate offence”

## BAIL SUBMISSION TEMPLATE

### DRAFTING OBJECTIONS TO GRANT OF BAIL – TO BE ATTACHED TO THE PROSECUTION FILE

#### SUMMARY OF THE CASE (BRIEF FACTS) *(Attach a Copy of Cover Report)*

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#### EOCCA (Cap. 200 RE. 2002), Section 36(4)

- (a) the accused person has previously been sentenced to imprisonment for a term exceeding three years: *(brief description to include case number, date, conviction/offence, sentence, court)*

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*(Attach previous conviction sheet).*

*The Prosecutor must tender before the court requisite supporting documents such as copies of charge sheets and judgments.*

- (b) the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded; *(brief description to include case number, date, court, report/conviction)*

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*(Attach report/records from court).*

*The Prosecutor must tender before the court requisite supporting documents such as copies of charge sheets and judgments.*

- (c) charges include economic offence alleged to have been committed while he was released on bail by a court of law; *(brief description including court reference, case number, date of bail, court granting bail, date of alleged offence)*

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*(Attach bail order.)*

(d) necessary for accused own protection or safety:

- . (i) Officer's view based on views in the community and/or other indicators of possible harm to the accused if released (*include potential sources of harm*):

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- . (ii) The security of the accused if released on bail (the views of the officer and/or community directly or indirectly affected) (*include potential security issues*):

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## COMPELLING REASONS TO WITHHOLD BAIL

### 1. Likelihood that the accused will fail to appear – factors to consider:

a) The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found to be guilty (*Cite the relevant section(s)*); *consider value of any item seized. Plus case law such as EDWARD KAMBUGA & ANOTHER Vs REPUBLIC (1990) TLR and ALLY NUUR DIRIE & ANOTHER Vs REPUBLIC (1988)*

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b) The strength of the prosecution case against the accused person/ nature of evidence on which the suspect has been arrested:

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c) Community ties (*foreign or unknown nationality (immigration to be notified and supporting evidence obtained); no confirmed place of residence, employment, children/family ties: YAN SHUANGXI Vs REPUBLIC, Misc. Eco. Application No. 133 of 2015 in which the court held that applicant's failure to indicate permanent place of abode in his affidavit left the court with no option but to reject bail application*)

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d) Accused failure to surrender to bail on previous occasion (*provide criminal case no. & court*)

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## **2. Likelihood that the accused will interfere with witnesses and/or the investigation**

a) Likelihood of Interference with prosecution witnesses (*e.g. proximity of address/community/relationship to any witness*).

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b) The inquiries that have been made by the police in relation to the offence and any further inquiries proposed to be made (*including whether information given by the Accused has led to discovery of evidence or arrest of another person in relation to other offence*). *Note: detail may be kept to a minimum to preserve integrity of investigation.*

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## **3. Likelihood that the accused will commit an offence while on release**

a) The character and antecedents of the accused (*e.g. criminal record and/ or material yet to be recovered believed to be in possession of the accused*); other pending prosecutions.

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**Annex a copy of a draft affidavit sworn by the Investigating Officer with attachments referred to above where relevant.**

**Previous conviction record should accompany every file.**

## **EXHIBIT MANAGEMENT GUIDELINES**

Careful, planned and documented exhibit management is an essential requirement for a successful investigation and prosecution. Unfortunately, all too often criminal cases have failed due to gaps in the chain of custody of exhibits, failure to follow exhibit management rules and procedure, or due to missing or lost exhibits.

“Exhibits” include:

- stolen property and any property the possession of which may be the subject of a criminal prosecution, such as animal parts/trophies, timber or forest products;
- objects which may connect a person with an offence or incident, such as articles bearing fingerprints, footprints, particles of dust, blood-stained clothing, hairs and fibres;
- instruments with which an offence is committed, such as guns, knives, cartridges, vehicle, vessel, aircraft, tent, camping equipment;
- documents which are relevant in the investigation of an offence, for example licensing records, hunting permits, customs declarations, expert reports with test results and photographs, caution statements, interview records; and
- photographs taken at a crime scene or seizure, including digital images and video recordings.

In advance of any search and seizure operation, it is extremely important to plan carefully for the proper collection and preservation of any items which may be found (be it evidence, instrumentalities or assets). An advance planning meeting should be held to remind all those participating in the operation of the rules and procedures around exhibit management, and preparation of detailed action plan and checklist to ensure the operation follows these in the field. It is important to identify and prepare all necessary forms, evidence bags, seals, cameras/video-recorders and other evidence preservation equipment, as well as considering (and taking expert advice if necessary) the need for specialist equipment for biological or forensic evidence (e.g. blood, meat, ballistics, fingerprints, etc.).

Whenever possible, two independent witnesses must oversee the search and seizure (see PGO No.226 para.17(b), S.38 of CPA) and must sign the report of search and each certificate of seizure for all items seized as directed by section 22(3)(ii) of EOCCA and S.93(2)(b) of FA. A receipt with the signature of occupier and any witness to the search must be provided to the occupier (s.38(3) CPA and s.22(3)(ii) of EOCCA).

Immediately after seizure or as soon as it is practicable, evaluate or cause the property, animal, trophy, livestock, forest produce or any timber product to be evaluated so as to ascertain its value, as instructed by s. 22(3)(i) of EOCCA.

In addition, teams should have a camera, photograph log and plan for development/preservation of memory cards/film as potential exhibits too.

### **National Law and Directives**

- Criminal Procedure Act [CAP 20 R.E. 2002]
- Evidence Act [CAP 6 R.E. 2002]
- The Police Force & Auxiliary Services Act [CAP 322 R.E. 2002]
- Police General Orders (in particular PGO No.229)
- Economic and Organised Crime Control Act [Cap 200 RE 2002] (s.22)

- Forests Act, No. 14 of 2002 (s.94)

### **Key Forms and Records be used to Record Seizure of Exhibits**

- **Search Warrant** – To be issued by the Officer In Charge of Police Station, District or Region whenever search is conducted by subordinate officers in terms of s.22(1) of EOCCA and s.38(1) of CPA save for permissible circumstances where search may be conducted without warrant.
- **Certificate of Seizure**– signatures from the accused/occupier/owner, 2 independent witnesses, the crime scene officer/exhibits office. Include assigned exhibit code for each item.
- **Scene of Crime Register/Search Report/Log of Search and Seizure**– noting particular place (e.g. study, desk drawer, left hand side second drawer down), description, assigned exhibit code and who found and bagged the item. (In terms of PGO No. 226 para.17(f) it should also be noted in Officer’s Notebook. Also note approximate position/distance from external door or window). Report should note that nothing else was seized and no damage done. Get occupier to confirm. All to sign, like Certificate of Seizure. Hand copy to occupier (PGO No.226 paras.18 and 19).
- **Log of Photographs** taken at location, including of each item *in situ* and then bagged/sealed up.
- **Grid map/sketch of location.**
- **Exhibit Labels P.F. 145**
- **Chain of Custody Form** securely attached to or part of evidence bag. [NOTE: use alternative process for bulky items which cannot be “bagged and tagged” in the usual way, e.g. tusks, timber, dead animals. Use indelible ink or markings, or a drilled hole with tag before bagging with polythene if possible and attaching a chain of custody form securely.]

