

**Outcome of Court Trials
in the First Two Years of
Implementation of the
Wildlife Conservation
& Management Act, 2013**

Courtroom Monitoring Report, 2014 & 2015



Outcome of Court Trials in the First Two Years of Implementation of the Wildlife Conservation & Management Act, 2013

Courtroom Monitoring Report, 2014 & 2015

Authors

Elizabeth Gitari, Paula Kahumbu, Shamini Jayanathan, Jim Karani, Wilfred Maranga, Naomi Muliro, Kenneth Kiriimi, Leslie Olonyi, Benson Mutua, Evelyne Gathoni, Emmah Kimemia, Calvin Ondigi, Dickson Olweny, Timothy Mutambuki, Mercy Mwari, Peggy Mideva, Chris Kiarie, Janet Mwai, Andrew Halliday

Contact Person: Dr. Paula Kahumbu - paula@wildlifedirect.org

June 2016.

Acroynms

CID	Crime Investigation Department
CITES	Convention on International Trade in Endangered Species
CR	Criminal Registry
CM	Chief Magistrate
CSO	Community Service Order
CUC	Court Users Committee
JKIA	Jomo Kenyatta International Airport
JTI	Judicial Training Institute
KWS	Kenya Wildlife Service
LL.B	Bachelor of Laws
NGO	Non Governmental Organization
NPS	National Police Service
NCAJ	National Council on Administration of Justice
ODPP	Office of the Director of Public Prosecutions
SOP	Standard Operating Procedures
STE	Save The Elephants
WCMA	Wildlife Management and Conservation Act
WCPU	Wildlife Crime Prosecution Unit

Contents

Preface	6
Executive Summary	7
Introduction	9
Research Methodology	12
Findings	13
Prosecuting Authority	14
Pleas	15
Bail and Bond	15
Overall Conviction Patterns	16
Sentencing	17
Type of Crime	18
Elephant and Rhino Cases	18
Areas of Concern Revealed by Courtroom Case Studies	19
Discussion	21
Cooperation	21
Effectiveness of the New Wildlife Act	21
Outcomes in the Courts	22
Record Keeping	24
Case Management	25
Conclusions	26
Recommendations	28
Appendix 1: Law Courts Monitored in 2014 & 2015	31
Appendix 2: Legal Interns Involved in Court Monitoring, 2014 and 2015	32



of the Director of Prosecution (ODPP) and Kenya Wildlife Service (KWS) assisted in accessing other data that were used in the production of this report.

The publication of this report comes soon after the announcement that President Uhuru Kenyatta will set fire to Kenya's entire ivory stockpile, amounting to more than 105 tonnes, in a ceremony to be attended by leaders from around the world at the end of April 2016. This event will symbolize the commitment of Kenya's government—and the Kenyan people—to a zero tolerance approach towards poaching and ivory trafficking. This commitment has already borne fruit in the form of an 80% reduction in deaths of rhinos and elephants from poaching from 2012 to 2015.

Enforcement of the rule of law, above all in the law courts themselves, is key to Kenya's success in cracking down on wildlife crime. WildlifeDirect's on-going courtroom monitoring programme contributes to this success by ensuring transparency, highlighting areas where progress has been achieved, and identifying where there is still more to be done.



Preface

Prior to the creation of WildlifeDirect's *Eyes in the Courtroom* project, the trial processes for persons accused of wildlife crime were unknown to Kenyans. Our first report transformed civil society's understanding of the role of legislative and judicial processes in deterring wildlife crime. This has allowed the public to lobby more effectively for amendments to legislation and for actions to discourage law breakers. It has also provided a rich source of material for the media, enabling more accurate reporting on wildlife crime.

This is the second report by WildlifeDirect on the outcomes of wildlife trials in Kenya, covering the period 2014–2015. Data was collected by WildlifeDirect's team of legal interns, acting as courtroom monitors. This study and the production of this report were generously funded by Save the Elephants (STE). We thank the Judicial Training Institute (JTI) and the Judiciary through the Office of the Chief Justice and the Chief Registrar for their support in accessing all court records that were used in the study. The Office



Executive Summary

A study by WildlifeDirect of wildlife trials in 18 courts between 2008 and 2013 concluded that Kenya was a safe haven for wildlife criminals because of major weaknesses in the legal chain. This second study examines progress made in wildlife trials in Kenya in 2014 and 2015, after the enactment of the Wildlife Conservation and Management Act, 2013 (WCMA 2013).

