



ON THE RIGHT PATH?

An analysis of Kenya's law enforcement
response to wildlife crime



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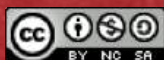
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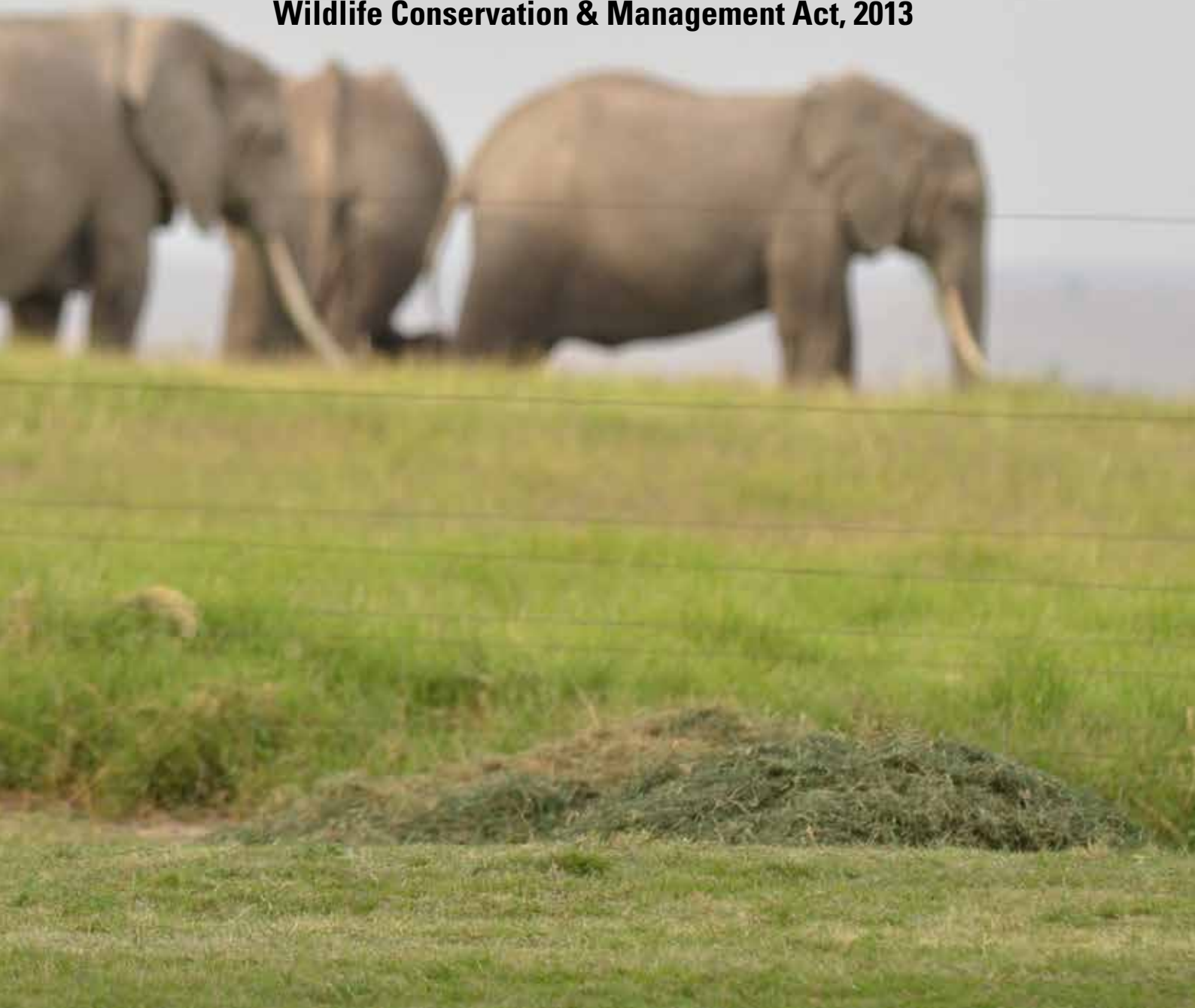
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ON THE RIGHT **PATH?**

**A review of the outcome of
wildlife crime court room cases under the
Wildlife Conservation & Management Act, 2013**





Terms & Acronyms

CITES	Convention on International Trade in Endangered Species
CSO	Community Service Order
CUC	Court Users Committee
DCI	Department of Criminal Investigation
EACCOMA	East Africa Community Customs Management Act, 2002
ETIS	Elephant Trade Information System
FA	Fire Arms Act
IAU	Internal Affairs Unit
JKIA	Jomo Kenyatta International Airport
JTI	Judicial Training Institute
KWS	Kenya Wildlife Service
KFS	Kenya Forestry Service
ODPP – WCPU	Office of the Director of Public Prosecution, Wildlife Crime Prosecutions Unit
POCA	Prevention of Crime Act, 2010
POCAMLA	Proceeds of Crime and Money Laundering Act, 2009
SPSS	Statistical Package for the Social Sciences
WILDLIFE ACT	Wildlife Conservation & Management Act, 2013

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Foreword

This report aptly poses the question whether Kenya's law enforcement response to wildlife crime is on the right path. It answers with an incisive assessment and indictment of the wildlife crime case management in Kenya, carried out in the 2018, gauging how wildlife crime was handled in Kenya in preceding years; 2016 and 2017.

It has laid bare the Strengths, the Weakness, the Opportunities and the Threats which our wildlife continue to face while shining a light on key successes of law enforcement. The public, law enforcement officers and policy makers now have a baseline on which they can use to replicate, improve and mitigate the gaps in the entire criminal justice system.

I had the awesome pleasure of showcasing Kenya's efforts to fight wildlife crime in a capacity building workshop for Global Partners in anti-wildlife crime in Hong Kong, May 2018. I showcased on these findings and how the government is forging bold steps to improve and better its response to wildlife crime.

Unsurprisingly, Kenya was leading in creativity and innovation in wildlife crime management which most jurisdictions are eager to emulate; especially our concerted and deliberate effort to champion for appropriate legislation, monitoring of wildlife crime cases in courts, spearheading of case management systems that enhance prosecutions and the ingenuity of our dedicated law enforcement officers when responding to wildlife crime.

This report is a product of Eyes in the Courtroom, a court survey project, which is originally Kenyan and now being replicated as a best practice tool of evaluation in Tanzania, Malawi, Uganda, Zimbabwe, Rwanda and Hong Kong. I am confident that the information in this report will be of value to you. Together, we can all ensure that Kenya's remains on the right path in the protection of our wildlife.

Mr. Edward Muriu.
WildlifeDirect Board Member
Founder Partner

Mmc Africa
L A W





Executive Summary

This report is the third in a series of reports monitoring the effectiveness of Kenya's wildlife law enforcement in responding to wildlife crime. Our first report published in 2014 was a wake-up call. It presented findings that exposed serious loopholes in the enforcement of the Wildlife Act (1989) and championed for a repeal of the then weak legislation. The second report published in 2016, after the enactment of new Wildlife Conservation and Management Act (WCMA 2013), revealed substantial improvement in process and outcomes of wildlife crime cases and made further recommendations to strengthen Kenya's response to wildlife crime.

Since our first report was published in 2014, government and civil society have invested enormously in building the technical, institutional and resource capacity of agencies involved in wildlife law enforcement such as the Kenya Wildlife Services, conservancies, the prosecutions, the police, and the judiciary. Analyzing wildlife crime data collected from courts in Kenya in the year 2016 and 2017, this report measures and evaluates this progress.

We conducted our surveys in 121 Kenyan courts between January 1st 2016 and December 31st 2017 to examine how well the Wildlife Act is being enforced. During the two year period, 1,958 people were arrested and charged with 2,610 wildlife crime related offences in 957 cases. We found a high conviction rate of 95% by the prosecution pointing to better prosecutions – in the past many cases were dismissed and suspects acquitted.

But success is mainly limited to low level wildlife crime offenders possessing wildlife trophies, bush meat or perpetrating illegal entry into protected areas with livestock. The cases involving the international trafficking of high value items like ivory, rhino horn and pangolin scales remain a major challenge in Kenya where cases are frequently delayed, and suspects are not brought to justice.

Here are our recommendations:

Kenya must improve convictions of high profile traffickers. Crimes against elephants attracted the most charges and most trafficking cases related to raw elephant tusks and worked ivory. Despite the high profile of this issue, most cases relating to elephant ivory and rhino horn, trials were frequently delayed attributed to judicial backlogs, procurement of expert evidence, tactical delays by defense counsel coupled with the protracted nature of cases bearing heavy penalties.

Kenya's most high-profile trafficking kingpin, Feisal Mohamed Ali who was convicted in 2016 and sentenced to twenty years and to pay a fine of twenty million shillings (\$200,000) for trafficking 2,152 kilograms of elephant ivory in 2014 is now free. This case was challenged from the start; the magistrate acquitted four of the five accused persons facing charges. The conviction of Ali was overturned on appeal in by the High Court of Kenya at Mombasa although the Office of the Director of Public Prosecutions is now appealing the case.



Kenya law enforcement must collaborate effectively with transit and demand countries.

This study identifies several cases relating to the seizure of 12,000 kilograms of elephant ivory that have been pending at various courts over the years. These delays are due to the lack of support from countries where seizures are made – especially trafficking cases, which are classical examples of organized crime an element found in 47% of all wildlife crime cases that we analyzed. These cases represent transnational crimes thus a cooperative framework between affected countries is urgently needed to support the exchange of evidence, witnesses and intelligence to bring these cases to conclusion. Kenya must sign mutual legal assistance treaties with the following countries Thailand, Singapore, Cambodia, Vietnam and other illegal wildlife destination countries.

Kenya must aggressively pursue fugitives.

Half of all Kenyans on INTERPOL's most wanted list are wildlife traffickers. These suspects have not been brought to justice despite playing roles in several seizures of elephant ivory, pangolin scales and rhino horn, made worldwide and attributed to Kenyan customs points. Kenya must take organized crime much more seriously and improve her arrest record for serious offenders, speed up trials, convictions and sentencing.

Amendments to the Wildlife Act are urgently needed.

The current Act does not attract penalties for the poisoning and direct killing of wildlife. Loopholes in the Wildlife Act are allowing traffickers and dealers to evade harsh penalties. Amendments, currently being debated by Parliament, will bring new opportunities in the enforcement of wildlife crimes offences.

This report offers a raft of other recommendations which when implemented can alleviate critical concerns highlighted and put Kenya on the right path. We remain optimistic and hopeful that bold steps by the government to Kenya would fast track her response to wildlife crime when bold reform interventions are implemented by key stakeholders.

WildlifeDirect remains committed to championing for stronger laws, building of the capacity of law enforcement officers and development of legal resources to support the government in its pursuit to protect wildlife. In addition to this, WildlifeDirect continues to inspire and connect Kenyans to their wildlife, so that they may value and protect it.





Preface

The continued monitoring of wildlife crime trials in Kenyan courts provides an assessment of governance and accountability process which guides the administration of rule of law. The need to foster and enhance these processes has informed the Eyes in the Courtroom survey which, at the start of the survey, had four (4) broad objectives;

1. To identify and document the outcomes of wildlife crime court cases; and,
2. To evaluate the effect of outcomes of wildlife crime court cases on deterrence; and,
3. To identify key loopholes and challenges in the criminal justice chain; and,
4. To recommend and suggest reform interventions to strengthen the response to wildlife crime.

This report provides a measure of the performance of investigatory, prosecutorial and judicial processes in responding to wildlife crime in Kenya. Our findings provide key metrics on indictments, quality of prosecutions, nature of disposal of cases and the overall effectiveness of the law in bringing offenders to justice. This report includes a description of data collection efforts, review of key findings, providing reform recommendations while tracking implementation of recommendations from preceding reports.

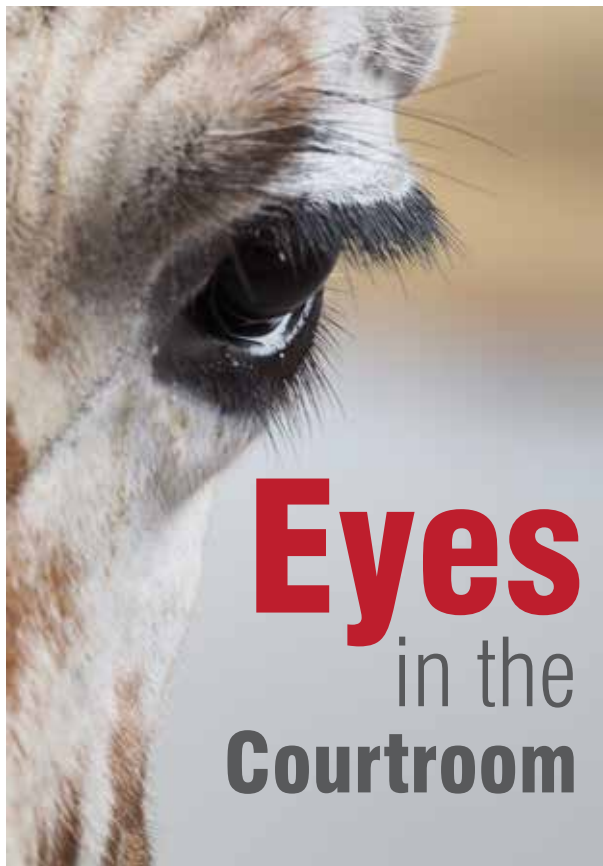
The data applied in this report was made available through a collaboration with the Judiciary Training Institute and the Judiciary through the Office of the Chief Justice and the Chief Registrar of the Judiciary. We thank them for their support in accessing court

records of wildlife crime cases applied in this survey. We also thank all judicial staff that assisted our court monitors access the court registries, files and archives. We thank the Office of the Director of Public Prosecutions, Kenya Wildlife Service and the National Police Service for their cooperation in accessing and analysis wildlife crime data.

This work is made possible through the gracious funding from the Elephant Crisis Fund as administered by Save The Elephants and the Wildlife Conservation Network, Whitley Segre Foundation, The Straus Foundation and The Cedar Hill Foundation. We thank them for their firm belief and commitment in our work.

This report is intended to act as a baseline for policy makers on reform interventions they can implement to strengthen Kenya's response to wildlife crime. It is also a guide to law enforcement officials and practitioners in the criminal justice chain – magistrates, judges, prosecutors, investigators and court administrators. It is a unique record that will be of interest to other law and criminal justice practitioners – police and probation officers, whose mandate and duties bring them in contact with the courts.

The Kenyan public, rangers, investigators, prosecutors, magistrates and judges are determined to address and curb wildlife crime. This report is dedicated to all who lost their lives while fighting for justice for wildlife. We hope that these findings strengthen their noble efforts.