### **Principles and Rules for Exhibit Management**

A judge needs to be able to determine the origin (or provenance) of an exhibit and its connection to the crime and/or accused being tried before them. It is also imperative that the judge can determine that the evidence has not been tampered or interfered with since being obtained by the police. This is done through documenting the seizure of an exhibit, taking immediate steps to protect/preserve that item and recording everything that happens to it from that moment until it is tendered into evidence before the court. In practice, this means a clear record of seizure and an uninterrupted chain of custody which tracks every step and set of hands through which it passes before reaching the judge.

A chain of custody is “the chronological documentation and/or paper trail showing the seizure, custody, control, transfer, analysis and disposition of evidence, be it physical or electronic. The idea behind recording evidence is in fact related to the alleged crime – rather than, for instance, having been planted fraudulently to make someone look guilty... 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 be probable that nobody else could have accessed it.” [Paulo Maduka case] “There are a considerable number and weight of precedents of this Court which are settled on the proposition that as custody of the evidence of exhibits move from one chain of custody to the next, the exhibits concerned must not only be properly handled, but each such stage of custody through which the exhibits pass, must be documented till they are tendered in courts.” [ZeinabuNassor case]

### **PGO No.229 INVESTIGATION – EXHIBIT MANAGEMENT**

#### **Who is Responsible**



- (a) The police officer who initially seized the exhibit will usually be asked to speak to that exhibit in court.
- (b) The LIO has overall responsibility to ensure safe custody and a proper chain of custody for all exhibits. [PGO No.229 para.2(a)(b)]
- (c) An Officer in Charge of a Station has overall responsibility for the safe custody of the Evidence Store. If necessary, he should issue special instructions or take additional precautions in relation to any particular exhibit. [PGO No.229 para.2(c)]
- (d) A Prosecutor should check and ensure uninterrupted chain of custody records are available for each exhibit he intends to tender in court to prove his case. Issues should be resolved at the post-arrest and pre-trial conferences.

### CRITICAL BASIC RULES

- Each exhibit should have a unique code assigned at the point of seizure. This code should be use to label, bag and tag and document the seizure and on every log/report/inventory/chain of custody form relating to that item.
- Exhibits should be photographed where they are found - *in situ*- from longer range, and close up with dates, investigation reference number, grid position/GPS and an assigned exhibit code.
- An exhibit should be preserved by bagging and sealing it up, coding and labelling it and logging it into the secure evidence store appropriate for the type of exhibit, **immediately and without delay upon seizure**. [Zeinabu Nassor case]
- As each exhibit is secured at the crime scene/searched location, it should also be logged into the Seizure Log and a Certificate of Seizure completed, the assigned exhibit code included and signed by accused, 2 independent witnesses and crime scene officer.
- As few people as possible should handle an exhibit and the chain of custody between seizure and tendering in court should be as short as possible. [PGO No.229 para.2(b)]
- Every movement or transfer of the item must be logged on the chain of custody form for that item. PGO Order 40 "... whenever an exhibit is **passed away from the custody of one officer to that of another**, the officer who hands over the exhibit **must record in the presence of the later officer the name, rank and numbers of the officer to whom he hands over the exhibit** and the date and time of the handling over on the back of the exhibit label." [Emphasis added].

### PGO No.229 CRIME SCENE PROTECTION OF EXHIBITS

4. (a) On arrival at the scene of a crime or incident, one of Police Officer's primary duties is to protect exhibits. He shall not handle exhibits unless it is absolutely necessary to move them to a place of safety to prevent interference until the arrival of the investigating officer. Exhibits on which there may be fingerprints shall be handled with the greatest care.
- (b) If the scene of crime is in the open and the weather is bad, the Police Officer shall take steps to protect any exhibit, particularly footprints, by covering them with a box, empty carton, bucket or some such covering.
- (c) If a Police Officer is obliged to move an exhibit to a place of safety, he shall (photograph the item in situ before moving it and) record exact particulars of his actions in his note book in accordance with paragraph 6 (f) of P.G.O. No. 282.

(d) In isolated areas where experienced investigating officers are not available, the Police Officer first at a scene of a crime or incident will as far as possible take action in accordance with para. 5.

5. The investigating officer shall take such steps as he considers necessary on arrival at the scene of a crime or incident to:-

- (a) photograph the scene and the position of exhibits;
- (b) call in a fingerprint expert to examine the scene and exhibits;
- (c) search for further exhibits by making a systematic search at the scene and if necessary, take further photographs;
- (d) take measurements for a plan;
- (e) take notes concerning the circumstances in which exhibits are found;
- (f) remove exhibits to a place of safety or guard them *in site*.

6. Very strict precautions will be taken when handling articles which might bear a fingerprint at scenes of crime which are not visited by fingerprint experts. For example:-

- (a) a tumbler or similar article shall be handled with one finger on the rim and a thumb under the base;
- (b) a piece of glass shall be handled by the edges without touching the flat surfaces;
- (c) a bottle shall be handled with one hand on the rim of the opening and the other hand under the base;
- (d) a knife shall be handled with one finger (or cork if too sharp) at the end of the blade and a finger of the other hand at the end of the handle;
- (e) a firearm shall be so handled that no fingerprint evidence is in any way disturbed. Under no circumstances may a firearm be picked up by placing a pencil or piece of wood up the barrel as this may interfere with material evidence. Generally, a firearm shall not be unloaded, but strict security precautions will be taken to avoid accidents. No attempt will be made to try the mechanism or discharge the weapon;
- (f) a suspect vehicle shall be immediately impounded and left in safe custody under cover until it has been examined. It may be necessary to examine the vehicle where it is found in order to avoid loss or damage to evidence (fingerprints, etc.);
- (g) when searching the clothing or person of a suspect special attention shall be paid to trouser flies, turn-ups, edges of cuffs or inside folds of rolled up shirt sleeves, the inside of pockets and footwear. These shall be examined for stains or marks or adhering matter. Attention shall be paid to fingernails and hands.

7. (a) Exhibits which bear or may bear any fingerprint, mark, or any other surface impression which might be of value as evidence, shall not be wrapped in a handkerchief, paper or other material nor handled with gloves. Every care shall be taken to preserve exhibits intact while in transit to the police station.