In general, we are cautiously optimistic with the progress being made in Kenya on wildlife trials as a result of the implementation of reforms driven by the President, His Excellency Uhuru Kenyatta. The enactment of the WCMA in January 2014 has been complemented by improvements in law enforcement. This includes the creation of a Wildlife Crime Prosecution Unit (WCPU) in the Office of the Director of Public Prosecutions (ODPP) with 35 prosecutors.

Lawyers working as interns led by Elizabeth Gitari, Legal Affairs Manager at WildlifeDirect, gathered data on wildlife crime cases in 50 court stations in 2014 and 52 court stations in 2015. These courtroom monitors examined a total of 330 and 218 cases in 2014 and 2015, respectively, of persons charged under the WCMA 2013.

The cases reviewed include the first ever trials of persons accused of major ivory trafficking offenses. At the end of 2014, there were five cases pending at the Mombasa Magistrate's Court relating to major ivory trafficking and seizures. Two more cases were brought against high-level traffickers in 2015. However, by the end of 2015, none of these cases had been concluded. To date no high-level trafficker has been convicted and sentenced by Kenyan courts.

Record management improved significantly in 2014 and 2015 compared to the period between 2008 and 2013. We could access nearly 92% of case files in 2014 compared to the previous period when 70% of files were missing. In 2015, nearly 94% of the case files were accessed. Records show that the recently gazetted specialist WCPU took on its first cases in 2014 and initiated the majority of cases reviewed in 2015.

The proportion of accused persons pleading guilty declined from 65% in 2008–2013 to 48% in 2014 and 19% in 2015. The most likely reason for this trend is that suspects were deterred from pleading guilty by the prospect of significantly higher penalties and preferred to take their chances in trials. For those awaiting trial, requirement for bail and/or bond were considerably higher in 2014 and 2015 compared to the previous period. For the first time in Kenya, a significant number of persons accused

of wildlife crimes were denied bail or bond and held in custody while awaiting trial.

Despite the increase in not guilty pleas, overall conviction rates fell only slightly in 2014 and recovered to over 75% in 2015, similar to the period 2008–2013. The proportion of convicted persons receiving jail sentences rose from 3% in 2008–2013 to 6.5% in 2014 and 6% in 2015. Thus the overwhelming majority of convicted offenders continue to receive non-custodial sentences. Between 2014 and 2015, there was a shift towards the imposition of community service orders in preference to fines, which might reflect a continuing failure by some magistrates to view wildlife crime as a serious offence.

While the standard of case management varied considerably, in the majority of courts authorities are now upholding both the letter and the spirit of the 2013 Act. However, the increased proportion of accused persons pleading not guilty has undoubtedly put pressure on the courts and led to significantly longer trials. This not only adds to the cost of the prosecutions; it also creates opportunities for corruption, tampering of evidence, witness fatigue and absconding of accused persons.

The report highlights a number of high-profile cases that illustrate continuing causes of concern. In particular, nearly all foreigners arrested at Jomo Kenyatta International Airport (JKIA) during 2014 and 2015, mostly in transit, were able to leave the country after paying a fine. This has led to missed opportunities for Kenya to capture information on transnational criminals and to collaborate with other countries in disrupting the operations of international criminal networks and cartels. The lack

of a centralized database and biodata of convicted persons compounds this problem.

While there is no doubt that the WCMA 2013 has transformed the prosecution of wildlife crime in Kenya, the implementation of the new Act is weakened by ambiguities in the text and mistakes in cross-referencing to the schedules. Most seriously, these led to a precedent setting case, in which Section 92, which provides for exemplary penalties for crimes against endangered species, was declared ambiguous and therefore invalid.

We conclude that while much has improved since the enactment of the new law, Kenya has not achieved the desired situation, where the possibility or arrest, the certainty of a speedy trial leading to conviction and the probability of receiving a custodial sentence have a decisive deterrent effect on wildlife criminals.

To this end, the report concludes by offering a series of recommendations for policy and legislative reforms, prosecution and law enforcement reforms, judicial reforms, and outreach programmes.

Convicted persons receiving jail sentences rose from **3%** in 2008 – 2013 to **6.5%** in 2014 and **6%** in 2015

3

Introduction

Kenya is listed by the Convention on International Trade in Endangered Species (CITES) as among the world's most complicit countries in ivory trafficking and elephant poaching. A study by WildlifeDirect of wildlife trials in 18 courts between 2008 and 2013 concluded that Kenya was a safe haven for wildlife criminals because of major weaknesses in the legal chain. This second study examines the progress made in wildlife trials in Kenya in 2014 and 2015 following the enactment of new legislation and implementation of legal reforms.