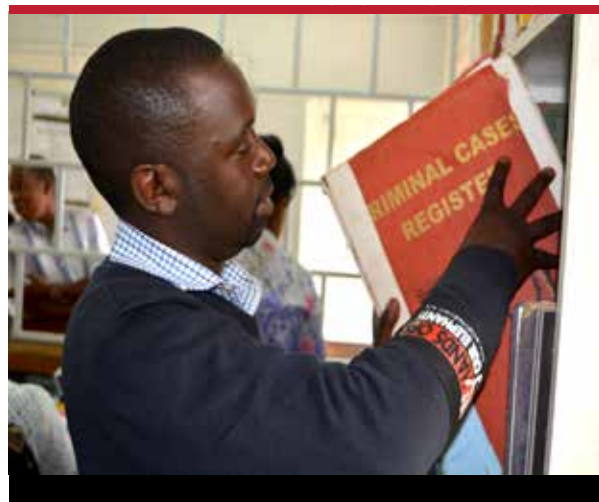


WildlifeDirect court monitors visit court stations to collect wildlife crime data and follow up wildlife crime court room cases as they progress from arraignment to conviction. This offers an unprecedented opportunity to diagnose and analyze key concerns in the criminal trial process through data collection and case tracking.

Data collection

Documentation of wildlife crime trials is key in analyzing the performance and effectiveness of law enforcement agencies in enforcing the Wildlife Act. The Eyes in the Courtroom court monitoring team is composed of fifteen court monitors; this being nine (9) Advocates of the High Court of Kenya, six (6) lawyers led by the Legal Affairs Manager.

The court monitors visited one hundred and twenty-one (121) Magistrate & High Court stations¹ administered by the Judiciary of Kenya in between the month of January 2016 and December 2017 and obtained access to 957 wildlife crime court cases relating to 1,958 persons arrested for various wildlife crime offences in 2016 and 2017.



Benson Waithaka retrieves a criminal register at Voi Law Courts

In consultation with the JTI, WildlifeDirect developed Standard Operating Procedures for collection and analysis court records improving efficiency, quality of output and uniformity in extraction of data from the Judiciary's criminal registry records. Data extracted from each court record includes; Case Number, Identity details of an accused person, date and location of Arrest, Arresting Authority, Date Arraigned in Court, Plea Date, Name of Magistrate, Name of Prosecutor, Prosecuting Authority, Type of Plea (Guilty or Not Guilty), Section of law contravened, Description of Offence, Species involved, Weight of wildlife product involved, Court Dates (Mention, Hearing and Judgment dates), Bail and Bond Details and Type of Sentence (Fine, Conviction, Acquittal or Withdrawal).

¹ Mobile Courts were not considered in this court survey.



Analysis examined the variety of wildlife crime cases, outcome of prosecution of wildlife offenses, administration and management of wildlife crime court cases and sentencing style of magistrates.

Case tracking

Eyes in the Courtroom's ability to maintain a presence in every court trial is limited and as a result only ongoing cases relating to elephant ivory² (95 cases), rhino horn (7 cases), sandalwood cases (34), bushmeat cases (27 cases), pangolin scales (1 case), cape eagle (1 case), involving law enforcement officers (10) and foreigners (7) were tracked from hearing to hearing until their date of determination. In total one hundred and eighty-two (182) cases were tracked all through 2016 and 2017 as they progress. These cases are all ongoing at the time of publishing this report.

Court monitors continually track and monitor wildlife crime cases by using the watching brief and amicus

2 Only cases with over 10 kilograms of elephant ivory, 20 kilograms of bushmeat, all cases relating to rhino horn and pangolin scales, cases relating to law enforcement officers and foreigners were tracked all through the survey period.

This involves the application of research that supports proper charging of offenders, adjudication of bail and bond, freezing of wildlife offenders' assets during cases, forfeiture of proceeds of crime after conclusion of cases and fast-tracking hearing of cases, ensuring right of all parties to a fair trial is upheld and while documenting the progression of court cases.

Case tracking enhances diligent prosecution of cases instilling transparency and accountability in the administration of wildlife law. Cases identified to have trial advocacy concerns are brought to the attention of prosecution and investigative organs for review to ensure that charged offenders are brought to justice. These interventions have proven important in enriching the quality of indictments and prosecution of ongoing wildlife crime cases.



Judy Wangari at JKIA Law Courts tracking a case relating to ivory impounded in a transiting passengers luggage

In July 2017 the ODPP Complaints Mechanism was invoked through a complaint to address twenty-one (21) cases, relating to 45 tons of sandal wood, charged under the Forest Act ordinarily attracting a fine of fifty thousand shillings.

The complaint raised the missed opportunity in these cases where preferred charge neglected the more punitive penalties in offences found in the Wildlife Act. Amending the charge from offences under the forest Act the Wildlife Act would considerably enhance the severity of penalties from a fine of KShs. 50,000 to a minimum penalty of KShs. 1 million and 5 years imprisonment. Follow up action was being fast tracked by the ODPP WCPU at the time of publishing this report.



iCourtroom Wildlife Crime System

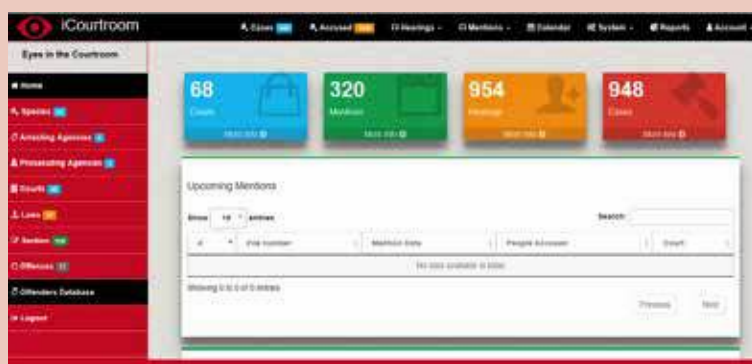
The original system for case monitoring was manual with hand written worksheets keyed in Microsoft Excel and SPSS workbooks for analysis. Given the volume of data and need for rapid analysis Eyes in the Courtroom developed a digital wildlife crime collection and analysis system called iCourtroom. iCourtroom is an android and web interface for capturing and analyzing wildlife crime data and storing of digital copies of court records.

This iCourtroom system also maintains a wildlife crime offenders database that currently holds records of one thousand six hundred and thirty-eight (1638) wildlife crime offenders convicted between 2014 and 2017 with the goal of tracking repeat offenders and recidivism. A second version of the system is under development and will harmonize and digitize key processes in prosecution while providing a real time legal resource to prosecutors and investigators handling wildlife crime cases.

This system is designed to be an open – source platform available to all law enforcement agencies in Kenya and the rest of Africa. This system has the potential to significantly improve regional law enforcement efforts in curbing wildlife crime by providing digitized access to wildlife crime data across different platforms in real time.



Mary Muthoni uploads data to iCourtroom



iCourtroom is designed as an android (left) and web (right) based system. Its features aid in the collection, management overall digitization of court proceedings as a case progresses through the criminal trial process. This tool also generates real time reports, tracks case dates while maintaining a wildlife crime offenders system for ease of reference. The second version under development will allow for video and audio integration and interfaces with reference tools for magistrates, prosecutors and investigators.

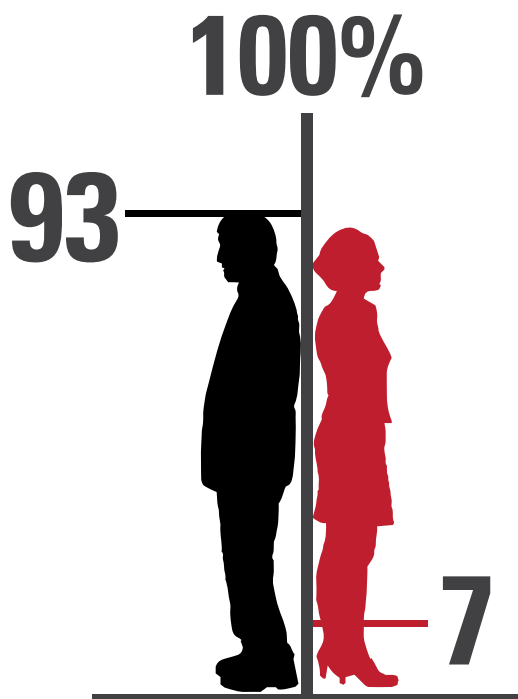


Eyes in the Courtroom Findings

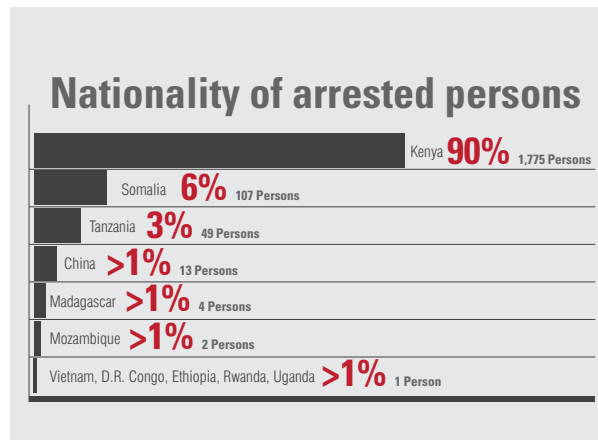
Arrest of Wildlife Crime Offenders

The protection of wildlife species requires that culpable wildlife offenders must be arrested and brought to justice. This mandate, falling upon NPS and KWS, involves the detection, apprehension and presentation of wildlife offenders before a competent court to face charges under the Wildlife Act.

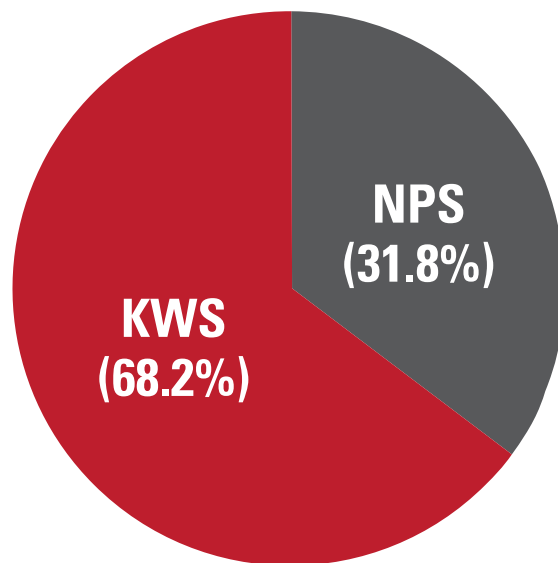
Gender of Accused Person



Nationalities of Accused



Arresting Authority





Number of Arrests

A total of one thousand nine hundred and fifty - eight (1,958) persons were arrested for various offences under the Wildlife Act in 2016 and 2017. Numbers of arrests slightly decreased by 6% from 2016 through 2017.

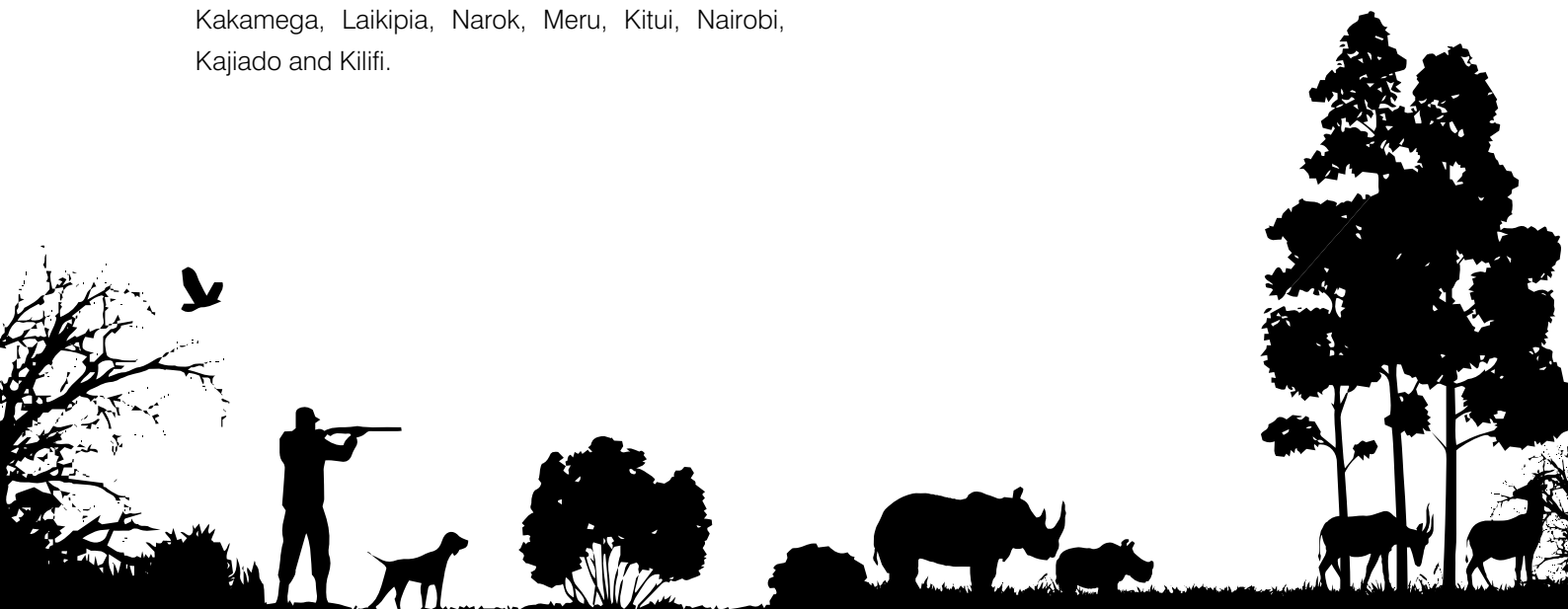


Most of these arrests were made in counties that have protected parks, reserves and sanctuaries that provide habitats to endangered and threatened wildlife species especially Tsavo, Mount Kenya, Amboseli, Meru National Parks; Laikipia and South Kitui National Reserves; Maasai Mara Game, Arabuko Sokoke, Kakamega Forest Reserves.

Some of the arrests made in Nairobi and Mombasa County related to seizures of wildlife products at Kenya's main points of entry; this being, the JKIA and the port of Mombasa. Twenty-one (21) suspects trafficking in wildlife products were apprehended connecting and transiting through JKIA Terminals with only one (1) arrested for the illegal export of wildlife products through the port of Mombasa during the survey period.