(b) Exhibits for scientific examination should be wrapped separately and never allowed to come into direct contact with each other.

Before seizure, all exhibits must be photographed *in situ*. A photograph log should be completed to record what each photograph is of and where it was taken. The film or memory card of the camera is then an exhibit in itself and needs to be treated as an exhibit with it being secured, given an assigned code/exhibit number and chain of custody record to track its connection from the crime scene/seizure point until court.

#### **PHOTOGRAPHS AT CRIME SCENES - PGO No.234**

12. All films of scenes of accident, crime, murder, etc., shall be submitted to the Forensic Bureau for processing by Stations and Units which are not provided with adequate darkroom facilities.
13. One film should be used for each Scene of Crime and should *not* include anything else. Photographic enlargements will be returned to Stations, together with a certificate and replacement film. Negatives will be filed in the Forensic Bureau.
14. Each such film must be accompanied with a P.F. 147 completed in full and must be sent direct to the Forensic Bureau in a *separate registered packet (postage paid)* and *not* by bulk mail.

**For digital cameras**, the memory card should be preserved as an exhibit immediately upon completion of the processing of the crime scene/seizures. It should be given an assigned exhibits code and should be placed in an exhibits enveloped and sealed up, with a chain of custody form attached. Its serial number/assigned exhibit code should be placed on the Log of Photographs. A copy can be taken at the time or later for investigation use.

#### **Labelling of Exhibits [PGO No.229]**

8. The investigating officer shall attach an Exhibit Label (P.F. 145) to each exhibit when it comes into his possession. The method of attaching labels differs with each type of exhibit. In general, the label shall be attached so that there is no interference with any portion of the exhibit which requires examination.
9. In some cases a stick-on label will be required; for example, on tumblers, bottles, china or pieces of glass. Care must be taken to ensure that the label does not cover any suspect mark or print.
10. A tie-on label shall be attached to clothing. The string should be passed through a button hole or a piece of thread attached to the side of the garment clear of any evidence of stains or marks. The position of labels on clothing shall be such that, when the garment is folded, the label hangs on the outside and can be seen without unfolding the garment.
11. Exhibit Labels shall be attached to documents with paper clips, pins shall not be used. Documents shall be folded, marked with numbers or other inscriptions.

In the case of large exhibits or exhibits which cannot easily have a label attached: e.g. elephant tusks, timber each item should be indelibly marked, where possible, with a unique exhibit number, either with permanent marker or by engraving.

12. Exhibit Labels shall always be attached to the exhibit itself and not to any wrapping which may be used while transporting the exhibit from one place to another.

Each exhibit should be placed, where possible, in an exhibit bag or envelope and secured with a tamper-evident seal. The chain of custody form should be attached to the bag or envelope to remain accessible for recording hand-overs and movement.

13. If the exhibit is a quantity of powder or liquid, i.e. bhang, sugar, flour, alcohol, etc., it will, if possible, first be weighed together with its container, before being placed in the exhibit store.

In cases of monetary exhibits denominations and serial numbers of banknotes should be recorded on the Certificate of Seizure and on the Search Report/Inventory of Search, as well as on the chain of custody log<sup>32</sup> (Paulo Maduka case).

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<sup>32</sup> In cases where detained currency will cease to be legal tender, advice should be sought from the banking authorities.

14. (a) The registered number on the Exhibit Label shall be the Case File or Minor Offence Docket number.

(b) In addition, the exhibit register serial number will also be entered on the Exhibit Label.

15. Whenever an exhibit is passed from the custody of one officer to that of another, the officer who hands over the exhibit shall record in the presence of the latter officer the name, rank and number of the officer to whom he hands over the exhibit and the date and time of the handing over on the back of the Exhibit Label (P.F. 145).

**NOTE:** It is very important that exhibits are packaged up and sealed to provide assurance that they have not been interfered with. This should be done at the earliest possible stage, and at the crime scene where possible.

### **Packing of Exhibits**

27. When an exhibit is taken or sent any distance, it shall be carefully packed to avoid interference with evidence. The officer responsible for packing an exhibit shall satisfy himself that the method chosen is adequate to prevent:-

- (a) loss during transit;
- (b) contamination from packing or outside sources;
- (c) damage from jolting or crushing;
- (d) damage from leakage, escape, ignition, corrosion or explosion.

29. Each exhibit shall be packed separately.

30. Wax seals shall be placed on the wrapping of each exhibit in such a manner as to prevent interference with the wrapping unless the seal is broken. Each person who takes over an exhibit in its packing shall examine the seals and ensure that they are intact when he receives it.

31. It is most important that a complete record of every person who handles an exhibit is maintained. This evidence may be required to prove in Court that there has been no interference with the exhibit from the time it comes into the hands of the police until it is produced in evidence in Court. This record shall be made on the Exhibit Label (P.F. 145). Each officer who takes over an exhibit shall also make a record in his note book of the date, time and place, and the person from whom he took it over. He shall obtain a receipt in his note book for the exhibit when he hands it over.

In the case of FIREARMS that are exhibits, they should first be photographed *in situ*, and the serial number and description noted, along with photographs of any identifying marks. An exhibit label and chain of custody form should be attached.

### **Master Exhibit Lists for Each Investigation/Case**

33. A typed list of case exhibits shall always be included in every Case File.

**Note:** There are various registers for seized evidence:

1) **Inventory of Search and Seizure** for each location (and a **Certificate of Seizure** for each exhibit).

2) The **overall Exhibits Register on the case file**, specific to the investigation and a compilation of all collected and seized evidence including statements, and expert reports, etc. along with a note of where it is stored and person in whose custody it last was. Continually updated – daily if exhibits being transported, transmitted for testing, etc., and

3) the **Evidence Store Register** at each place of Evidence storage (Police Station Evidence Store, Armoury, Valuables, Ivory Room, etc.)

**Enter Exhibits Immediately into the Evidence Store at the Police Station and Record them on the Exhibit Store Registry (P.F.16)**

16. Particulars of each exhibit shall be recorded in columns 1 to 5 of the Exhibits Register (P.F. 16) by the O/C. Station or other Police Officer deputed by a commanding officer to keep the register, as soon as the exhibit has been brought to a station.

17. (a) Column 6 of the Exhibit Register shall be completed by the officer who receives and places the exhibit in the store for safe custody.

(b) Any movement of an exhibit after it has been placed in the store shall be recorded in Columns 7 to 11 of the Register.

(c) Column 12 shall be completed when the exhibit is finally handed into Court against receipt on P.F. 137.

(d) Column 13 shall be completed when the exhibit is returned to the owner or destroyed by the O/C. Station as having no value or on the order of a Court or the owner.