The previous report highlighted several major concerns. These included lenient penalties (maximum fines of USD 500), poor case management (70% of case files were missing or lost) and ineffective prosecutions (a high proportion of cases were withdrawn or dismissed due to lack of evidence or procedural errors). Underlying all these problems was the fact that wildlife crimes in Kenya were treated as petty offences, leading to the failure to use the full force of the law in the prosecution

of wildlife criminals. We also drew attention to the role of corruption at KWS, in ports, and in courts in undermining the rule of law and damaging public confidence. We cautioned that unless wildlife crime, particularly poaching of elephants and rhinos and trafficking of ivory and rhino horn, was treated with the seriousness it deserved, two of the iconic 'big five' mammal species could soon disappear from Kenyan landscapes.

WildlifeDirect made 10 recommendations to address the challenges in the criminal justice system identified by the report. While progress towards implementing these recommendations has been mixed (see Box 1), overall the response of the Kenyan government has been encouraging.

1. Office of the Director of Public Prosecutions (ODPP) to develop and adopt Standard Operating Procedures (SOP) for wildlife crime. **Implemented in late 2014.**
2. Office of the ODPP to be responsible for charging decisions on all elephant and rhino, ivory and rhino horn cases. **Partially implemented through the creation of the Wildlife Crime Prosecution Unit (WCPU) in the ODPP. By the end of 2015, WCPU was handling the majority of all wildlife crime cases.**
3. Chief Justice to issue practise directions on bail and bond. **Partially implemented: A new bail and bond practice directive (not specific to wildlife crime) was published in March 2015.**
4. Government to authorize an independent annual stock take of ivory and rhino horn stockpiles. **Implemented.**

5. An NGO structure to support wildlife investigations and prosecutions. **Partially implemented: Though no structure exists, NGOs are now working closely with prosecutors and even watching brief on some cases.**
6. Chief Justice to fast track reforms in court registries for effective case file management with rapid call-up system. **Implemented, although work on digitizing court records is still underway.**
7. Government to empower citizens to participate in the fight against wildlife crime by encouraging them to act as independent court monitors and through a wildlife reporting hotline. **Partially implemented: NGOs are monitoring trials and are given access to documents by the ODPP and Judiciary. The Court Users Committees (CUC) actively encourage member of the public to report wildlife crimes in some areas. The KWS has launched a wildlife crime hotline.**
8. Chief Justice to assign a dedicated judge and court in each conservation area. **Partially implemented: By end of 2015 there were courts and resident judges in most conservation areas in Kenya.**
9. The National Council of the Administration of Justice (NCAJ) to adopt and implement rules for streamlining wildlife trials to achieve inter-agency cooperation and avoid unnecessary delays. **(Not implemented.)**
10. Chief Justice to issue sentencing guidelines. **Implemented in 2015**



Overall, we are cautiously optimistic about the progress being made in Kenya on wildlife trials as a result of the implementation of reforms driven by the President of the Republic of Kenya, His Excellency Uhuru Kenyatta. The President has publically prioritized wildlife conservation within the framework of the Rapid Results Initiative (RRI) on service delivery by the civil service of the Republic of Kenya.

The most significant reform in 2014 was the enactment, in January, of a new Wildlife Conservation and Management Act (WCMA 2013)¹. The law sets the penalty for crimes against endangered species (Section 92) at life imprisonment and/or a minimum fine of KSh 20 million (approximately USD 200,000); while wildlife crimes affecting other species (Section 95) are punishable by a minimum fine of KSh 1 million and/or a minimum of 5 years in jail. This improved legal framework has been complemented by improvements in law enforcement, including:

- The creation of a Wildlife Crime Prosecution Unit in the ODPP with 35 prosecutors
- Development of Standard Operating Procedures (SOP) for handling wildlife crimes
- The training of investigators, prosecutors and magistrates in wildlife law
- The recruitment of nearly 577 new rangers
- The creation of an elite Inter-Agency Anti-Poaching Unit by KWS in collaboration with the General Service Unit and Administration Police.

¹ Government of Kenya (2014) *Wildlife Conservation and Management Act, 2013*, Government Printer, Nairobi.