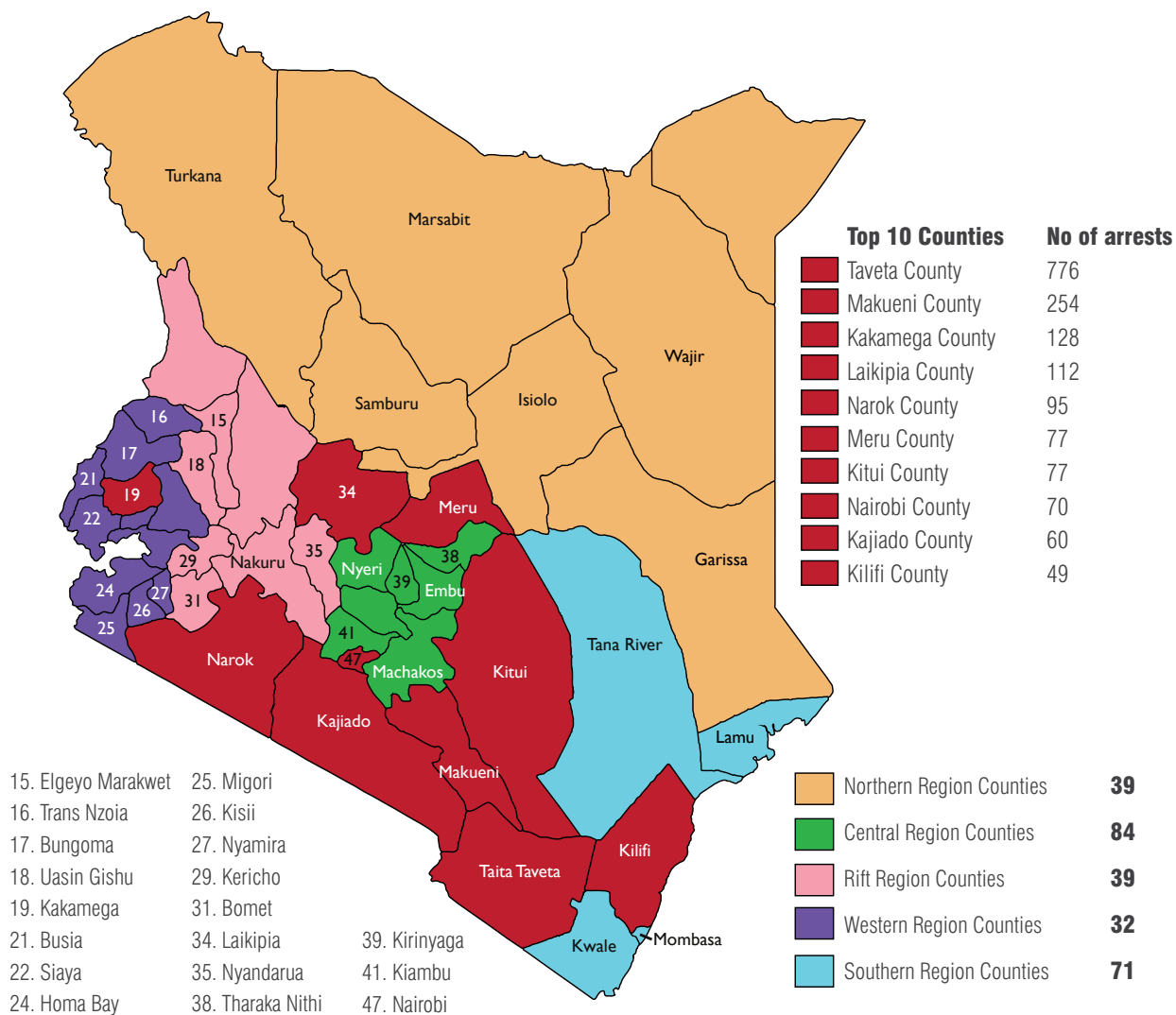
Location of Arrests

Arrests were made by KWS (66%,1,292) and the National Police Service (34%,666) with arrests made through intelligence tip offs and detection controls at road blocks and border entry points. Arrests were mostly made in the counties of Taveta, Makueni, Kakamega, Laikipia, Narok, Meru, Kitui, Nairobi, Kajiado and Kilifi.





Location of Arrests



All these counties have sensitive ecosystems and habitats for wildlife in Kenya.

1. Taita & Makueni Counties – Tsavo East and West National Park, Chyulu Hills
2. Kakamega County – Kakamega Forest Reserve.
3. Laikipia County – A large biodiversity habitat home to conservancies and sanctuaries.
4. Narok County – Maasai Mara Game Reserve
5. Meru County – Mount Kenya & Meru National Parks.



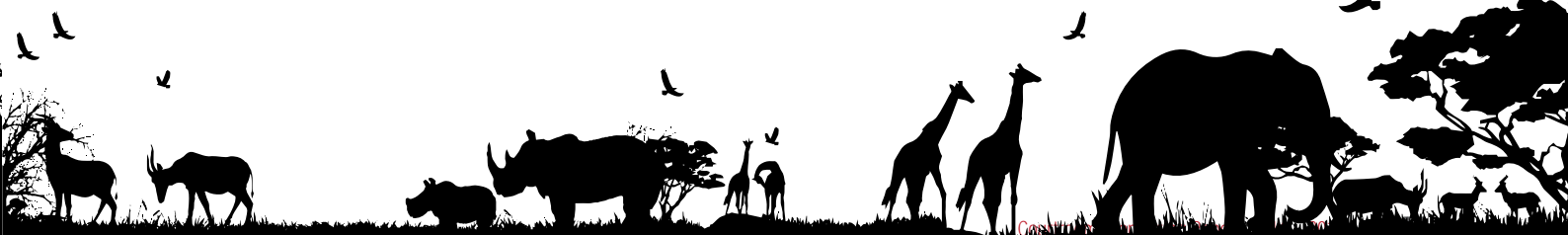
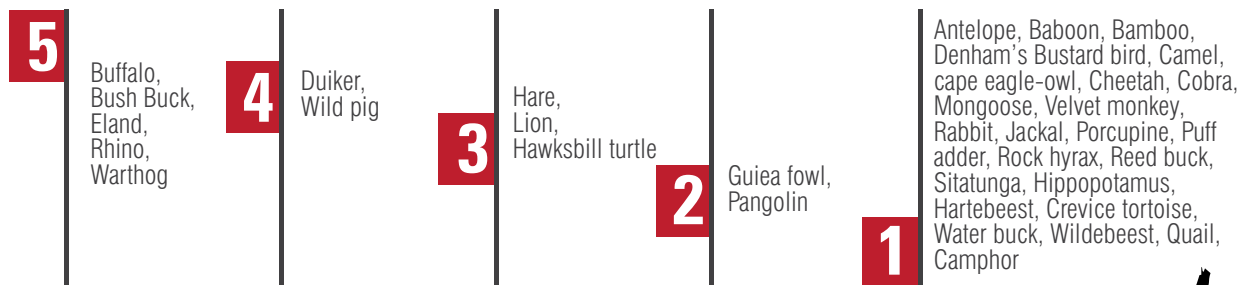


Species involved

Four hundred and twenty-eight (428) court cases directly involved wild animals or parts from forty-eight (48) different wildlife species. Of these, 6% species are critically endangered, 8% species are near threatened, 19% species are vulnerable, 44% species are least concern and 23% species are not assessed as endangered as per IUCN classification standards.

Most of wildlife crime arrests in 2016 and 2017 in Kenya were in connection with offences relating to elephant, dik-dik, zebra, impala and sandalwood species. Other affected species include eland, gazelle, giraffe, warthog, leopard and rock python. Wildlife species involved were labelled as evidence after confiscation and were in various forms as either whole live individuals or as parts of meat, teeth, skin, horn, raw, manufactured or derivative forms or plant samples and timber.

Various modus operandi of trafficking in wildlife products were identified and include concealment of elephant ivory in hollowed out export timber, passing off bush meat as beef for public consumption, possession of live wildlife and smuggling of python skin declared as gunny sacks for export.





Dealing with evidence

The management of scenes of crime, and processing of evidence was examined through analyzing protocols for evidence storage, preservation and chain of custody procedures. This study found that during trials, evidence was stored in various locations; this being, police stations, KWS storage rooms and court stations which created challenges in the integrity, preservation and production of evidence.

We documented several cases in which poor preservation of wildlife meat was the primary cause of acquittals in bush meat related cases. By the time bush meat samples arrive at the forensic laboratory they could not be properly analyzed and examined due to rotting.

We conclude that there is need for evidence collection, preservation and sampling guidelines to support front line officers who ordinarily have first contact with a wildlife crime scene. Specific guidance is especially needed for cases involving the possession of bush meat which presents a unique challenge due to the preservation needs

of this perishable evidence. Guidance should detail sample size, quality and evidence collection methodology for onward expert analysis by the KWS Forensics and NMK laboratories.

Another identified evidentiary concern is in the arrest of illegal grazers in national parks and the consequent preservation of impounded livestock upon arrest. With law enforcement lacking capacity to handle and preserve livestock as evidence, they are in most circumstances, forced to keep livestock in the same protected areas they have been impounded perpetuating the same illegal activity sanctioned by law.

Our study concluded there is an urgent need to support KWS's capacity to deal with the illegal entry with livestock. This can be through implementation of strategy that uses civil forfeiture and on the spot fines. Graze agreements with pastoral communities can also be powerful instruments along side mediation and alternative dispute resolution.



Four (4) elephant ivory tusks awaiting presentation in court at Makindu Law Courts



Prosecution of Offenders

After arrests are made the next step of bringing offenders to justice falls on the prosecution. The ODPP – WCPU and KWS have the legal duty to charge an arrested person with an offence and execute a prosecution strategy that presents the best evidence to prove their case beyond reasonable doubt.

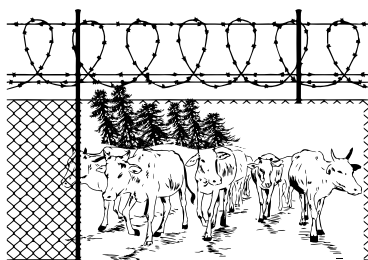
Type of Offences Charged

The main offences charged under the Wildlife Act involved breach of protected areas regulations at 52% (illegal entry and illegal entry with livestock into national parks), possession of bush meat at 19%, possession & dealing in wildlife trophies at 18%, and extractive activities at 8% of total charged offences.

Illegal Entry With Livestock

Entry with Livestock
into National Park

650



Illegal Entry

Entry into NP **598**
Entry into NR **80**
Entry into MP **3**
Residing in NP **13**



694

Extractive Activity



Logging into NP **67**
Logging into NR **47**



Undertaking
extractive activities
28



Removing forest
produce
19



Cutting and removing
forest produce
9



Fishing in NP
9



Cultivating in a
protected area
4



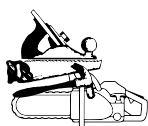
Setting fire in NP
4



Clearing land in NP
3



Making charcoal
3



Possession on
logging tools
2



Fishing with
prohibited nets
2

1 Removing charcoal
Setting fire in a wildlife protected area
Extraction of shrubs

**TOTAL
OFFENCES**

200



Bushmeat Related Offences



Possession of meat of wildlife species	290
Possession of hunting apparatus	50
Subsistence hunting	45
Hunting for bush meat trade	42
Conveying hunting apparatus	19
Possession of snares	18
Conveying snares	16
Dealing in meat of wildlife species	8
Conveying uninspected meat	2

490

Trophy Related Offences



336	Possession of wildlife trophy
110	Dealing in wildlife trophy
9	Transporting wildlife trophy
7	Exporting illegal goods
6	Relating to endangered species and threatened species
5	Possession of endangered species
4	Possession of wildlife species
3	Dealing in endangered species
3	Killing endangered species
2	Keeping wildlife trophy
1	Failing to report possession of game trophies
1	Trading in specimen of wildlife species
1	Importing specimen of wild species
1	Operating as a trophy dealer
1	Harvesting sandalwood
1	Deceptive packaging of goods for export

491

Other Offences

50	Unlawfully present in Kenya	1	Unregulated tourism activities
5	Conspiracy to commit a felony	1	Resisting arrest
5	Killing an animal with intent to steal	1	Making false declarations
5	Trespass upon private land	1	Possession of public stores
4	Possession of firearm	1	Possession of public stores
3	Using resources in a wasteful manner	1	Obstruction
2	Assault	1	Attempting murder
2	Possession of ammunition		
2	Possession of police uniform		

85



Multiple Charges

The prosecution preferred charging all 1,958 arrested persons with 2,610 wildlife crime offences in 957 registered cases.³ Most (73%) of wildlife crime court cases having one charged offence with multiple offences being preferred in rest of the cases with 22% of cases having two offences, 4% of cases having three offences and less than 1% of cases having four or more offences. These offences were principally drawn from the Wildlife Act alongside other ancillary criminal offences drawn from the Penal Code, FA, POCA and the EACCMA.

Organized Crime Element

Just over half of all wildlife crime court cases (53%) had a single offender with multiple offenders being charged in 47% of the cases; 23% of the cases have two joint offenders, 11% have three joint offenders and 13% have four joint offenders or more.

Nearly half (47%) of all cases had two or more offenders charged in one case. This is highly indicative of the element of conspiracy, concert and organization⁴ of perpetrators of wildlife crime. Even though nearly half of all cases indicated conspiracy, concert and organization of perpetrators of wildlife crime, organized crime offences drawn from POCA were applied in only two cases during the survey period.⁵

3 A person may be charged of one or more offences in a case and can give a different plea on each offence.

4 The United Nations Convention on Organized crime defines "organized crime" as a crime committed by two or more. However, the POCA determines "organized crime" as a crime committed by three (3) or more offenders.

5 Kibera CR 3202 of 2017 R v. Julius Andika & 6 Others and Kibera CR 1649 of 2017 R v. Nahashon Mochere & 2 Others

Plea Taking

A plea is an official response to a criminal charge by an accused person to whether they are guilty or not guilty. Each accused person is required by law to make a statement of guilty or not guilty when arraigned in court to answer to a charge of an offence.

Slightly less than half (46%, 1207) of all charged offences resulted in a guilty plea on arraignment of accused persons. The rest of the offences (54%, 1,403) proceeded to prosecution and open trial.

Accused persons were more likely to plead Guilty in cases with low fines and short imprisonment periods and Not Guilty in offences bearing long imprisonment or heavy fines; for example, 77% of all persons charged with illegal entry with livestock in a national park pleaded guilty to this offence that attracts a fine of thirty thousand shillings and imprisonment not exceeding six months while 96% of all persons charged with possession of elephant ivory plead not guilty to this offence that attracts a fine of twenty million shillings and life imprisonment.

None of the guilty pleas were obtained by way of plea negotiation. With plea bargaining and negotiation regulations⁶ now passed and integrated into Kenya's prosecution philosophy it is expected that more guilty pleas will be judiciously negotiated through plea bargains to expedite determination of wildlife crime cases.

6 Plea Bargaining Rules gazetted in February 2018.



Conclusion Rate & Withdrawals

The prosecution concluded more than half of all offences charged (55%, 1,371 offences) within the survey.⁷ Most (88%, 1207) of these concluded offences were concluded after accused persons pleaded guilty on arraignment or changed their plea from not guilty to guilty during trial with offences concluded (12%, 164 offences) after the prosecution closed their case.

This indicates that at least half of the offences charged (45%, 1,007 offences) are still pending in the courts all through into the year 2018 with court backlogs, workload on prosecutors, delay in the procurement of witnesses and evidence posing a challenge to the expedient conclusion of prosecution.

The survey identified that a few offences (7%, 232 offences) charged were withdrawn during prosecution. These offences were withdrawn to allow for further investigations and proper case management to build a stronger prosecution case. However, none of these offences withdrawn within the survey period were reinstated for formal prosecution during the survey period.

Prosecution Work Load

The ODPP - WCPU handled 99% of all offences with KWS handling 1% of offences charged and prosecuted. A considerable case load was undertaken by ODPP - WCPU against the prosecution work by KWS, an agency that traditionally has exercised delegated powers of prosecuting wildlife crime offences.