18. (a) Each exhibit in a crime or incident shall be recorded under a separate item number in column 4 of the Exhibit Register, except in the case of a number of identical exhibits which may be recorded in one entry and the quantity only recorded (for example, 20 tins of milk of the same brand and size recovered in a theft case at the same place and time).

(b) A black line shall be drawn below the last exhibit entry of each case, allowing for sufficient space to record the movement of exhibits.

26. When an exhibit is temporarily removed from and returned to the exhibits store, an entry shall be made in the Exhibits Register (P.F. 16).

19. The keys of the exhibits store will be kept by the O/C. Station or by an officer specifically nominated by him and the holder will be responsible for the contents of the store, provided that in no case will the key be held by an officer below the rank of Sergeant Major unless otherwise provided in local Station Standing Orders.

**Storage of Specific Exhibits**

20. **Valuable exhibits**, such as jewellery and cash, shall be sealed in a Valuable Property Envelope (P.F. 166) and kept in the safe or cash box. Particulars shall be entered in the safe or cash box register as the case may be. [NOTE: bag, tag and seal exhibit at scene/upon seizure, then once they are at the Station place into Valuable Property Envelopes in the Safe.]

21. Special arrangements shall be made by the O/C. Station to store **petrol, kerosene and all explosive or dangerous exhibits**.

22. Arms and ammunition shall, where possible, be stored in the **Police Station Armoury**, in an area set aside for exhibits only.

23. Animals, where possible, will be retained by their owners, provided full particulars such as colour, marking, brand marks, etc., have been recorded and, if practicable, photographs taken. Before returning an animal to the owner, an undertaking, in writing, will be obtained from him by the investigating officer, that they will produce the animal when called upon to do so. If animals are retained in police custody they will be placed in the Government pound.

When an animal is suffering from an injury or disease, the Magistrate will be asked to give instructions regarding its disposal.

In cases of live protected species (e.g. turtles or pangolins) that are subject to proceedings, these should be retained by the wildlife authorities in appropriate surroundings until the case is heard.

24. Exhibits which are **too bulky** to be placed in the exhibits store shall be kept in a safe and secure place. All other exhibits shall be kept in the exhibits store.

25. **Perishable exhibits and exhibits which are subject to speedy destruction or depreciation**, prior to commencement of proceedings, shall be brought before the Magistrate, together with the suspect (if any) so that the Magistrate on its own motion or upon application, may note the exhibits and order immediate disposal. Where possible, such exhibits should be photographed before disposal.

#### **TRANSMISSION OF EXHIBITS FOR ANALYSIS OR TESTING**

28. (a) When an investigating officer requires the **pathological or chemical examination** of an exhibit, he will arrange for its dispatch and collection and shall prepare P.F. 180 in duplicate, and submit to the Pathologist/Government Chemist.

(b) In the case of exhibits for **handwriting, ballistic, finger, palm or footprint examinations**, Parts I & II of P.F. 118 will be completed and parts II & III forwarded to the Forensic Bureau with the exhibit. Part I shall remain in the book as a record. On completion of the examination by the Forensic Bureau Part III of P.F. 118 will be returned to the originating Station endorsed with the result of the examination. It will then be filed in the Case File and entries made in the Investigation Diary, showing date of dispatch, date of return and the number of the P.F. 118.

(c) It is the duty of the investigating officer to pack, seal and dispatch an exhibit by the most suitable method, bearing in mind its value. An exhibit destined for analytical examination which is of a perishable nature, will be dispatched by the quickest method, usually by hand of a Police Officer who has a special responsibility in this connection.

(d) If the exhibit is dispatched by post, it will be registered. The registration receipt number will be entered in the Investigation Diary and the receipt itself posted on the copy of the covering letter or the P.F. 180. [*Note: use with caution - mainly used for documentary exhibits.*]

(e) An officer bringing an exhibit to Dar es Salaam will be instructed to report on arrival to the O/C. Forensic Bureau, who will arrange for the officer and exhibit to be conveyed to the Pathologist/Chemist. If an exhibit can suitably be returned by post, the escorting officer will be instructed to return to his Station immediately. He will, in this event, be given a receipt for the exhibit or his marching order will be endorsed certifying safe receipt or otherwise of the exhibit and stating the method proposed for its return.

(f) Examinations, as indicated, are undertaken by the following laboratories:-

(i) Bloodstains, seminal stains, and all pathological inquiries to the senior pathologist, medical laboratory, Dar es Salaam.

(ii) Drugs, traditional medicines, poisons, including arrow poisons, viscera (where poisoning is suspected) to the Government Chemist, Medical Laboratory, Dar es Salaam.

(iii) Finger, palm and footprints, handwriting, ballistics, to the Forensic Bureau, C.I.D., H.Q., P.O. Box 9094 Dar es Salaam.

32. (a) Exhibit for pathological or chemical examination shall only be forwarded under cover of P.F. 180.

(b) Where expert examination is required of any other exhibit, a report giving concise details of the case and description of the exhibit shall be forwarded, together with the exhibit. A copy of the report will be sent by hand of escort or by separate post.

#### **Upon Report of Case/Recommendation for Charge**

- Ensure the **Master Evidence List** is up-to-date and accurate and in the Police File. Check all exhibits are where they are supposed to be – this is the LIO's duty before hand over of Police Case File.
- Prosecutor will do the same in preparation before Trial and any issues must be discussed before and at the Pre-Trial Conference.

#### **Transporting and Tendering the Exhibit in Court**

Once exhibits are transferred to the custody of a court, the court will retain custody unless it otherwise orders (e.g. in the case of high value goods, firearms, chemicals etc.)

34. (a) When exhibits are admitted into evidence by a subordinate Court or examining Magistrate, the prosecutor is responsible for preparing and submitting a Court Exhibit Receipt on P.F. 137 to the Magistrate and for obtaining that Magistrate's signature on the receipt during or immediately on the termination or the trial or preliminary Inquiry.

(b) The prosecutor is responsible for ensuring that the relevant receipt serial number is entered in Column 12 of the Court Exhibit Register on his return to the Police Station.

(c) A receipt will not be removed from the book in which it is bound and investigating officers will check receipt serial numbers against the relevant entries in the Court Exhibit Register. When not in use, receipt books will be kept under lock and key.

#### **Final Disposal of Exhibits**

35. Where the Court orders the disposal of an exhibit by police, the prosecutor is responsible for returning the exhibit to the Police Station and handing it over to the O/C. station. A record will be made by the prosecutor in the exhibit register in column 12 of the Court order. The directions of the Court will be carried out by O/C. Station.

36. In cases where the Court declines to give directions as to disposal, the exhibit will be returned to the exhibits store by the prosecutor and the O/C. Station will seek instructions from the Regional Commander.