- The inclusion of the KWS Director General in the National Council on Administration of Justice (NCAJ)

To support these reforms, WildlifeDirect has collaborated with other NGOs and government agencies to provide training to investigators, prosecutors and judicial officers in the provisions and workings of the new Act and other relevant legislation. During 2014 and 2015, more than 20 events were held, including training courses for prosecutors, national dialogues, and conferences.

These improvements in law enforcement have contributed to a significant fall in the deaths of

elephants and rhinos from poaching since the first report was published. The latest figures indicate that death of both rhinos and elephants from poaching fell by 80% between 2012 and 2015. At a time when elephants in many parts of the continent remain under extreme pressure, this news from Kenya is an important success story.

The present report examines the effect of the new law and associated reforms by comparing trials prior to and after the enactment of the new law in January 2014 in a total of 68 courts across Kenya (see Appendix 1).



4

Research Methodology

The research methodology used in the production of this report did not differ significantly from that used in the initial baseline study conducted in 2008–2013. In 2014 and 2015 teams of courtroom monitors, lawyers working as interns led by Elizabeth Gitari, Legal Affairs Manager at WildlifeDirect, gathered wildlife crime data for cases of wildlife crime brought to court. Between January 2014 and December 2014 a team of 12 monitors gathered data in 50 court stations; between January 2015 and December 2015, 8 monitors gathered data at 52 court stations (see Appendices 1 & 2). The study targeted key conservation areas including Maasai Mara, Samburu, Tsavo, Mt Kenya, Isiolo, Laikipia, and the Coastal and Western Regions. In 2015, effort was focused particularly on areas known to be hotspots for wildlife crime.

The study involved field visits to the criminal court registries, courts, KWS offices, ODPP offices

and the National Police Service. Court officials, prosecutors, magistrates, KWS officers and the police were interviewed. Court records were also perused.

Only cases that were prosecuted under the new Act were considered for this study. The team examined how the new legislation was applied, how the rights of an accused person to a fair trial were implemented, and whether the sentences given for convicted persons were compliant with the provisions of the new law.

The data extracted from the court files included:

- Court case number
- Name(s) of accused person(s)
- Particulars of the offence as it appears on charge sheet
- Date of arrest
- Date of plea recording
- Type of plea recorded
- Name of presiding magistrate
- Name of prosecuting office/officer
- Bail and bond terms given if any.
- Sentences imposed
- If fined, whether accused paid the fine(s)



5

Findings

According to KWS records 1,430 suspects were arrested and prosecuted for various wildlife law offences in Kenya during 2014². Data in 2015 was not yet available at the time publishing this report.

Courtroom monitors examined a total of 330 and 218 cases in 2014 and 2015 respectively (Table 1). Typical cases involved one or two accused persons. While in both years the vast majority of those accused were Kenyan nationals, the number of non-Kenyan nationals charged in cases we monitored fell sharply (from 21 to 3) between 2014 and 2015. All accused were charged under the WCMA 2013; some were also charged under the Forests Act (Act No. 7 of 2005) and in one case in 2015 a charge was brought under the Meat Control Act. For the first time, one case in 2015 involving multiple defendants was prosecuted as a serious offence under the Prevention of Organized Crimes Act.

² Kenya Wildlife Service (2015) KWS Annual Report 2014. KWS, Nairobi, p 26. Available at: <http://www.kws.go.ke/downloads>

Table 1. Summary data on cases examined by WildlifeDirect's courtroom monitors in 2014 and 2015

	2014	2015
Number of cases reviewed	330	218
Number of accused persons	465	364
Average number of accused persons per case	1.41	1.67
Kenyan accused	444	361
Number (%) of foreign nationals accused	21 (4.5%)	3 (0.8%)
Number (%) of cases concluded by the end of the year	167(50.6%)	97 (44.6%)
Number (%) of accused persons whose cases were concluded	245 (52.7%)	147 (40.4%)

Access to records improved significantly between 2008–2013 and 2014. We could access nearly 92% of case files in 2014 compared to the previous period when 70% of files were missing. In 2015 we accessed nearly 94% of the case files.

The figures provide evidence of the substantial—and increasing—delays involved in bringing wildlife trials to conclusion. Of 465 persons brought to court

in trials monitored during 2014, only 245 (51%) had their cases decided by the end of the year. The delays increased significantly in 2015, when cases of only 147 (40%) out of 364 accused persons were concluded by the end of the year.