7 The prosecution of an offence was analyzed as concluded when a charged offence resulted in a guilty plea and conviction or acquittal after the prosecution closed their case.

This is indicative of the need to re - build the capacity of KWS through gazettement of more prosecutors to take up the prosecution of wildlife crime offences. This would support the endeavor to expedite prosecutions, increase conclusion rate of offences and reduce the workload on the ODPP - WCPU.

Conviction Rate

A trial magistrate has the responsibility of determining whether a person apprehended and prosecuted for committing an offence committed the offence. This determination results in a conviction, which is an outcome of a criminal prosecution concluding that an offender is guilty of an offence charged, or an acquittal which is an outcome that the accused person is not guilty or culpable of the charged offence.

An analysis of the proportion of offences ending in a conviction against concluded offences indicates the prevalence of accused persons brought to justice and is a widely accepted measure of success in prosecution. In general, the prosecution of wildlife offences has attained a high conviction rate (95%, 1,299 offences) in concluded prosecutions over the survey period. This indicates a strong likelihood that an offender charged with a wildlife crime offence will be found culpable and guilty of wildlife crime.

Very few (5%, 72 offences) of concluded offences resulted in acquittals attributed to unsuccessful prosecution of charges. The prosecution failed to discharge this burden of proof due to challenges ranging from poor evidence and to poor trial advocacy concerns.

Once an accused person is acquitted they are set free and any follow up by the prosecution must be by way of formal appeal to the High Court. Only 4 cases



(>1% of total cases, 4 offences) were challenged by the prosecution by way of appeal. None of the appeals were decided and determined at the time of publishing this report.

Legal Representation

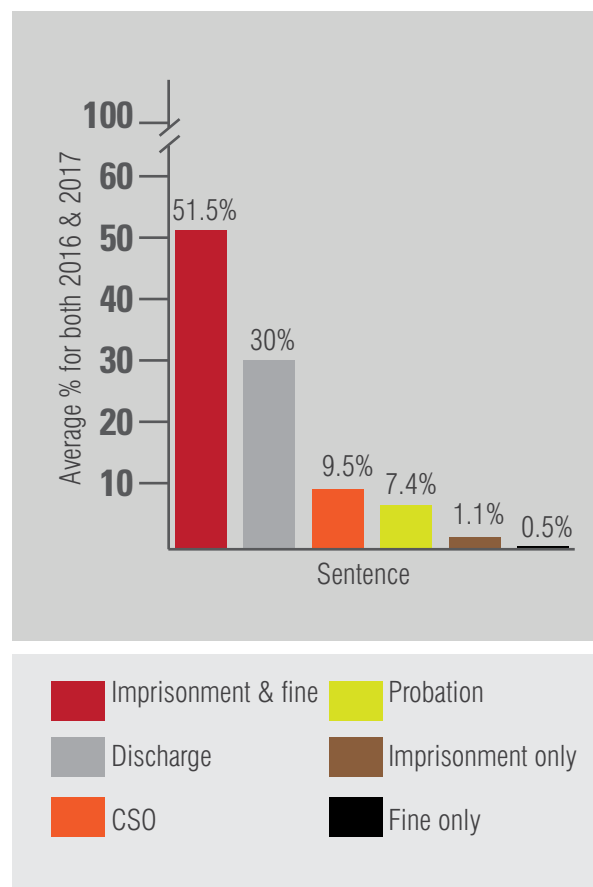
The right to a fair hearing guarantees every wildlife offender legal representation of their choice or legal representation provided by the state. This study found out that legal representation was very poor at 8% of all wildlife crime accused persons seeking legal representation with 92% opting to represent themselves in court.

We further established that legal representation was only sought when an accused person was charged with an offence carrying a heavy penalty; especially offences relating to endangered species. Legal representation was split between full case representation and specialty representation; especially in bail and bond application and release of instrumentalities of crime proceedings.

Our study did not delve deeper into reasons for the lack of representation albeit high fees was identified as a challenge that made legal representation prohibitively expensive. The Legal Aid Act of 2016 provides that legal aid is available for needy persons or where a case attracts public interest and denial of representation would lead to injustice. The Legal Aid Act of 2016, however, lacks regulations and guidelines that operationalize and give effect to legal representation principles as highlighted under the Constitution of Kenya, 2010. Regulations are needed that set out criteria for eligibility for legal aid, quality and standards of legal aid.

Sentencing of Offenders

Pattern of Sentencing in Concluded Offences



The Wildlife Act only allows for imprisonment sentences and fines as the prescribed penalties for wildlife crime offences. These penalties are envisioned as the deterrent measure to reduce the temptation for would be wildlife crime offenders while seeking to punish and rehabilitate convicted offenders.

The survey indicated that 52% (669) offences of convicted offences resulted in a sentence to pay a fine or serve an imprisonment term, 30%



(392 offences) of were discharged and convicted offenders set free, 17% (223 offences) resulted in probation and community service sentences and the remaining 1% (26 offences) sentenced to pay a fine and also serve an imprisonment term.

Three persons were sentenced to serve life imprisonment sentences for the possession of wildlife trophies.⁸ Only three convicted persons have challenged against their conviction and sentence at the High Court from magistrates' courts by way of appeal in relation to surveyed offences.

Probation & Community Service Orders

The Wildlife Act does not provide for the rehabilitative penalties of community service orders⁹ and

probation¹⁰, however, magistrates have in turn applied the use of the CSO Act in sentencing offenders to probation and community service.

The CSO Act gives judicial officers powers to prescribe a lower sentence in a criminal case if they determine it is judicious to do so and especially where the penalty prescribed by law is less than one year and not subject to a minimum sentence. As a result, offenders found culpable of illegal entry with livestock into a national park and subsistence bushmeat offences were subjected to probation and community service sentences.

Community service and probation orders, despite being judicious and an accepted sentence by law, create a challenge for law enforcement especially in the supervision of these sentences. It is the duty of the community service officers to identify unpaid work placements under these orders, supervise the progress of offenders and execution of the orders.

8 Nyahururu CR 608 of 2016 R vs. James Awoi and Kyuso CR 97 of 2017 R vs. George Njeru & Another both cases relating to the possession of three (3) kilograms and one twenty (120) kilograms of elephant ivory respectively.

9 A probation order is a period of supervision over an accused person as opposed to being committed and incarcerated in jail. An accused person is required to enter cognizance with the Department of Probation and Aftercare Services; Section 4 of the Probation of Offenders Act, Laws of Kenya.

10 Community service orders are orders imposed by a court that include any unpaid work for the benefit of the community usually for a period that does not exceed the term of imprisonment that the accused person could have been sentenced to; Section 3 (2), Community Service Orders Act, Laws of Kenya





There is a challenge in the capacity to supervise community service orders and identification of work placements that complement anti – wildlife crime efforts. For example, a community service work placement that complements de – snaring efforts in protected areas has more impact in countering wildlife crime efforts of bushmeat poachers while serving justice.

Discharges

Thirty percent (30%,) of convicted offences resulted in a discharge and convicted persons were consequently set free. Discharges were mostly preferred in illegal entry and illegal entry with livestock cases with few discharges being preferred in bushmeat related cases and elephant ivory cases.



Two hundred and eighty (280) of these persons were minors (children in conflict with the law) convicted for illegal entry and entry with livestock into a national park offence. This is largely attributed to the social conditioning of pastoralist communities living along and within protected areas where the use of minors in herding of livestock is a norm. They were discharged owing the fact that minors cannot stand trial as adults under the Wildlife Act. The use of diversionary measures needs to be inculcated in sentencing of children in conflict with the law to ensure provisions are implemented that maintain the

best interests of the children while holding parents accountable for offences perpetrated by children in their supervision.¹¹

One discharge was noted in a case relating to elephant ivory where the accused was set free due to the lack of a penalty in the offence used to charge him. Section 92 was used to charge the accused person in this case and despite being found guilty they could not be sentenced as this section lacks a penalty. Whenever Section 92 of the Wildlife Act is used to charge a person a magistrate cannot punish the accused and must set them free.

Orders for Compensation & Forfeiture

A positive development in sentencing has been identified in the inclusion of punitive measures like compensation for loss of wildlife and the cost to law enforcement. This measure was noted in two cases where two illegal grazers were ordered to pay twenty thousand shillings and had their cattle forfeited to the state and another ivory trafficker ordered to pay two hundred thousand shillings as a cost to law enforcement.

Orders for compensation and forfeiture act as an extra punitive penalty when applied. It also acts as a deterrence with the extra financial penalty deterring would be offenders from risking financial loss in addition to the penalty of a fine and imprisonment.

¹¹ Article 53 (1) (d) of the Constitution of Kenya as read with the Children Act, Chapter 586 Laws of Kenya.





Sentencing on Illegal Entry Offences

Disparate sentencing on illegal entry and illegal entry with livestock has skewed the law enforcement approach to offences related to the breach of protected areas. Despite illegal entry and illegal entry with livestock into a national park bearing the same element of criminal trespass the two offences carry very different penalties.

In illegal entry offences the penalty is prescribed at a minimum fine of two hundred thousand shillings and imprisonment of two years while illegal entry with livestock penalty is prescribed at a maximum fine of a hundred thousand shillings and imprisonment not exceeding six (6) months. This disparate provision of penalties in offences bearing the similar criminality has a negative effect on deterrence to wildlife crime.

As a result, the breach of protected areas offences is the most prevalent offences as convicted offenders can easily pay the fine or serve the low imprisonment terms prescribed. Unsurprisingly, the offence of illegal entry with livestock causes more harm to wild ecosystems and encourages competition for pasture between livestock and wildlife species in national parks. The quantum of punishment attributed to illegal entry with livestock is very low and offers a poor deterrence to would be offenders. There is a need to review these provisions to enhance or harmonize penalties to create a deterrence against the rampant illegal entry with livestock into protected areas.

To compound the issue, an illegal entry with livestock offence only applies to national parks with illegal grazing in national reserves not covered by the offence.

Similar Elements of Crime:	
illegal entry into a national park	illegal entry with livestock into a national park
	
Different Penalties	
minimum fine of KSh. 200,000 & imprisonment of 2 years	maximum fine of KSh. 100,000 & imprisonment not exceeding six (6) months



Elephant Ivory, Rhino Horn & Pangolin Cases



The African elephant, rhino and pangolin species face unprecedented challenges due to wildlife crime. The African elephant is in a steady decline¹², rhinos face extinction and pangolins are now classified as the world's most trafficked wildlife species. These three species are lucrative black-market products targeted for use in contemporary oriental ornaments and eastern medicine. As a result, these three species have been accorded the highest level of protection through listing in CITES Appendix 1 and trade in their products is prohibited.

The Wildlife Act is one of the world's most punitive wildlife legislation providing for life imprisonment and twenty million shillings fine for wildlife crime offences related to elephant ivory, rhino horn and pangolin species. Enforcing this law, history was set in July 2016 when a magistrate at Shanzu Law Courts convicted Kenya's first high profile wildlife trafficker, Feisal Ali Mohammed, in a landmark decision that affirmed the law enforcement's approach to wildlife crime.

This case sent the message to all wildlife traffickers – if you deal in endangered species you will be detected, arrested, prosecuted, convicted and sentenced

¹² The Great Elephant Census highlights that Kenya has seen a slight increase in elephants, but elephants have declined over Africa by 30% in the last decade.

harshly. This conviction and sentence was reversed by Judge Chepkwony at the High Court of Kenya in Mombasa. Kenya remains listed as a country of primary concern by CITES and is attributed as a source or transit country in the trafficking of elephant ivory, rhino horn and pangolin scales.

Cases involving these endangered species are very different from other wildlife crime cases brought to court. The severity of penalties in their offences coupled with the lucrative black-market value of endangered species, organized crime and transnational character of trafficking complicate their investigation and consequent prosecution.

Law enforcement faces challenges that are greater in scope and complexity compared to other identified wildlife offences at all stages of the criminal trial process. These challenges are described in the following chapters which draw on the results of case tracking of elephant ivory, rhino horn and pangolin scale cases, reported worldwide seizures in 2016 and 2017 and ongoing major ivory seizure¹³ cases from preceding years.

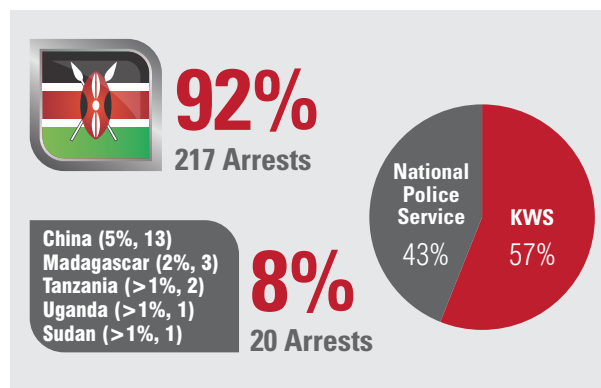
¹³ A seizure is regarded as any illegal impound of exceeding 500 kilograms of ivory and 1 kilogram of rhino horn.



Arrests of Wildlife Traffickers

Number of Arrests

A total of two hundred and thirty-seven (237) persons were arrested for possessing and dealing in elephant ivory (94%, 223), rhino horn (4%, 10) and pangolin (2%, 4) under the Wildlife Act.



Location of Arrests

Arrests were mostly made in Nairobi, Taveta, Makueni, Laikipia, Meru, Mombasa, Nairobi, Kajiado and Kwale Counties. These arrests are distributed among counties that have elephant, pangolin and rhino populations. Twelve (12) foreigners were arrested Nairobi County where as transiting and connecting passengers at JKIA. This is attributed to the increased detection controls at JKIA implemented by KWS which combines the use of luggage and passenger x – ray screening with the use of trained sniffer dogs.

There were no seizures made at either Malaba, Busia, Namanga or Mandera border stations. These border points lack the infrastructure JKIA and the port of Mombasa have employed in anti-wildlife crime efforts and as such need capacity to enhance and match enforcement response.

Dealing with Evidence

In these identified cases at least 2,976 kilograms of elephant ivory, 176 kilograms of rhino horn, one live pangolin and 200 kilograms of pangolin scales were impounded by law enforcement and kept in custody as wildlife trophies. The seizure of 1,097 kilograms of elephant ivory made at the port of Mombasa was identified as the most significant ivory seizure in Kenya during the survey period. Only one arrest was made in relation to this seizure.

The survey identified a continued reliance on the physical production and presentation of wildlife trophy evidence at court hearings. This poses a challenge for officers preserving this evidence as they must produce it in court despite facing logistical and security challenges in the chain of custody of evidence. As a best practice, law enforcement ought to use electronic evidence in court allowing the use of certified photographs and videos of evidence as opposed to the regular production of high value wildlife trophies.¹⁴

The scientific examination and identification of these wildlife species is necessary as part of any prosecution case. With the KWS Forensics laboratory currently lacking the capacity to analyze ivory and rhino horn samples, law enforcement has solely relied on the National Museums of Kenya laboratories for the scientific analysis and identification of ivory and horn samples. There is a need to build the capacity of the KWS Forensic Laboratory to apply DNA sequencing in elephant and rhino horn cases.