37. Exhibits to which paragraphs 34, 35 and 36 are not applicable shall be returned to the owner unless the Court otherwise directs, or transferred to the Found Property Register, if ownership is in doubt. The final handing over of an exhibit will, without exception, be carried out by the O/C. Station. A person receiving the exhibit will sign the exhibit register at Column 13.

#### **Retention of Exhibits in Undetected Cognisable Offences**

38. In undetected cognisable cases, exhibits shall be retained indefinitely unless the Regional Commander otherwise directs.



## GUIDE TO EXPERT EVIDENCE IN WILDLIFE AND FORESTRY CRIMES

### A. Introduction

Expert witnesses are covered by Part VIII of the Evidence Act [CAP 6 R.E. 2002], ss.47-52.

Section 47 provides, “When a court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger or other impressions, the opinion upon that point of persons (generally called experts) possessing special knowledge, skill, experience or training in such foreign law, science or art or question as to identity of handwriting or finger or other impressions are relevant facts.”

An expert report should be tendered into evidence through the expert who is the author of the report, except where exceptional circumstance prevent this.<sup>33</sup>

The duty of the expert is to furnish and educate the court with the knowledge necessary to make an independent assessment of the evidence and to assist the court in deciding the case in a rational manner and the interest of justice. The expert is not there to make the decision for the court, or to usurp the function of the judge. An expert opinion is not the conclusive evidence; the court may reject or accept it.<sup>34</sup> Expert testimony, like all other evidence, will be assessed and afforded whatever weight the court determines based on credibility, reliability and relevancy.<sup>35</sup>

The Tanzanian Appeal Court cited with approval, that the duty of an expert witness “... is to furnish the Judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor (and often an important factor) for consideration along with the whole other evidence in the case, but the decision is for the Judge or jury. In particular the bare ipse dixit of a scientist, however eminent, upon the issue in controversy, will normally carry little weight, for it cannot be tested by cross-examination nor independently appraised, and the parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert.”<sup>36</sup>

“It must always be kept in mind that an expert is not a witness of fact and as such his evidence is really of an advisory character. It is not within his province to act as a judge, assessor or jury. His real function is to put before the court all the materials, together with reasons which induced him to reach that conclusion. It is from this data, material, reasons, etc. that the court, though not an expert, may form its own judgement by its own observation of those materials.”<sup>37</sup>

**Ikarian Reefer case** [1993] 2 Lloyds Rep 68, Justice Creswell:

“THE DUTIES AND RESPONSIBILITIES OF EXPERT WITNESSES

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<sup>33</sup> Msungu and MKenya v. R, Criminal Appeal No.78 of 2012, CAT at Arusha. S.34(2)(a) Evidence Act (Cap 6 R.E. 2002).

<sup>34</sup> EVAN BELL, Judicial Assessment of Expert Evidence (2010), Judicial Studies Institute Journal p. 56.

<sup>35</sup> “An expert witness merely gives an opinion and the value of that evidence depends upon the experience and ability of the witness and the extent to which his opinion is supported by the opinion and experience of other recognized experts in the particular field – See **Rajabu Vs. Republic** (1970) EA 395 at page 397.” Msungu and MKenya v. R, Criminal Appeal No.78 of 2012, CAT at Arusha. S.34(2)(a) Evidence Act (Cap 6 R.E. 2002)

<sup>36</sup> Note: This is a Scottish case - **Davies v Magistrates of Edinburgh** 1953 SC 34.

<sup>37</sup> The D.P.P v Manyama & Mabuba Criminal Appeal No.285 of 2012, CAT at Mwanza p.32



*The duties and responsibilities of expert witnesses in civil cases include the following:*

- 1. Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation (Whitehouse v. Jordan, [1981] 1 W.L.R. 246 at p. 256, per Lord Wilberforce).*
- 2. An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise (see Polivitte Ltd. v. Commercial Union Assurance Co. Plc., [1987] 1 Lloyd's Rep. 379 at p. 386 per Mr. Justice Garland and Re J, [1990] F.C.R. 193 per Mr. Justice Cazalet). An expert witness in the High Court should never assume the role of an advocate.*
- 3. An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion (Re J sup.).*
- 4. An expert witness should make it clear when a particular question or issue falls outside his expertise.*
- 5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one (Re J sup.). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report (Derby & Co. Ltd. and Others v. Weldon and Others, The Times, Nov. 9, 1990 per Lord Justice Staughton).*
- 6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the Court.*
- 7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports (see 15.5 of the Guide to Commercial Court Practice)."*

You should expect an expert witnesses to be challenged on their qualifications or experience, their methodology and their reasoning in reaching any conclusions in their report/opinion.

**A. Expert Witnesses who might be able to assist in Wildlife and Forestry Crimes and associated offences**

- Veterinarian (identification, DNA, cause of death)
- Properly qualified warden, ranger, forestry officer (identification)
- Botanist (identification)
- TAWIRI (impact and sentencing evidence)
- Ballistics (firearms)<sup>38</sup>
- Chemist/Toxicologist (poisoning)
- DNA testing (identification – national or regional when available)
- Handwriting (fraud, customs, paperwork);<sup>39</sup>
- Document Analysis;
- Computer/phone IT analysis;
- Forensic Accountant/FIU;

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<sup>38</sup> See for example *SAMWEL MKIKA AND THE REPUBLIC, CRIMINAL APPEAL NO. 47 OF 2001 (IN THE COURT OF APPEAL OF TANZANIA AT MWANZA)*.

<sup>39</sup> See *The D.P.P v Manyama & Mabuba Criminal Appeal No.285 of 2012, CAT at Mwanza pp.27-28* some caution required on handwriting expert evidence – see also s.49, 75 of Evidence Act [Cap 6 of 2002].

- Fingerprints (forensic, scene of crime unit);
- Officers using sniffer dogs for detection work (training to use dogs and outcome);<sup>40</sup>
- Photographic Department expert (development and authenticity);
- Other forensic analysis or expertise as may be necessary.

## **B. Conditions to be met for someone to be an expert**

The law requires the witness to possess comprehensive and authoritative knowledge of, or skill in, a particular area relevant to a fact in issue based on the expert's knowledge, skill, experience, training or education.

- The expert witness to be used by the prosecution to examine the issue must possess comprehensive and authoritative knowledge relevant to the facts. The reputation and academic qualification of the expert are very important (see SAMWEL MKIKA's case cited below);
- Certificate of valuation from the expert, to be tendered by the prosecution, must be signed, dated, and certified by the responsible officer (refer REPUBLIC V. AMIRU S/O MCHEKE RWEASIRA and *MWITA MOROGO ROSANA*);
- The expert witness must be called by the prosecution to testify so as to allow the accused to cross-examine him/her and must have all the relevant documents he used to conduct his investigation and tender them as exhibits (*MWITA MOROGO ROSANA case*);
- The experience of the expert witness must be sufficiently proved before the court (refer SAMWEL MKIKA's case cited above); *and*
- The expert witness must be of impeccable character.