For the first time in 2014, there was evidence that high-level offenders were being brought to trial. Despite several cases arising from ivory seizures in Mombasa during the previous period 2008–2013, we could not find any case involving major ivory traffickers. At the end of 2014, there were five cases pending at the Mombasa magistrate courts relating to major ivory trafficking and seizures. A further two cases were brought against high-level traffickers in 2015. However, by the end of 2015, none of these cases had been concluded.

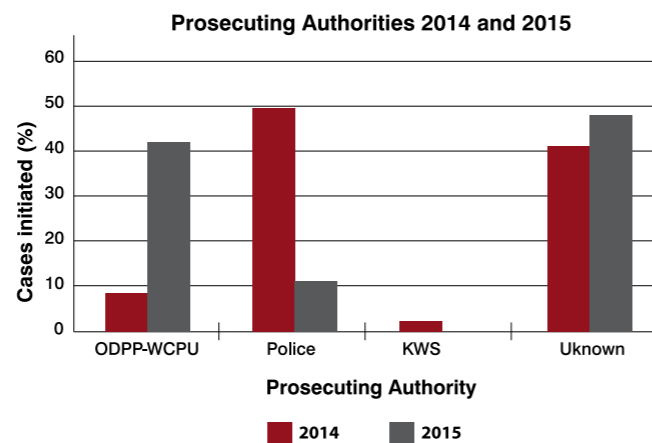
Prosecuting Authority

Based on data from 2015, responsibility for prosecuting wildlife crime in Kenya changed dramatically between 2014 and 2015. In 2014, most cases were still prosecuted by the police, while smaller numbers were prosecuted by KWS and the recently gazetted ODPP Wildlife Crime Prosecution Unit (WCPU). By 2015, WCPU was responsible for the majority of the cases where information was obtainable. This suggests that in most cases the police and KWS are routinely passing on cases to WCPU following the arrest of the suspects, as had been intended when the unit was set up. The relative proportions of cases initiated by different agencies in 2014 and 2015 are shown in Table 2 and Figure 1.

Table 2: Breakdown of cases by prosecuting authority

Prosecuting agency	No. (%) of cases 2014	No. (%) of cases in 2015
Police	161 (48.8%)	17 (8%)
ODPP	27 (8.2%)	89 (41%)
ODPP and police	2 (0.6)	6 (2.5%)
KWS	6 (1.8%)	0
Not specified / unavailable	134 (40.6%)	106 (48.5%)
TOTAL CASES	330 (100%)	218 (100%)

Figure 1: Breakdown of wildlife crime cases in Kenya in 2014 and 2015 by prosecuting authority. (Note: Police cases include 2 in 2014 and 6 in 2015 where prosecution was shared with ODPP-WCPU)



Pleas

In 2014 only 48% of persons in concluded trials pleaded guilty, compared to 65% of accused persons in all trials in the previous period 2008–2013³. The decline in the proportion of persons pleading guilty continued in 2015, when only 19% of accused persons in completed trials were recorded as pleading guilty (Table 3, Figure 2). While the larger number of cases where the plea was unknown in 2015 means that the actual proportion of guilty pleas was certainly somewhat higher, it is clear that there has been a significant increase in not guilty pleas since the introduction of the new Act.

Table 3: Breakdown of cases by plea in 2008–2013, 2014 and 2015. Note that data for 2014 and 2015 are for concluded cases, while data 2008–13 is for all cases. Of persons shown as pleading guilty in 2008–13, 36 had initially pleaded not guilty

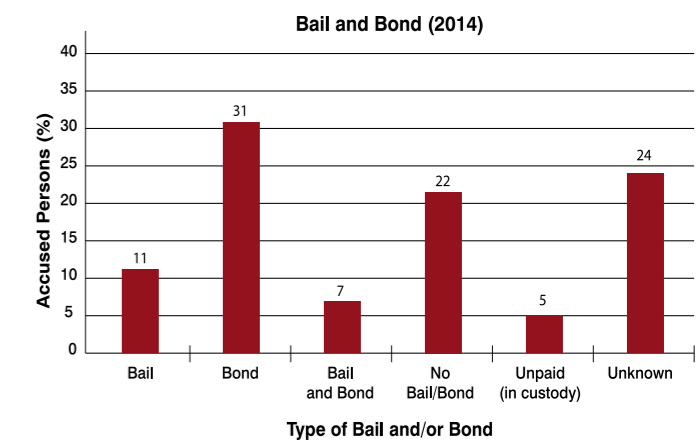
Plea	Number (%) of accused persons		
	2008–13	2014	2015
Guilty	205 (65%)	117 (48%)	28 (19%)
Not guilty	103 (21%)	118 (48%)	89 (60.5%)
Plea not documented / not known	6 (2%)	10 (4%)	30 (20.5%)
TOTAL CASES	314 (100%)	245 (100%)	147 (100%)