¹⁴ Section 78A and 106B of the Evidence Act, Chapter 80 Laws of Kenya allow for the use of electronic evidence by way of photos and video.



Fugitives from Justice

The seriousness of wildlife crime offences and the punitive penalties involved create a strong incentive for suspected and charged wildlife offenders to evade arrest, prosecution and jurisdiction of Kenyan courts.

Our survey shows that nine (9) charged persons¹⁵ are fugitives of justice and are wanted for offences related to dealing and possession of elephant ivory in cases identified in the survey period and in pending elephant ivory seizure cases. Seven (7) fugitives absconded after being granted bail and bond while two (2) fugitives have never been apprehended and have outstanding warrants of arrest for elephant ivory trafficking.

The most high-profile fugitives identified are Nicholas Mweri Jefwa and Samuel Bakari Jefwa who are the suspected masterminds behind the exportation of 6,400 kilograms of elephant ivory from Kenya to Singapore in the year 2014. An international warrant of arrest is in effect against the two with INTERPOL issuing a Red Notice and the Magistrate Courts at Mombasa issuing warrants of arrest. The two remain at large.

Absconding after bail and bond has been granted gravely undermines the administration of criminal justice as cases lag in court until the accused is apprehended and brought to court to answer to charges.

¹⁵ Republic vs Ahmed Gedi, Kibera CR 1647 of 2017, Republic vs Paul Muya & 2 others, Thika CR 6618 of 2016, Republic vs Gerishon Choba & another, Wang'uru CR 254 of 2016, Republic vs Henry Okore & another, Maralal CR 1154 of 2016, Republic vs Fidelis Tarus & 2 Others, Maralal CR 1153//16, Republic vs Jumba Gumba Amaheno & 6 Others, Shanzu CR 418/17, Republic vs Dismus Etyang & 3 Others and Busia CR 2721/16.

WANTED



**NICHOLAS MWERI
JEFWA**



**SAMUEL BAKARI
JEFWA**

An arrest warrant has been issued for Nicholas Mweri Jefwa and Samuel Bakari Jefwa, wanted for their involvement in the possession and dealing in elephant ivory.

Any person with information as to their whereabouts should contact the nearest police station or the Directorate of Criminal Investigation through 0791573080 or email ipnairobi@accesskenya.co.ke

The Judiciary generally lacks the capacity to effectively verify the authenticity and determine the suitability of security documents used by accused persons to apply and secure bail and bond; e.g., vehicle log books & land title deeds. Administrative loopholes have been exploited by accused persons when posting bail and bond leaving the Judiciary holding to worthless and fake surety documentation.

Average Bail in Cases

Elephant ivory cases – Kshs 1.9 million

Rhino Horn cases – Kshs 678,000

Average Bond in Cases

Elephant ivory cases – Kshs 250,000

Rhino horn cases – Kshs 300,000



To compound the problem, preparation of bail reports by the Probation & Aftercare Service is slow and ineffective due to key capacity challenges. Lack of a bail supervision system has hampered the ability of this agency to properly enforce bail and bond terms and conditions against accused persons.

The prosecution has however shown promise in dealing with fugitives from justice in the use of trial in absentia prosecutions. Currently, the constitution allows for criminal charges to be laid by the prosecution against a fugitive who has willfully absconded. Trial in absentia prosecutions are judicious and accepted as a best practice tool in dispensing justice against persons who willingly flee from prosecution. Without trials in absentia there is a risk of evidence going stale, witnesses dying or forgetting their account of events adversely impacting prosecution cases.

Profit Motivated Police Crime

Profit motivated police crime occurs when sworn law enforcement officers use the authority of their position to engage in crime for personal gain. The survey identified four cases relating to 5 law enforcement officers who were arrested perpetrating wildlife offences and consequently charged with various offences.

Republic v Peter Karanja (Maralal CR 956/16) – found in transporting 2 tons of sandalwood in a government vehicle GKB 734F

Republic v Thomas Simiyu (Kibera CR 3272/17) – found in possession of two ivory tusks

Republic v Wilfred Mwenzia & Another (Makindu CR 1001/16)

Republic v Francis Kioi & 3 Others (Kibera CR 994/2016) – found in possession of 5kgs of raw ivory

A further investigation and indictment leading to punishment for offences also applies in addition to criminal prosecution of the officers. The National Police Service by law is mandated to investigate and determine whether a public officer has contravened the Code of Conduct and Ethics by referring cases to the IAU.

The IAU is the administrative body mandated to prevent corruption, promote transparency and accountability within the NPS. The IAU upon investigation of a case may recommend disciplinary action that includes the interdiction, suspension, reduction in allowances and conditions of service of an officer. This disciplinary action is preferred against any police officer who commits a criminal offence whether convicted or acquitted of the alleged wildlife offence.

IAU however, is not fully functional and independently operational as it lacks the adequate financial resources and personnel.¹⁶ As currently constituted the IAU lacks sufficient capacity to investigate misconduct and corruption of police officers.

¹⁶ Independent Police Oversight Authority, End Term Board report (May 2012 – May 2018)



Police officers carrying elephant ivory tusks to court for presentation as evidence



Failure to Bring Transnational Traffickers to Justice

Thirteen (13) major seizures made during the survey period have been attributed and transiting through Kenya's JKIA and port of Mombasa. These seizures relate to 3,100 kilograms of elephant ivory, 218 kilograms of rhino horn and 2,370 kilograms of pangolin scales have been followed up by limited investigations and arrests.

These seizures have only resulted in the follow up and indictment of two persons. One accused person was charged before the Magistrates' Court at Mombasa for illegal exportation of elephant ivory to Cambodia through the port of Mombasa and another was convicted for possessing elephant ivory in their luggage transiting through JKIA. There is a failure by investigative authorities to pursue leads that could lead to the arrest and trial of suspected traffickers.

Based on identified modus operandi, wildlife traffickers prefer air trafficking route as opposed to containerized sea cargo with eleven (11) out of thirteen (13) seizures being made in air - freight cargo and travelling passenger luggage. The rest of the seizures were made in sea – freight containerized cargo.

Border customs procedures create mandatory requirements in the handling of import and export cargo covering basic requirements for the verification, packaging and transportation of cargo. This obligation to comply with these procedures is upon to the owner of cargo (consignor), receiver of cargo (consignee), transporting agent, customs verification officer, clearing and forwarding agent to ensure for legal exports and imports are made.

They are at the very minimum, key players in chain of criminality especially where elephant ivory is trafficked through the port of Mombasa. However, they hardly feature in surveyed prosecutions.

For example, in *Republic v Ephantus Gitonga*¹⁷, one accused faces charges of illegally exporting 1,097 kilograms of elephant ivory sourced from South Sudan destined for the Port of Cambodia. Limited investigations have left the owner of consignment (consignor), receiver of consignment (consignee), transporter, verifier of consignment, clearing and forwarding agents unindicted despite this obvious breach of customs and clearance protocols.

Trafficking cases exhibit elements of organized crime especially where large amounts of elephant ivory or rhino horn are being moved from one jurisdiction to another. The poor indictment of suspects in these cases allows trafficking networks to thrive unchecked. Single arrests in cases relating to wildlife trafficking with obvious criminal organization and conspiracy reflects poor and limited investigations.

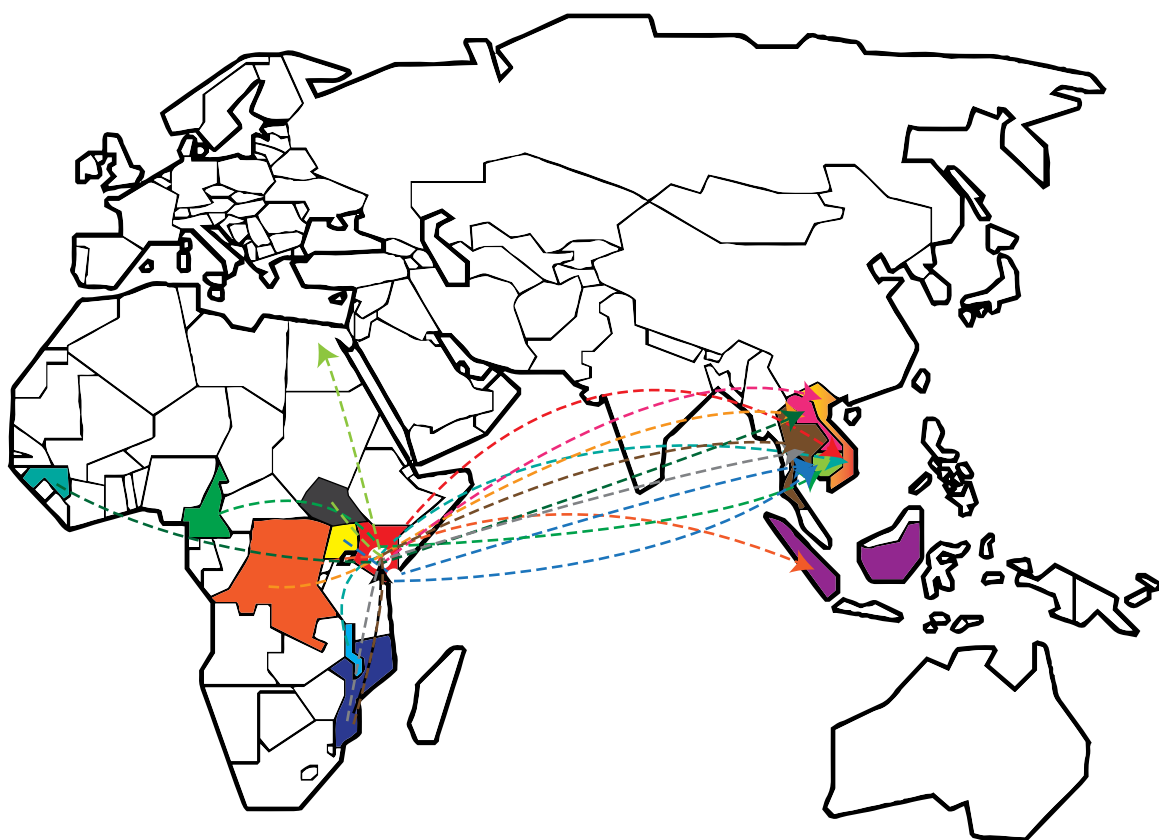
Limited investigations reduce the chances of identifying all wildlife offenders culpable for trafficking. As a best practice, when prosecutors guide investigators the best match of evidence and prosecution strategy is identified expeditiously, often to judicious ends; prosecution cases end faster with more convictions. There is a need for a prosecutor - guided investigations philosophy guiding investigative agencies in Kenya.

¹⁷ Mombasa Criminal Case Number 2511 of 2016.



Inset: Photos of the December 2016 seizure of 1,097 kilograms showing raw elephant ivory found in timber beams. The raw ivory, concealed in a false bottom in a beam was covered with wax to evade detection by sniffer dogs.





Points of Origin

● DR Congo
● Malawi
● Kenya

● DR Congo
● Uganda
● Cameroon

● South Sudan
● Guinea
● Mozambique



Air Freights

Sea Freights

■ Thailand

■ Vietnam

■ Laos

■ Malaysia

■ Cambodia

Port with most major seizures



JKIA – 3



Mombasa – 1

Most preferred traffickers route



Air Freight – 11



Sea Freight – 2



Prosecution of Wildlife Traffickers

Standard operating procedures into the investigation and prosecution of wildlife crime require that the ODPP – WCPU handles the prosecution of cases relating to endangered species and fully prosecuted all cases related to elephant ivory, rhino horn and pangolin scales.

Plea Taking

96% of offenders facing elephant ivory related offences, 50% of offenders facing pangolin related offences and all (100%) offenders facing rhino horn related offences pleaded Not Guilty. This is attributed to the stiff penalties that these offences carry with most charged persons choosing to contend with trial as opposed to pleading guilty and risk facing the penalty of life imprisonment and fine of twenty million shillings.

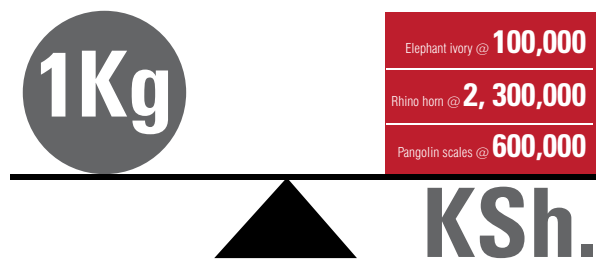
The remainder of the offenders pleaded guilty, were sentenced and consequently paid the fine issued by the court.

Valuation of wildlife trophies

The survey also reveals that most charges relating to elephant ivory, rhino horn and pangolin scales had valuations of the trophies seized or impounded. This valuation of wildlife trophies for the purpose of proceedings in an offence could not be ascertained as no legal market exists for trophies belonging to the three species.

On average, elephant ivory has been valued at KShs. 100,000, rhino horn valued at KShs, 2,300,000 and pangolin scales valued at KShs. 600,000 per

kilogram in charge sheets identified in the survey period.



This valuation of wildlife trophies is not consistent with the provisions of the Wildlife Act as no legal framework exists that permits law enforcement officers to provide the market value of wildlife trophies. To the contrary, valuation of wildlife trophies only raises the profile of wildlife trafficking offences by placing a price tag on wildlife trophies.

Organized Crime Charges

More than half of all these (61%) had a single offender with multiple offenders being charged in the rest of the cases; 23% of the cases having two joint offenders, 11% having three joint offenders and 5% having four joint offenders or more.

Less than half (**39%**) of all cases had two or more offenders charged in one case.

This is indicative of the element of conspiracy, concert and organization of perpetrators of **wildlife crime.**



Organized crime offences drawn from POCA have, however, been applied in only two cases during the survey period.¹⁸

¹⁸ Kibera CR 3202 of 2017 R v. Julius Andika & 6 Others and Kibera CR 1649 of 2017 R v. Nahashon Mochere & 2 Others.



Multiplicity of Charging

49% of these cases had one charged offence, with the rest of the cases (51%) having two or more charged offences. The chances of securing a conviction naturally increases with the diligent indictment & prosecution of multiple charges. The seriousness of multiple offences charged together with wildlife offences offer a larger pool of penalties that an accused can be subjected to; e.g., money laundering charges, disgorgement and forfeiture of proceeds of crime provide an extra punitive penalty



Freezing of assets case

*High Court of Kenya at Mombasa
Miscellaneous Criminal Application No. 62 of 2015
(Consolidated with No. 37 of 2015)
Before: P.J.O Otieno J
30th September 2016*

Sheikh Abdulrahman and six other accused persons currently face charges of illegally exporting 3127 kilograms of elephant ivory from Kenya to Thailand. The charges draw offences relating to dealing in wildlife trophies, illegal export of prohibited goods and engaging in organized crime. The prosecution went ahead and froze assets relating to the accused as suspected proceeds of wildlife crime.

Personal assets belonging to the accused persons were frozen and their access to the assets restricted. Land, four (4) luxury cars, six (6) bank accounts with twenty-six million shillings remain frozen until the determination of the case against the accused persons.