## **C. Issues commonly arising on Expert Evidence in Wildlife Cases:**

### **i. Identification of meat or a trophy**

*If relying upon a Certificate of Valuation which include identification of species, the person proffering the Certificate must be an expert able to accurately identify the species from which the meat or trophy came. He may also testify as to how he came to that conclusion.*<sup>41</sup>

## **D. Process of instructing and getting expert evidence into court**

### **STEP ONE: Instruction**

- Set out a simple, clear question, test or task.
- Remind them of duties in law (with cases).
- Set out expectations of reporting results/expert opinion
- Is MLA needed to get regional expertise? Does Tanzanian law permit submission and movement of evidence to a facility in another country for testing?
- Please check for Mandated Forms and processes under Tanzanian law. Here are some common examples:

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<sup>40</sup> R. v Pieterse [1994] EWCA Crim 5: Leading English case.

<sup>41</sup> REPUBLIC V. AMIRU S/O MCHEKE RWEASIRA AND 2 OTHERS, RM ECONOMIC CRIME NO.11, 2009 (giraffe meat Certificate of Valuation not signed by experts who could identify meat), MWITA MOROGO ROSANA AND OTHERS, DISTRICT COURT OF SERENGETI, ECONOMIC CASE NO.24/2010 (certificate of valuation prepared by trained Game Warden who was qualified to identify the meat (dried topi, impala and warthog) MACHAKO ATHUMANI V REPUBLIC, HIGH COURT OF TANZANIA AT TANGA, CRIMINAL CASE NO.1, 2014 (Unreported)(No expert called, only Certificate of Seizure, certification of Valuation – three different types of meat between charge sheet and 2 witnesses).

- P.F. 147 for development of film/photographs – follow CPA s.202 Certificate.
- P.F. 118 for Handwriting, Ballistics, Finger, Palm or Foot prints,
- P.F. 180 for chemical or pathology testing,
- CPA 1985 s.185 Certificate for Handwriting Expert,<sup>42</sup>
- Certificate of Valuation (indicates identification of species, but need foundation for wildlife officer expertise).<sup>43</sup>

**STEP TWO: Submission** of samples/evidence to test or analyse USING any mandated FORMS, and chain of custody must be maintained.

**STEP THREE: Expert Certification OR Report** (use legislated forms where mandated).

The following are the main parts of an expert report in this order:

- Question asked/task to be performed by the Expert
- Qualification of Expert
- Methodology including any protocols/standards, instruments used (including lab standards and non-contamination where relevant)
- Findings and underlying data or materials<sup>44</sup>
- Interpretation and Conclusions<sup>45</sup>
- Annex – photos, sketches, test results/print outs.
- Annex – any supporting/references scientific articles
- Sign/declaration

This order can also be used for the order of examination in chief of that expert in court.

**STEP FOUR: Preservation/return** of remaining sample to allow for Defence testing.

**STEP FIVE: Calling to court, preparation/proofing**

- Proofing with expert including a reminder of duties and expectations regarding testimony in court.
- Ensure all associated exhibits ready and certificates properly completed.
- Taking testimony in court and all associated exhibits admitted during testimony.
- Potential cross examination by Defence.
- Defence expert? Get own expert input to assist with cross examination.

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<sup>42</sup> See The D.P.P v Manyama & Mabuba Criminal Appeal No.285 of 2012, CAT at Mwanza: enlarged photographs provide invaluable assistance in handwriting comparisons. Be careful to avoid mere assertion of opinion that two samples compare- an expert must explain and show the similarities which brought him to that conclusion.

<sup>43</sup> See GN No.206 15.06.2012 in RRG Volume II.

<sup>44</sup> See The D.P.P v Manyama & Mabuba Criminal Appeal No.285 of 2012, CAT at Mwanza on the importance of underlying data, materials, findings.

<sup>45</sup> See The D.P.P v Manyama & Mabuba Criminal Appeal No.285 of 2012, CAT at Mwanza on the importance of providing clear reasoning which a court can follow.

## **GUIDE TO MUTUAL LEGAL ASSISTANCE AND INTERNATIONAL CO-OPERATION IN WILDLIFE AND FORESTRY CRIME**

### **IMPORTANCE AND ROLE OF CO-OPERATION WITH OTHER JURISDICTIONS**

Wildlife and forestry crime is one of the most profitable transnational organised crimes in the world. Tanzania's natural resources are often illegally removed and trafficked across borders and oceans to other countries. It is important to recognise that evidence, witnesses, accused and profits are all likely to be found outside Tanzania's jurisdiction. In order to successfully combat the organised crime, we must build cases against organised criminal groups through co-operating with and obtaining evidence from other jurisdictions.

During investigations, informal information sharing and assistance can often be done effectively through counter-parts and contacts in other jurisdictions (e.g. through the UNODC IOFMC networks) or using INTERPOL through NCBs and via EAPCCO, SARPCCO, WAPCCO. It is also possible to make informal requests between Financial Intelligence Units (Eastern and Southern African Anti- Money Laundering Group- ESAAMLG requests). For prosecution, evidence, witnesses and sometimes the accused will need to be secured through formal mutual legal assistance. Investigators and prosecutors should consider:-

1. Collaboration with foreign counterparts to identify an effective investigation and prosecution strategy that takes into account the laws and events in each state.
2. Any investigative assistance and steps required in another jurisdiction.
3. Any witnesses and evidence which are situated outside Tanzania.
4. Any assets and instrumentalities which may be hidden or secured outside Tanzania.
5. Any suspects outside Tanzania (extradition and prisoner transfer).

It is critical that the formal processes to secure evidence, witnesses, assets and accused start as soon as possible in conjunction with informal methods, as they can be time consuming and can delay or disrupt criminal proceedings.

**In Tanzania, the Attorney General is the mandated central authority for Mutual Legal Assistance and international co-operation. There is also a specialised desk at the DPP HQ who can assist with MLA for criminal cases in Tanzania which need assistance from foreign countries.**

**IF THERE IS ANY FOREIGN or TRANSNATIONAL ASPECT TO YOUR INVESTIGATION OR CASE, PLEASE CONTACT THE MUTUAL LEGAL ASSISTANCE DESK AT THE DPP HEADQUARTERS IN DAR ES SALAAM AS SOON AS POSSIBLE TO DISCUSS WHAT STEPS ARE NECESSARY.**

Contact details of MLA DESK at DPP HQ. Tel. +255 22 21133315.