It's the belief of the prosecution that the assets are suspected to have been acquired through the sale of ivory. When the prosecution is successful in proving their case against the accused persons it is expected that all these assets will be forfeited to the State.

to wildlife offenders creating an additional deterrence to wildlife crime.

The complexity and transnational character of wildlife trafficking operations point to a high degree of organization, conspiracy and cooperation. This emphasizes the need to apply additional charges from criminal law provisions in other legislations to further enhance the quality of investigation, prosecution charges and effectively punish wildlife traffickers; for example, tax evasion, prevention of organized crime, anti - corruption and economic crimes laws and financial investigation to restrain and forfeit of assets of offenders' proceeds of crime.

Poaching vis a vis Trafficking Offence

Poaching statistics declared by the government indicate that sixty-nine (69) elephants and nine (9) rhinos were killed.¹⁹ The survey identified that five rhino horn and two elephant related cases attributed directly to killing of critically endangered species were brought to court during the survey period.

The survey indicates that there is a high number of unprosecuted poaching incidents of critically endangered species. None of these prosecutions directly relate to retaliatory killings of elephants relating to aggravated human wildlife conflict.

This is primarily attributed to the lack of an offence addressing the killing and poaching of critically endangered species under the Wildlife Act. The

¹⁹ Ministerial statement by Cabinet Secretary Najib Balala on May 9, 2018.



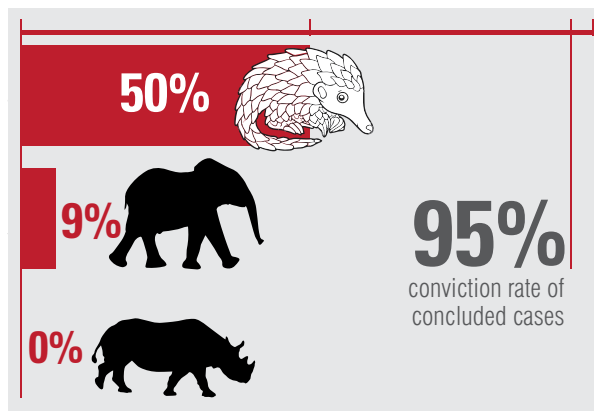
Wildlife Act only makes provision for the possession, dealing and general trafficking of wildlife and remains silent on direct killing of wildlife, especially that of critically endangered species. The prosecution usually reverts to Chapter XXVII of offences allied to stealing under the Penal Code and charge using Section 289 for killing of an animal with intention to steal.

The penalty for poaching lacks the same quantum of punishment as the penalty for possession or dealing in endangered species. A review of the Wildlife Act is therefore necessary to accommodate heavier penalties targeting the killing and poaching of endangered wildlife. This study concludes it would be prudent to have the penalty against possessing elephant ivory like the penalty of killing an elephant. This will ensure a deterrence against poaching of elephants for ivory will be in place.

Our study indicates that there is limited capacity to apply the use of DNA Sequencing to support investigations that link poaching and trafficking criminality. Currently, the NMK laboratory only performs the scientific identification of endangered species which is key and important in determining whether a seized wildlife trophy is an endangered species or not. The KWS and NMK laboratories have limited capacity to use DNA sequencing to link poaching and trafficking incidents meaning this critical tool remains largely unused by law enforcement.

The use of DNA sequencing is crucial in enhancing and enriching deeper investigations that can link poachers and traffickers by matching trafficked products with poached wildlife individuals in protected areas. This has the potential of cracking down on poaching and trafficking networks.

Conclusion of cases



With all offences against endangered species carrying stiff penalties, more accused persons are more willing to plead Not Guilty and contend with trial. Despite it being universally accepted that justice should be delivered expeditiously, very few criminal jurisdictions, including Kenya, have conclusive evidence at the start of a case. For example, expert analysis and identification of ivory usually is not always done before charging of offences. Although there are circumstances like these that cause delay in the conclusion of cases and are not easily controllable there are others that are.

Coupled with judicial backlogs, the limited use of case management mechanisms continually protracts cases. Case management is an administrative tool that could empower prosecutors with the right information to match the best evidence with litigation strategy to quickly dispose of cases.

As evidenced by the survey, 91% of elephant ivory related cases, 50% of pangolin cases and all rhino horn cases are still pending in court at various stages of prosecution and determination. To compound the issue, cases from preceding years relating to 12,000 kilograms of elephant ivory are still pending before various Magistrates' courts.



Ongoing Major Ivory Seizure Cases

1. Sheikh Abdulrahman & 8 others (2015)

Seizure of 3172 kilograms in Thailand, April 25th 2015
Export Country – a/ Destination - Vietnam
Obfuscation: Stuffed in export tea leaves
Charges of organised crime, possession of wildlife trophies & illegal export of restricted goods
Penalty to be faced if found guilty – minimum 5 years, minimum 1 million fine.
Main Challenge: Lack of MLA with Thailand & Singapore

2. Nicholas Jefwa, Samuel Jefwa & 2 others (2015)

Seizure of 3,363 kilograms of elephant ivory in Singapore, May 16th 2015
Export Country – Kenya / Destination – Laos
Obfuscation: Stuffed in export tea leaves
Charges of organised crime, possession of wildlife trophies & illegal export of restricted goods
Penalty to be faced if found guilty – minimum 5 years, minimum 1 million fine
Main Challenge: Principal accused persons are fugitives -warrants of arrest issued.

3. Nelson Ayoo & 4 Others (2013)

Seizure 1,833 kilograms of elephant ivory in Singapore, January 23rd, 2013.
Export Country – Congo / Destination Vietnam
Obfuscation: Declared for export as archaeological stones
Charges of illegal export of restricted goods under the EACCMA
Penalty to be faced if found guilty – maximum 5 years
Main Challenge: Lack of MLA with Singapore & trial advocacy concerns

4. Ephantus Gitonga (2016)

Seizure of 1097 kilograms of elephant ivory in Mombasa, December 23rd, 2016
Transit Country – Kenya / Destination Cambodia
Obfuscation – concealed in carved out timber beams
Charges of possession of wildlife trophies under s. 92 Wildlife Act
Penalty to be faced if found guilty – minimum 1 million shilling fine and/ or minimum 5 years imprisonment.
Main Challenge: Limited investigations, Defective charging of offences

5. Sammy Maina (2012)

Seizure of 1500 kilograms of elephant ivory in Mombasa, December 21st, 2011
Export Country – South Sudan / Destination Dubai, UAE
Obfuscation – declared as waste plastic
Charge of illegal export under EACCMA
Penalty to be faced if found guilty – maximum 5 years
Main Challenge: Trial advocacy concerns

6. Nicholas Maweu (2013)

Seizure of 3287 kilograms of elephant ivory in Mombasa, July 8th, 2013.
Export Country – Kenya / destination Malaysia
Obfuscation – concealed in export groundnuts
Charge of illegal export under EACCMA
Acquitted of all charges; ODPP appealing

7. Falah Manzu & 6 Others (2014)

Seizure of 1000 kilograms of elephant ivory in Singapore, March 25th, 2014.
Source Country – Uganda/ Destination Singapore
Obfuscation – Stuffed in export coffee beans
Charge of illegal export under EACCMA
Penalty to be faced if found guilty – maximum 5 years
Main Challenge: Lack of MLA with Singapore and absconding of two accused persons after bail was granted.

8. Fredrick Mungule & 2 Others (2013)

Suspected 1323 kilograms of elephant ivory in Hong Kong, January 3rd, 2013
Export Country – Kenya / Destination – Hongkong
Suspected 3827 kilograms of elephant ivory in Mombasa, January, 14th, 2013
Export Country – Kenya / Destination – Indonesia
Obfuscation – Declared for export as archaeological stones
Charges of illegal export of restricted goods under EACCMA
Penalty to be faced if found guilty – maximum 5 years



Lack of Mutual Legal Assistance Agreements

Wildlife trafficking is a global concern that requires the strengthening of international cooperation and law enforcement efforts.²⁰ The countries of Malaysia, Laos, Vietnam, Singapore, Thailand, Cambodia and Indonesia were identified as destination countries for illegally trafficked endangered species in surveyed in cases and reported seizures.

This indicator of cross border criminality between Kenya and destination countries can be efficiently addressed by law enforcement through use of mutual legal assistance (MLA) agreements. These agreements are necessary frameworks that define how foreign and international law enforcement agencies cooperate to investigate and prosecute wildlife trafficking.

This lack of mutual legal frameworks creates a challenge in the investigation and prosecution of transnational trafficking affecting exchange of evidence and intelligence or the handover and extradition of suspects. For example; in Republic v Sheikh Abdulrahman & 8 others, an ivory trafficking case relating to 6 tons exported to Thailand and Singapore has been protracted awaiting the negotiation of an MLA to facilitate the procurement of witnesses and expatriation of seized ivory as evidence.

20 Wildlife crime is now regarded as a serious crime as affirmed by the United Nations General Assembly Resolution in 2012 (A/RES/67/189) that expressed concern about global wildlife crime, recognizing the need for a comprehensive approach to combat transnational organized crime and urges Member States to strengthen international cooperation and law enforcement efforts.

A positive development was identified in the negotiation of a mutual legal assistance treaty between Kenya and China.²¹ This agreement allows for the sharing of intelligence and evidence between the two countries strengthening the law enforcement approach against wildlife trafficking. A similar negotiation is needed between Kenya and the remaining illegal wildlife product destination countries; Thailand, Cambodia, Vietnam, Laos and Hong Kong.

Practice of Plea Negotiation or Bargaining

Implementation of the practice of negotiated pleas would greatly enhance the investigation and prosecution of these cases by providing access to important evidence; for example, a low-level trafficker of wildlife products could potentially have information that supports prosecutors in their case against a high-level trafficking kingpin by way of a negotiated plea. With plea-bargaining rules now passed into law, it is expected that these negotiated pleas will be obtained judiciously and used to crack and disrupt wildlife trafficking networks by providing access to credible intelligence.

21 MLA does not cover Hong Kong.

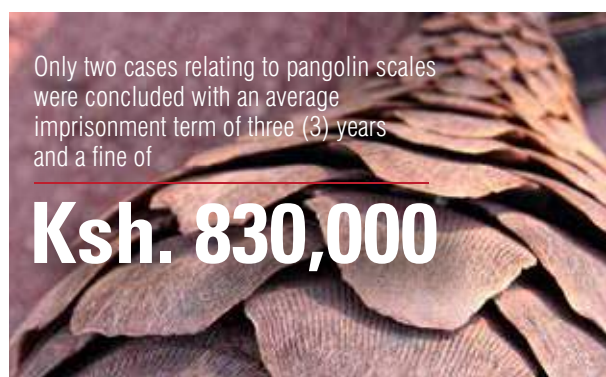


Sentencing of Wildlife Traffickers

It is widely expected that those bearing the greatest culpability in wildlife trafficking ought to be punished severely. Legislators while passing the Wildlife Act created a general penalty for offences against wildlife species at five (5) years imprisonment and, or, a fine of one (1) million shillings and a higher penalty for offences against critically endangered species as a minimum fine of twenty (20) million shillings and or life imprisonment. This enhanced penalty and increased quantum of punishment is meant to serve as a deterrence against trafficking of critically endangered species and their products, especially elephants, rhinos and pangolins.

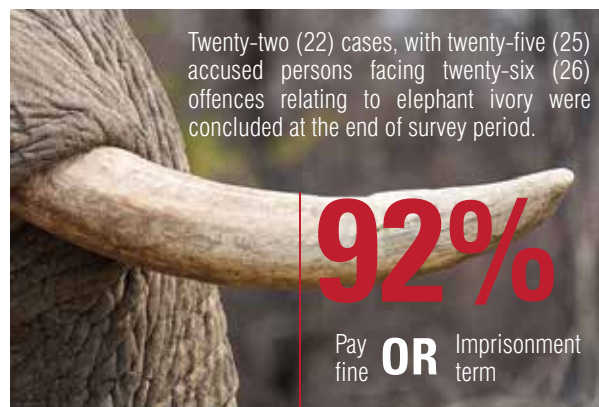
Type of sentencing

With most cases pending before various courts very few cases have been concluded and consequently proceeding to sentencing. None of the rhino horn cases were concluded by the end of survey period. Only two cases relating to pangolin scales were concluded with an average imprisonment term of three (3) years and a fine of KShs. 830,000.

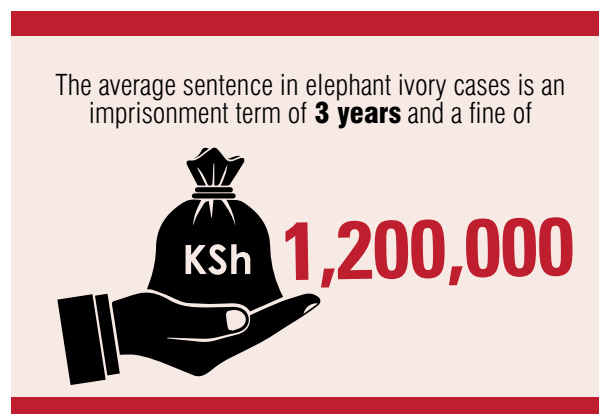


Twenty-two (22) cases, with twenty-five (25) accused persons facing twenty – six offences relating to elephant ivory were concluded at the end of survey

period. 92% of all concluded offences resulted in a sentence to pay a fine or face an Imprisonment term.



Four percent (4%) of concluded offences resulted in a sentence to pay a fine only with 4% of concluded offences discharged and one accused person set free. The average sentence in elephant ivory cases is an imprisonment term of 3 years and a fine of Kshs. 1,200,000 shillings.



This average imprisonment is below the minimum sentence prescribed by law of five (5) years imprisonment. It is imperative to sensitize judicial officers to enhance penalties are instructed by the law to reinforce deterrence against wildlife trafficking.



Judicial officers have notably issued sentences beyond the minimum sentences prescribed by law. Three low level offenders were sentenced to life imprisonment sentences and to pay a fine of twenty million shillings for possessing and dealing in elephant ivory.²² These landmark rulings capture the quantum of punishment duly expected against those who possess and deal in wildlife trophies. Judicial officers have captured the spirit of provisions enhancing penalties against convicted low level wildlife traffickers. However, the same sentencing style is yet to be replicated in high profile trafficking cases.

Missed Opportunities

Wildlife traffickers are getting away with less penalties despite the intention of parliament to sentence them to a maximum penalty of life imprisonment and pay a fine of twenty million shillings. Legal challenges against the sentence of life imprisonment and a fine of twenty million shillings have rendered the application of this punitive penalty against wildlife traffickers invalid. In a ruling in *Republic v. Zhan Chunsheng*²³, Justice Mbogholi at the High Court in Nairobi rendered the penalty of life imprisonment and twenty million shillings for possession of elephant ivory as in Section 92 of the Wildlife Act unconstitutional.

The unconstitutionality is specifically targeted to Section 84 and Section 92 of the Wildlife Act that deal with offences against endangered species.

²² *Republic v. George Njeru & Another, Kyuso Criminal Case 97 of 2017 (120 kilograms elephant ivory), Republic v. James Awol, Nyahururu Criminal Case 608 Of 2016 (3 kilograms of elephant ivory).*

²³ *High Court of Kenya at Nairobi, Criminal Revision 9 of 2014.*

The two provisions do not declare an offence or circumstances and activities in which an offender triggers this offence and as such cannot be used to charge a trafficker of any endangered species

This means a trafficker can get sentenced under the general penalty avoiding sanction and enhanced penalty under the harsher Section 92. This low general penalty is not a proper deterrent against high profile wildlife trafficking. There is a missed opportunity to properly sentence a wildlife trafficker of elephant ivory to more than five years imprisonment and the payment of a fine of twenty million shillings.

The Wildlife Act requires substantive review to amend the Section 92 and 84 (1) provisions related to endangered wildlife species to include offences. This is aimed to address the unconstitutionality relating to offences against endangered wildlife species to enhance sentences against wildlife traffickers. The amendment to this section must clearly define that actions that attempt to kill, injure, deal or manufacture products of an endangered species attract an enhanced penalty of up to life imprisonment or a minimum fine of twenty million shillings to ensure wildlife traffickers are brought to justice.

We reasonably conclude that the enforcement of the Wildlife Act does not provide a certain path to justice for the prosecution, conviction and sentencing of high profile wildlife traffickers.



Tracking Recommendations from Previous Reports

The Eyes In The Courtroom survey report published in 2016 made findings that exposed Kenya's ailing law enforcement response to wildlife crime. It provided recommendations to address key challenges affecting the law enforcement response to wildlife crime. Through engagement with key stakeholders, we have tracked the progress of implementation of these recommendations through the year 2016 and 2017 and report the following;

Policy and legislative reforms to target kingpins and to strengthen effectiveness of WCMA (2013) and to harmonize regional laws:

1. Ministry of Environment and Natural Resources to work with ODPP - WCPU and other law enforcement agencies, experts and donor groups to formulate and fund a national strategy to combat transnational wildlife crime and set up an inter-agency transnational task force on wildlife crime investigations and prosecutions.

Partially implemented.

There is an existing intra – agency wildlife and environmental crimes working group under the auspices of the Judicial Training Institute working towards the implementation of an inter-agency task force on wildlife and environment crime investigations and prosecutions.

2. Ministry of Environment to fast track a proposal to parliament to amend the WCMA to reflect current best practices in respect to floor vs. ceiling penalties and to operationalize Section 92. ODPP - WCPU to conduct an evaluation of the need for amendments to other laws e.g. the Anti Money Laundering Act.

Implemented.

Amendments to the WCMA are before Parliament through Statute Law (Miscellaneous Amendments) Bill, 2018.

Prosecution and law enforcement reforms to improve trial outcomes:

1. Government of Kenya to create a national investigative task force combining relevant law enforcement agencies and experts to target high-level traffickers and work closely with international teams in the region to pursue targets across borders. A hotline and rewards programmes to be introduced.

Implemented.

There is a specialized national investigative force currently in place specifically focusing on wildlife crime within DCI, KWS and KFS. Kenya is host to the Lusaka Agreement Task Force, a regional wildlife law enforcement network.

Implemented.

ODPP - WCPU currently prosecutes 99% of all wildlife offences and has progressively implemented the Standard Operating Procedures into the investigation and prosecution of wildlife crime.

2. ODPP - WCPU to apply additional legislation such as the Proceeds of Crime and Anti-Money Laundering Act as well as

the Prevention of Organized Crime Act in proceedings against dealers and traffickers.

Partially implemented.

This application of the Proceeds of Crime & Anti – Money Laundering Act, 2009 has been successfully implemented in only one case. An application under this Act resulted in the restraint of over thirty (30) million in personal assets belonging to an accused wildlife trafficker of over 5 tons of elephant ivory to Thailand and Singapore.

3. The Inspector General of Police to elevate the classification of wildlife crimes to 'serious crimes' within the principal register of CID in order to trigger fingerprint recording for all wildlife crime suspects including foreign travelers arrested in Kenyan airports.

Implemented

4. ODPP - WCPU to train relevant police prosecutors who are handling wildlife trials.

Implemented.

Police prosecutors have been progressively phased out and replaced with legal counsel from ODPP - WCPU.

5. Standard Operating Procedures to be developed to guide both the National Police Service and KWS to ensure that they work as one team with good working relations when arresting offenders, and in the handling/storage/ custody of evidence. This will help avoid conflicts where overlapping mandates exist.

Implemented.

6. ODPP - WCPU and Inspector General to work together to ensure that incompetence within the police force and prosecution of such crimes is addressed directly and, if necessary, with appropriate sanctions.

Implemented

Both ODPP - WCPU and NPS have created complaint mechanism structures that identify and address incidences of incompetence, professional negligence and abdication of duty within their agencies. ODPP - WCPU has created the ODPP - WCPU Complaint mechanism and the NPS has the Independent Police Oversight Authority (IPOA) complaints mechanism.

Judicial reforms to improve monitoring and deterrent sentencing:

1. Chief Justice to digitize court files in order to identify repeat offenders and to improve case file management.

Implementation ongoing

2. Chief Justice to share the information from digitized court files with other relevant agencies in the region.

Not implemented.

3. Chief Justice to give practice direction on sentencing specific to wildlife crime to ensure that sentences meted out are commensurate with the gravity of the offence and are consistent nationwide.

Partially implemented.

Sentencing Guidelines developed.²⁴

²⁴ Gazette Notice No. 2970



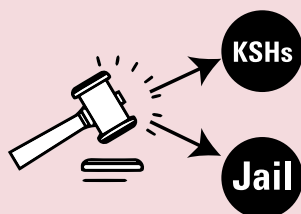
Key Report Recommendations



1
**Strategy to deal with
Illegal Grazing in
Parks**



2
**Fast tracking
negotiation of Mutual
Legal Assistance
Agreements**



3
**Review of the WCMA
to operationalize
penalty provisions**



4
**Capacity Building
of law enforcement
officers**

Office of the Director of Public Prosecutions

1. Delegation of Prosecutorial powers to KWS and KFS with harmonization of prosecution philosophy between relevant agencies.
2. Development of a national criminal justice policy to guide prosecution of wildlife crimes
3. Development of a wildlife crime offenders' database to keep track of repeat offenders
4. Building capacity of prosecutors and professional mentorship in anti – wildlife crime tools in trial advocacy, asset recovery, cybercrime prosecution and forfeiture of proceeds of crime.
5. Build mutual legal assistance agreements with destination countries of illegal wildlife products; this being, Cambodia, Laos, Thailand, China, Taiwan, Japan and Vietnam
6. Develop standard operating procedures for the recall and reinstatement of withdrawn wildlife crime cases
7. Develop standard operating procedures on the charging of subsistence and commercial bushmeat offences

8. Use of the trial in absentia prosecution especially for fugitive and absconding wildlife crime offenders.
9. Implement Standard Operating Procedures into the investigation & prosecution of wildlife offences.
10. Need to embrace diversion and plea bargain provisions as alternative dispute resolution tools
11. Development of an automated or digitized case management system for wildlife crime cases
12. Development of performance management and monitoring framework for prosecutors handling wildlife crime cases

State Department of Tourism & Wildlife

1. Review of both WCMA and FCMA to clear offending sections
2. Fast track amendments in Parliament on key wildlife offence specific laws undergoing substantive law review.
3. Formulation of an inter – ministry policy to guide the response to the illegal entry into parks with livestock.



4. Fast tracking policies and negotiations with the Ministry of Foreign Affairs and ODPP - WCPU to accelerate mutual legal assistance agreements.

Kenya Revenue Authority

1. Implementation of the export and import procedures.
2. Development of procedural requirements to scan and verify transit goods through border points
3. Streamlining and simplifying the complexity of the customs & clearance process.
4. Amend the EACCMA to upgrade the seriousness of wildlife products from just “restricted goods”.
5. Capacity building of frontline customs officials on detection of illegal wildlife products contraband.

Kenya Wildlife Service

1. Adoption of prosecution guided investigations philosophy.
2. Build the capacity of scene of crime officers involved in wildlife crime offences.
3. Boosting Forensic Investigation by increasing efficiency of the KWS Forensic laboratory
4. Building capacity of rangers and foresters in Crime Scene Management
5. Training of law enforcement on emerging anti – wildlife crime tools at respective training academies; Manyani and Kiganjo enforcement training academies
6. Fast track the gazettement of specialized scenes of crime officers.
7. Use of alternative judicial systems especially for lesser crimes and offences e.g. possession of bushmeat, entry into the park, burning vegetation
8. Formulation of an inter – agency policy to guide their intervention and response to the illegal entry with livestock in protected areas.

9. Develop guidelines and standard operating procedures into the sampling of wildlife products designated for forensic laboratory testing.
10. Fast track the building and development of a specialized prosecution unit within KFS and KWS.

Judiciary

1. Build the capacity of court interpreters
2. Implement the use of court transcribers in criminal proceedings.
3. Fast track implementation of the pre – trial case management in criminal cases
4. Build the capacity of magistrates and judges handling wildlife crime cases (targeting emerging best practice jurisprudence in wildlife crime.)
5. Clearance of existing backlog of criminal cases.
6. Development of a wildlife crime specific sentencing guideline.

National Police Service

1. Amendment of the National Police Force Standing Orders to upgrade wildlife crime offences from petty crimes to serious crimes.
2. Capacity building of officers involved in the investigation and prosecution of wildlife crime offences.
3. Capacity building of crime scene and forensic experts.

Recommendations for further research

Study of reported wildlife crime incidents that are not successfully followed up with prosecution or investigation- No national database that maintains and keeps a record of these cases.

A close-up, profile view of a rhinoceros head, showing the thick, wrinkled skin and a single, sharp, orange-brown horn. The rhino is facing right. The background is a plain, light-colored wall.

Appendixes

During the writing of this report, fifteen (15) rhinos lost their lives. Eleven died in a botched translocation from Nairobi National Park, one poached in L.Nakuru National Park and three (3) in the Meru National Park.

We will aggressively pursue the bringing to justice of all culpable!



Gender of Accused Person (Page 14)

Gender	No. of persons 2016	No. of persons 2017	%
Female	90	46	7
Male	947	875	93
Total	1037	921	100

Nationalities of Accused (Page 14)

Nationalities	No. of persons 2016	No. of persons 2017	Total	%
Kenyan	917	858	1775	90.7
Tanzanian	31	18	49	2.5
Somali	68	39	107	5.5
Chinese	11	2	13	0.7
Rwandese	0	1	1	0.1
Ethiopian	0	1	1	0.1
Ugandan	1	0	1	0.1
Malagasy	4	0	4	0.2
Mozambique	0	2	2	0.1
Vietnamese	3	0	3	0.2
Sudanese	1	0	1	0.1
Congolese	1	0	1	0.1
Total	1037	921	1958	100

Arresting Authority (Page 14)

Arresting authority	No. of persons 2016	%	No. of persons 2017	%	Total
KWS	722	69.6	613	66.6	68.2
NPS	315	30.4	308	33.4	31.8
Total	1037	100	921	100	100

Location of Arrests (Page 16)

Counties	No of arrests
Taveta County	776
Makueni County	254
Kakamega County	128
Laikipia County	112
Narok County	95
Meru County	77
Kitui County	77
Nairobi County	70
Kajiado County	60
Kilifi County	49
Northern Region Counties	39
Central Region Countries	84
Eastern Region Counties (Nyandarua, Bomet, West Pokot)	5
Western Region Counties	32
Southern Region Counties	129
Rift Region Counties	39



Species Involved (Page 17)

NO	SPECIE	SCIENTIFIC NAME	NO. INVOLVED	%	IUCN STATUS	KENYAN PROTECTION (WCMA)
1	Antelope	Hippotragus equines	1	0.2	Not assessed	Not listed
2	Baboon	Papiocynocephalus anubis	1	0.2	Not assessed	Not listed
3	Bamboo	Bambusoideae	1	0.2	Not found	Not listed
4	Buffalo	Syncerus caffer	5	1.2	LC	Not listed
5	Bush Buck	Tragelaphus scriptus	5	1.2	LC	Not listed
6	Denham's Bustard Bird	Neotis denhami	1	0.2	NT	Near threatened
7	Camel	Camelus ferus	1	0.2	CR	Not listed
8	Cape Eagle-owl	Bubo campensis	1	0.2	LC	Near threatened
9	Cheetah	Acinonyx jubatus	1	0.2	VU A2acd; C1	Endangered
10	Cobra	Naja nigricollis	1	0.2	Not assessed	Protected species
11	Mongoose	Mungos mungo	1	0.2	LC	Not listed
12	Velvet Monkey	Chlorocebus pygerythrus	1	0.2	LC	Not listed
13	Hare	Lepus microtis	3	0.7	LT	Not listed
14	Dik-dik	Madoqua guentheri	59	13.6	LC	Not listed
15	Lesser kudu	Tragelaphus imberbis	9	1.9	NT	Vulnerable
16	Guinea Fowl	Numida meleagris	2	0.5	LC	Not listed
17	Gazelle	Eudorcas thompsonii	9	2.8	NT	Not listed
18	Eland	Taurotragus oryx	5	1.9	LT	Not listed
19	Elephant	Loxodonta africana	136	31.7	VU A2a	Endangered
20	Duiker	Sylvicapra grimmia	4	0.9	LC	Not listed
21	Rabbit	Poelagus marjorita	1	0.2	LC	Not listed
22	Giraffe	Giraffa camelopardalis	19	4.5	VU A2acd	Not listed
23	Impala	Aepyceros melampus	20	4.7	LC	Not listed
24	Leopard	Panthera pardus	13	3.1	VU	Endangered
25	Lion	Panthera leo	3	0.7	VU	Endangered
26	Jackal	Canis aureus	1	0.2	LT	Not listed
27	Porcupine	Hystrix africaeaustralis	1	0.2	LC	Not listed
28	Crocodile	Crocodylus niloticus	2	0.5	LC	Not listed
29	Rock Python	Python sebae	17	3.7	Not assessed	Endangered
30	Pangolin	Smutsia gigantea	2	0.5	VU A4d	Not listed
31	Puff Adder	Bitis arietans	1	0.2	Not assessed	Protected species
32	Red Cedar	Juniperus virginiana	10	2.4	LC	Not listed



33	Rock Hyrax	Procavia capensis	1	0.2	LC	Not listed
34	Reed buck	Redunca arundinum	1	0.2	LC	Not listed
35	Rhino	Diceros bicornis	5	0.9	CR A2abcd	Critically Endangered
36	Sandalwood	Osyris lanceolata	33	7.8	Not assessed	Endangered
37	Sitatunga	Tragelaphus spekii	1	0.2	LC	Endangered
38	Hippopotamus	Hippopotamus amphibius	1	0.2	VU	Vulnerable
39	Hartebeest	Alcelaphus buselaphus	1	0.2	LC	Endangered
40	Crevice Tortoise	Malacochersus tornieri	1	0.2	VU A1bd	Threatened
41	Hawksbill Turtles	Eretmochelys imbricata	3	0.7	CR	Critically Endangered
42	Warthog	Phacochoerus africanus	7	1.6	Not assessed	Not listed
43	Water buck	Kobus ellipsiprymnus	1	0.2	LC	Not listed
44	Wilde Beast	Connochaetes taurinus	1	0.2	LC	Not listed
45	Wild pig	Phacochoerus africanus	4	0.9	LC	Not listed
46	Zebra	Equus quagga	29	6.8	NT	Not listed
47	Quail	Synoicus adansonii	1	0.2	LC	Not listed
48	Camphor	Ocotea kenyensis	1	0.2	VU	Vulnerable
			428	100%		