### **INTERNATIONAL FRAMEWORK**

Tanzania is a party to UNTOC, UNCAC, the AU Corruption Convention, the SADC Protocols on Mutual Legal Assistance and Extradition, the Harare Scheme on MLA and the London Agreement on Extradition.<sup>46</sup> These international agreements give Tanzania a framework to co-operate on transnational organised crime and other crimes with most countries in the world. In practice, the SADC Protocol on MLA and Extradition, and the Commonwealth Harare and London Schemes are most commonly used as bases for providing co-operation and extradition on wildlife and forestry cases.<sup>47</sup> Tanzania has also entered into bilateral arrangements with other countries or agreed to extradition on the basis of reciprocity.

## MAIN NATIONAL LAW

- *Mutual Assistance in Criminal Matters Act [Cap 254 R.E. 2002]*
- *Extradition Act*<sup>48</sup> [Cap 368 R.E. 2002]

## MAKING REQUESTS

### 1. Investigative steps and securing evidence

The ability to make requests for investigative measures, documentary and other physical evidence, and witnesses (including expert witnesses) in other states depends both on the law of the state where the evidence or witnesses can be found, and ALSO on Tanzanian law on the admissibility of evidence. It is important to communicate as soon as possible (before any formal request is made) with your counterparts in the other jurisdiction to understand what their laws permit and what restrictions or challenges might arise in a mutual legal assistance request. For example, some countries will not provide any assistance if the death penalty is applicable to the crime. Also consider the official language requirements – you may need to organise to get the request and any accompanying documents translated.

Depending on the law in the other country, it may be possible to request:

- Examination of witnesses;
- Recording statements;
- Locating persons and objects;
- Obtaining information/records e.g. from banks
- Search and seizure (see s.12(3) MLA Act: requires to be accompanied by affidavit stating purpose);
- Transfer of consenting persons (imprisoned in another country) to give testimony (see MLA Act ss.14-23);
- Production of documents and other records;
- Service of documents;
- The presence or attendance of Tanzanian investigator or prosecutor if necessary;
- Asset tracing, freezing and recovery; and
- Other investigative steps and measures, providing these are permitted in the other state.

The law in Tanzania requires the following for evidence to be admissible:

- For documents requested to be admissible in court, they must be in original form or certified copies of the original if the original cannot be obtained.

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<sup>46</sup> Tanzania has signed but not ratified the IGAD Convention on Mutual Legal Assistance in Criminal Matters and the IGAD Convention on Extradition.

<sup>47</sup> AUCC and UNCAC are also used as a basis for extradition.

<sup>48</sup> Applicable in mainland Tanzania and Zanzibar.

- For statements of witness or documents to be admissible as evidence in lieu of oral testimony they must fulfil the following conditions:
  - (a) be signed or certified by a judge, magistrate or officer in or of a foreign country; and
  - (b) authenticated by oath of a witness or an officer of the Government of the foreign country or sealed with an official public seal of the foreign country or of a Minister (see MLA Act s.38(2)).

While s.38 requirements should be sufficient for admissibility of all foreign evidence, in some cases the Court in Tanzania has also looked to local law for admissibility requirements. Therefore, investigator and prosecutor should specify in their request, where it is possible for the requested state to comply, that the following additional steps should be undertaken for witness testimony, to assist argument both in relation to admissibility and as to weight upon admission:

- (c) a witness must be cautioned that he/she gives the statement under the obligation to tell the truth; and
- (d) the statement must be signed by the suspect or witness. [Evidence Act s.34]<sup>49</sup>

*Information needed to prepare a request for this kind of assistance:*

Consult with the DPP HQ MLA Team for precise information, but it is useful to have prepared in advance:

- A brief outline of the case, including:
  - a description of the crimes or charges (or reasonable grounds to suspect) together with the applicable range of penalties; and
  - all potential suspects: name, alias, address, date of birth, nationality and passport/ID number.
- Descriptions of the assistance or materials sought and the reasons why it is sought (i.e. relevancy and importance of the materials). List each one separately and as clearly as possible – with process and outcome/what is to be transmitted in what form (as long as consistent with law of that state).

*Note: Most countries restrict the use of the assistance narrowly to the crime and purpose stated in the request, so make sure all potential uses are stated. e.g. “for use in all related criminal proceedings, trial, confiscation and enforcement proceedings.”*

- Outline any particular requirements/procedures to be followed to provide the assistance requested: for example,
  - examination under oath and caution of a witness before a magistrate in court, certified or signed, authenticated by oath or seal, and signed by the witness.
  - original or certified copies of a particular document which is in the hands of [person].
  - Trace the identity and whereabouts of the consignees of the container [no.] which was seized on [date] by [officer].
- Any requirement for confidentiality.
- Any time limits for receiving the sought assistance, including any upcoming court dates or other critical deadline.
- If you already are in contact with a counterpart in that jurisdiction to be requested, have the name, title, location and contact details to hand to be included.

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<sup>49</sup> Mwale, Gichana and 2 Others v. R, Criminal Appeal No.2 of 2016, CAT at Arusha. See also China, Bakari and 2 Others, Criminal Appeal No.230 of 2004, CAT at DSM.

Possible grounds for refusal: dual criminality, double jeopardy, politically motivated offences or prosecutions, discrimination, privilege, if impairs sovereignty, security, public order, public interest or the safety of any person, contrary to national constitution or non-compliance with their legal requirements.

## **2. Asset tracing and freezing**

Using Mutual Legal Assistance provisions, it may be possible to:

- Trace property and assets;
- Obtain restraining orders and freeze assets, including the interdicting of dealings in property, or the freezing of assets that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences;

[*Note: There may be management obligations or costs over frozen or seized assets.*]

- forfeiture or confiscation of property in respect of offences; and
- recovery of pecuniary penalties in respect of offences.

The *Mutual Assistance in Criminal Matters Act* makes provision for requests by the Attorney General to a foreign State for

- a) enforcement of a Tanzanian forfeiture or pecuniary order or interdict, or
- b) for the issuance of a warrant or other such instrument similar to those under Tanzanian law in relation to the proceeds of crime (see MLA Act ss.30-31).<sup>50</sup>

Note: The Act's specific reference to the proceeds of crime in section 31 is narrower than the provisions for foreign requests that refer to property "in respect of offences" or "tainted property".

It is important to involve the Tanzania FIU and the DPP HQ AFRS so informal, rapid co-operation channels for financial information and asset tracing can be used, and local orders can be obtained for enforcement in other states, where possible, as this may be the quickest way to ensure assets are seized or frozen without risk of tip-off or movement.

It is also useful to have an agreed plan in advance with counterparts in the other state in relation to distributing any proceeds of crime which may be seized in relation to a case. Consider victim needs, compensation/restitution from crime, as well as cost and needs of requested state.

## **3. Extradition of Accused**

Obtaining an accused for trial through extradition from another country can be a difficult and lengthy process. It is worth considering the feasibility and advantages (as well as disadvantages) of prosecution in that country, with support from Tanzanian authorities.

The Central Authority for Extradition in Tanzania is currently the Minister of Justice. Again, investigators or prosecutor should contact the MLA Desk at the DPP HQ.

An extradition request will be subject to the law of the requested state but restrictions can apply against extradition for:

- (a) Nationals of that state.
- (b) Crimes which are not also crimes in that state (dual criminality)
- (c) Crimes which are not "Extraditable Offences" in that state.
- (d) Crimes for which the death penalty applies.

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<sup>50</sup> Specified in section 31 as a search warrant, interdict, production order or search warrant in respect of a property tracking document and monitoring order. Sections 30-31, Mutual Assistance in Criminal Matters Act 1991.

Also requested states may refuse or delay extradition due to investigation and prosecution in requested state, double jeopardy, *in absentia* proceedings, immunity, amnesty or statute of limitations, discrimination, humanitarian reasons (age, health), *de minimus* rule, passage of time, unjust, oppressive or too severe and compliance with legal requirements.

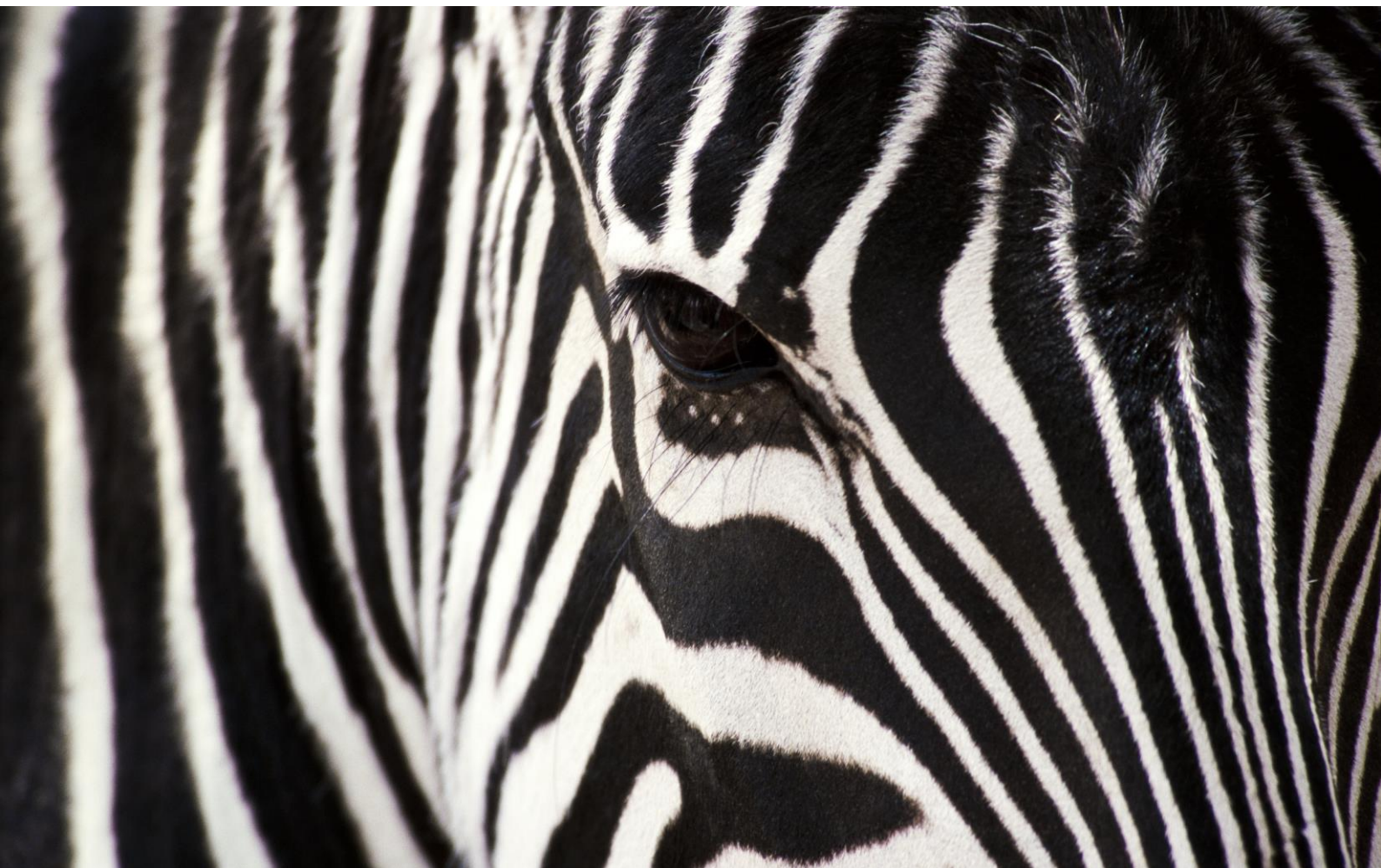
**Information and supporting documentation which may be needed as part of an extradition request:**

- a warrant for arrest or a certificate of the conviction and sentence and a statement of the amount, if any, of that sentence which has been served,
- the particulars of the description, identity, nationality and, to the extent available, the whereabouts of the person sought for extradition;
- the particulars of each offence (constituent elements) or conduct in respect of which the extradition is being sought (material facts), specifying the date and place of commission, the legal definition of the offence and a copy, certified by the Attorney General of the relevant provisions in the relevant law (criminalisation and punishment sections);
- a recital of the evidence obtained to support the request for extradition of the person, together with a copy, reproduction or photograph, all certified by Attorney General of material exhibits or documentary evidence;
- the original or a copy, in either case certified by Attorney General, of any document of process issued;
- an affidavit of the officer who has investigated the case or is in charge of the investigation of the case that the record of the case was prepared by or under the direction of the officer and the evidence in respect of the case has been preserved for use in court; and
- a certificate of the Attorney General that in his opinion discloses the existence of evidence under law sufficient to justify a prosecution.

**STEPS WHICH CAN HELP EXPEDITE MUTUAL LEGAL ASSISTANCE AND EXTRADITION**

1. Having communication in advance and during the request with your counterpart in the other state.
2. Knowing what is possible under the laws of the other state and drafting the request in accordance with that.
3. Ensuring the request contains all the necessary information and clarity on what is needed, and providing translated copies in the official language of the other state.
4. Push-pull of requests: getting regular updates and process reports from your central authority to push the request through, and asking your counterpart to do the same with their central authority to pull the request through, and *vice versa* in terms of the response.





*Overall coordination conducted by:*