Types of Offences

Entry Offences (Page 19)

Offence	2016	2017	Total
Entry into NP	343	255	598
Entry into NR	24	56	80
Entry into MP	3	0	3
Residing in NP	9	4	13
TOTAL	379	315	694

Illegal Grazing (Page 19)

Offence	2016	2017	Total
Entry with Livestock into National Park	303	347	650

Extractive Activity (Page 19)

Offence	2016	2017	Total
Logging into NP	52	15	67
Logging into NR	13	34	47
Undertaking extractive activities	9	19	28
Fishing with prohibited nets	2	0	2
Possession on logging tools	2	0	2
Clearing land in NP	3	0	3
Removing forest produce	15	4	19
Cutting and removing forest produce	9	0	9
Cultivating in a protected area	4	0	4



Fishing in NP	9	0	9
Removing charcoal	1	0	1
Making charcoal	2	1	3
Setting fire in a wildlife protected area	1	0	1
Extraction of shrubs	0	1	1
Setting fire in NP	0	4	4
TOTAL	122	78	200

Bushmeat Related Offences (Page 20)

Offence	2016	2017	Total
Subsistence hunting	33	12	45
Hunting for bush meat trade	29	13	42
Possession on meat of wildlife species	165	125	290
Dealing in meat of wildlife species	5	3	8
Possession of snares	14	4	18
Conveying snares	0	16	16
Conveying hunting apparatus	0	19	19
Possession of hunting apparatus	35	15	50
Conveying uninspected meat	0	2	2
TOTAL	281	209	490

Trophy Related Offences (Page 20)

Offence	2016	2017	Total
Possession of wildlife trophy	182	154	336
Dealing in wildlife trophy	73	37	110
Keeping wildlife trophy	2	0	2
Operating as a trophy dealer	1	0	1
Killing endangered species	3	0	3
Failing to report possession of game trophies	1	0	1
Trading in specimen of wildlife species	1	0	1
Importing specimen of wild species	1	0	1
Relating to endangered species and threatened species	6	0	6
Possession of wildlife species	4	0	4
Possession of endangered species	4	1	5
Dealing with endangered species	0	3	3
Exporting illegal goods	0	7	7
Transporting wildlife trophy	0	9	9
Harvesting sandalwood	0	1	1
Deceptive packaging of goods for export	1	0	1
TOTAL	279	212	491



Other Offences (Page 20)

Offence	2016	2017	Total
Unlawfully present in Kenya	35	15	50
Unregulated tourism activities	0	1	1
Possession of firearm	2	2	4
Possession of ammunition	2	0	2
Resisting arrest	0	1	1
Possession of police uniform	2	0	2
Using resources in a wasteful manner	3	0	3
Conspiracy to commit a felony	5	0	5
Making false declarations	1	0	1
Possession of public stores	2	0	2
Killing an animal with intent to steal	5	0	5
Assault	0	2	2
Trespass upon private land	0	5	5
Obstruction	0	1	1
Attempting murder	0	1	1
TOTAL	57	28	85

Cases relating to major seizures of elephant ivory still pending before courts.

1. Republic v. Sheikh Abdulrahman & 8 others (Mombasa CR 1132 of 2015)
Seizure of 3172 kilograms in Thailand, April 25th 2015
2. Republic v. Nicholas Jefwa, Samuel Jefwa & 2 others (Mombasa CR 945 of 2015)
Seizure of 3,363 kilograms of elephant ivory in Singapore, May 16th 2015
3. Republic v. Nelson Ayoo & 4 Others (Mombasa CR 754 of 2013)
Seizure 1,833 kilograms of elephant ivory in Singapore, January 23rd, 2013.
4. Republic v. Ephantus Gitonga (Mombasa CR 2511 of 2016)
Seizure of 1097 kilograms of elephant ivory in Mombasa, December 23rd, 2016
5. Republic v. Sammy Maina (Mombasa CR 530 of 2012)
Seizure of 1500 kilograms of elephant ivory in Mombasa, December 21st, 2011
6. Republic v. Nicholas Maweu (Mombasa CR 3081 of 2013)
Seizure of 3287 kilograms of elephant ivory in Mombasa, July 8th, 2013.
7. Republic v, Falah Manzu & 6 Others (Shanzu CR 418 of 2017)
Seizure of 1000 kilograms of elephant ivory in Singapore, March 25th, 2014.
8. Republic v. Fredrick Mungule & 2 Others (Mombasa CR 225 of 2013)
Suspected 1323 kilograms of elephant ivory in HongKong, January 3rd, 2013
Export Country – Kenya / Destination - Hongkong
Suspected 3827 kilograms of elephant ivory in Mombasa, January, 14th, 2013



Failure to Bring Transnational Traffickers to Justice (Page 31)

DATE	LOCATION OF SEIZURE	POINT OF ORIGIN	TRANSIT POINTS	DESTINATION	SPECIES	WEIGHT (KGS)	TRANSPORT
2017-05-03 ¹	Malaysia	DR Congo	JKIA- Dubai – Kuala Lumpur IA	Malaysia	Pangolin	304	Air Freight
2017-03-14 ²	Vietnam	Malawi	JKIA, Hanoi Intl Airport	Vietnam	Rhino	118	Air Freight
2017-03-10 ³	Thailand	Kenya	JKIA – Bangkok Intl Airport	Vietnam	Rhino	50	Air Freight
2017-02-14 ⁴	Thailand	DRC	JKIA -Bangkok Intl Airport	Laos	Pangolin	1,066	Air Freight
2016-12-29 ⁵	Vietnam	Kenya	JKIA - Noi Bai Intl Airport	Vietnam	Rhino	50	Air Freight
2016-12-20 ⁶	Kenya	Uganda	Malaba - Port of Mombasa	Cambodia	Ivory	1,097	Sea Freight
2016-11-09 ⁷	Kenya	Cameroon	Yaounde – JKIA	Thailand	Pangolin	100	Air Freight
2016-12-06 ⁸	South Sudan	Kenya	South Sudan Intl Airport – JKIA	Egypt	Ivory	500	Air Freight
2016-10-26 ⁹	Vietnam	Kenya	Port of Mombasa - Cat Lai Port	Cambodia	Ivory	1,000	Sea Freight
2016-06-08 ¹⁰	Kenya	Guinea	Conakry Intl –JKIA	Laos	Pangolin	500	Air Freight
2016-03-14 ¹¹	Mozambique	Mozambique	Mozambique – Maputo, IA	Kenya	Rhino	76	Air Freight**
2016-03-27 ¹²	Thailand	Mozambique	Maputo, IA –JKIA – Bangkok Intl Airport	Thailand	Ivory	315	Air Freight
2016-03-29 ¹³	Kenya	Mozambique	Maputo, IA –JKIA	Thailand	Ivory	70	Air Freight

1. See full article at <http://www.telegraph.co.uk/news/2017/05/08/malaysian-authorities-seize-700kg-pangolin-scales-smuggled-africa/>; Also see <https://www.chinadailyasia.com/articles/0/95/223/1494238419472.html>

2. See full article at http://news.xinhuanet.com/english/2017-03/17/c_136136437.htm; Also see <https://news.mb.com.ph/2017/03/17/over-100-kg-of-alleged-rhino-horns-seized-at-vietnams-airport/>; Also see <https://www.vietnambreakingnews.com/2017/03/over-100kg-of-alleged-rhino-horns-seized-at-hanoi-airport/>

3. See full article at <http://www.dailymail.co.uk/wires/ap/article-4312024/Thai-customs-seizes-21-rhino-horns-worth-5-million.html>; Also see <https://www.reuters.com/article/us-thailand-rhino/thailand-seizes-rhino-horns-worth-5-million-in-biggest-haul-for-years-idUSKBN16L17Y>

4. On the Trail Edition 16, pg. 40

5. See full article at http://news.xinhuanet.com/english/2017-03/16/c_136133546.htm

6. See full article at <http://www.nation.co.ke/news/Authorities-seize-illegal-ivory-headed-for-Cambodia/1056-3493618-format-xhtml-7bk8ho/index.html>; Also see <https://www.reuters.com/article/us-kenya-ivory/kenya-seizes-nearly-two-tonnes-of-ivory-from-shipment-bound-for-cambodia-idUSKBN14B0IM>; Also see <http://www.theeastafrican.co.ke/news/Kenya-seizes-nearly-two-tonnes-of-ivory-bound-for-Cambodia/2558-3494862-w3twe4/index.html>

7. On the Trail, Edition 15, pg. 41

8. See full article at <http://www.worldbulletin.net/news/181345/ivory-bound-for-egypt-seized-in-south-sudan>

9. See full article at <http://www.nation.co.ke/news/Vietnam-seizes-one-tonne-illegal-ivory-shipment-from-Kenya/1056-3431696-qgbed3/index.html>; Also see <http://www.qatar-tribune.com/news-details/id/30720>; Also see <https://www.dawn.com/news/1292700>

10. See Full article at <http://www.kws.go.ke/content/kws-canine-unit-intercepts-500kg-pangolin-scales> Also see <https://www.standardmedia.co.ke/lifestyle/article/2000204722/kws-canine-unit-seizes-half-tonne-pangolin-scales-at-jkia>

11. See full article at <https://citizen.co.za/news/south-africa/1036372/over-76kng-of-rhino-horn-seized-in-mozambique/>; Also see http://news.xinhuanet.com/english/2016-03/15/c_135190250.htm

12. See full article at <http://www.dailymail.co.uk/wires/ap/article-3524208/Thailand-seizes-87-African-ivory-tusks-worth-800-000.html>

13. See full article at <http://www.savetheelephants.org/about-elephants-2-3-2/elephant-news-post/?detail=guinean-man-arrested-for-smuggling-african-ivory>



Court Stations and cases identified

	COURT	CASES IN 2017	CASES IN 2016	TOTAL CASES
1.	Makindu	83	69	152
2.	Voi	43	40	83
3.	Taveta	100	93	193
4.	Wundanyi	4	3	7
5.	Kajiado	9	7	16
6.	Loitokitok	10	5	15
7.	Kilifi	5	0	5
8.	Mombasa	2	1	3
9.	Nanyuki	9	20	29
10.	JKIA	3	7	10
11.	Isiolo	1	1	2
12.	Kibera	13	10	23
13.	Maralal	1	3	4
14.	Marsabit	3	0	3
15.	Karatina	1	1	2
16.	Nyeri	2	2	4
17.	Nyahururu	14	18	32
18.	Kilgoris	7	18	25
19.	Maua	14	4	18
20.	Chuka	2	2	4
21.	Kyuso	2	0	2
22.	Meru	1	4	5
23.	Mutomo	17	21	38
24.	Kakamega	21	29	50
25.	Wanguru	1	0	1
26.	Ndhiwa	1	1	2
27.	Mbita	2	1	3
28.	Eldoret	1	0	1
29.	Siakago	1	3	4
30.	Kericho	3	1	4
31.	Narok	9	11	20
32.	Kilungu	2	2	4
33.	Kithimani	5	13	18



34.	Machakos	9	12	21
35.	Nakuru	2	3	5
36.	Garissa	2	2	4
37.	Malindi	6	13	19
38.	Mariakani	8	5	13
39.	Kwale	12	10	22
40.	Shanzu	3	1	4
41.	Butali	0	14	14
42.	Hola	0	8	8
43.	Iten, Kitale, Makadara, Naivasha	0	7	7
44.	Garsen	0	5	5
45.	Githongo, Siaya	0	4	4
46..	Busia	0	3	3
47.	Thika, Lamu	0	2	2
48.	Wajir	0	4	4
49.	Bomet, Engineer, Gatundu, Gichugu, Homabay, Kapenguria, Kehancha, Keroka, Kitui, Lodwar, Mavoko, Nyamira, Webuye	0	1	1
50.	Githunguri, Limuru, Kikuyu, Kiambu, Kaloleni, Embu, Mwingi, Nkubu, Tigania, Marimanti, Moyale, Mandera, Kabarnet, Kisumu , Winam, Maseno, Nyando, Tamu, Bondo, Ukwala, Oyugis, Migori, Rongo, Ogembo, Mumias, Vihiga, Hamisi, Bungoma, Kimilili, Sirisia, Molo, Eldama Ravine, Runyenjes, Murang'a, Kangema, Kigumo, Kandara, Kerugoya, Baricho, Othaya, Mukurwe-Ini, Kapsabet, Kakuma, Sotik, Kangundo, Tawa, City Court, Milimani, Milimani Commercial, Tononoka, Ngong, Makueni, Kisii, Butere, Kianyaga	0	0	0
TOTAL		434	523	957

List of court monitors

1. Mr. Jim Karani, LL.B, LL.M Advocate of the High Court of Kenya
2. Mrs. Marion Muigai, LL.B, Advocate of the High Court of Kenya
3. Mr. Clifford Tolo, LL.B, Advocate of the High Court of Kenya
4. Ms. Mary Muthoni, LL.B, Advocate of the High Court of Kenya
5. Mr. Franklin Lagat, LL.B, Advocate of the High Court of Kenya
6. Ms. Sharon Muthoni, LL.B, Advocate of the High Court of Kenya
7. Mr. Benson Maina, LL.B, Advocate of the High Court of Kenya
8. Ms. Judy Wangari, LL.B, Advocate of the High Court of Kenya
9. Ms. Khadija Said Ali, LL.B
10. Mr. Christopher Rosana, LL.B
11. Ms. Carolyn Kaunda, LL.B
12. Mr. Leslie Olonyi, LL.B
13. Ms. Catherine Kahi, LL.B
14. Ms. Joan Njeri, LL.B





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If we do not do something to prevent it, Africa's animals, and the places in which they live, will be lost to our world, and her children, forever. Before it is too late, we need your help to lay the foundation that will preserve this precious legacy long after we are gone.

Nelson Mandela

As a country we cannot just be satisfied with catching pawns in what is a network that spans the world. Rather than sitting back and leaving our future in the hands of others let's take the fight to the kingpins who run the illegal ivory operations. Ultimately passivity when it comes to our own future costs us more than the will to stand up and fight for the conservation of our animals today.

Imani Naitore, 15
International School of Kenya

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Last year 3,000 people turned out to march with us during the Global March for Elephants and Rhinos under the clarion call of Justice for Wildlife. We must bring all traffickers to justice or our inaction will lead to the extinction of Africa's most iconic and revered wildlife species. The time for action is now.

Dr. Paula Kahumbu, OGW

WildlifeDirect is a Kenya and US registered charitable organization working to connect people to their wildlife and inspire them to value and protect them. WildlifeDirect is committed to **Justice for Wildlife** by changing minds, behavior and laws to ensure Africa's magnificent wildlife endures forever.