The most likely reason for this increase in not guilty pleas is that suspects were deterred from pleading not guilty by the prospect of significantly higher penalties and preferred to take their chances in trials. The increasingly adversarial nature of wildlife

³ Since only 27 cases reviewed in 2008–13, i.e. less than 10% of the total, were still on-going at the end of 2013, the data for this period are roughly comparable with those for 2014 and 2015.

trials in Kenya revealed by this data certainly contributed to the increasing delays in the courts, as shown by the rising proportion of cases not concluded by the end of the year (Table 1). There were 220 unconcluded trials at the end of 2014; in all on-going cases where pleas were known, suspects had pleaded not guilty.

Figure 2: Breakdown of wildlife crime cases in Kenya in 2008–2013, 2014 and 2015 by type of plea



Bail and Bond

Information on the granting of bail and/or bond is incomplete across the three study periods. In 2014, detailed information was collected on the numbers of accused persons granted bail and/or bond. A total of 230 persons (49.5%) of 465 accused persons were granted bail and/or bond which they were able to raise, while 22 (4.7%) of those granted bail or bond could not meet the terms and were remanded in custody pending trial. 102 (21.9%) accused persons were denied either bail or bond; previously this was unheard of. We could not access bail/bond information on 111 (23.9%) accused persons (Figure 3).

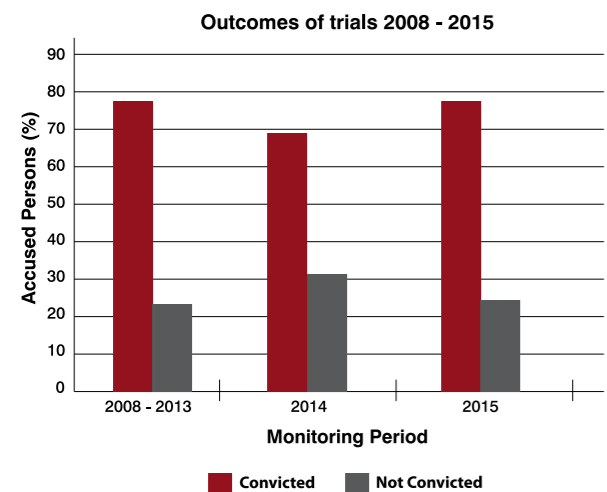
In 2015, data was collected regarding the amounts of bail and bond set for different types of wildlife crimes (Table 4). It is notable that amounts of bail

and bond were significantly higher for accused persons charged with being in possession of a wildlife trophy, as would be expected given the much higher potential financial gain from sale of trophies, compared with other illegal activities.

Table 4: Ranges of bail and bond set for persons accused of wildlife trials in 2015. Values are Kenyan Shillings (KSh 100 were equivalent to approximately USD 1.15 in 2015). n/c: no cases recorded

Type of crime	Cash bail	Bond
Possession of wildlife trophy	500,000–1,000,000	200,000–5,000,000
Illegal entry	5,000	30,000–100,000
Introducing snares	10,000	20,000–200,000
Possession of bush meat	10,000	100,000–200,000
Introducing livestock	n/c	100,000–400,000
Illegal extractive mining in a marine area	20,000	n/c
Hunting	30,000	n/c

Figure 3: Breakdown of bail and bond conditions in wildlife trials monitored in 2014



Overall Conviction Patterns

In concluded cases, the rate of convictions fell between 2008–2013 and 2014, from 79% to 69%, but rose again to 77% in 2015 (Figure 4, Table 5). Given the very large rise in the proportion of accused persons pleading not guilty in 2014 (Table 3), the decline in overall conviction rates in 2014 is not surprising. The rise in convictions in 2015 might reflect the increased proportion of cases being prosecuted, more effectively, by ODPP-WCPU.

Although not recorded directly, some indication of the numbers of convictions in cases where the accused person pleaded not guilty can be inferred from the data in Tables 3 and 5⁴. Assuming in all cases that guilty pleas were entered when shown as “not known” in Table 3, then 19, 21 and 55 persons were convicted after pleading not guilty in 2008–13, 2014 and 2015 respectively⁵. Although the data is approximate, it provides evidence of a sharp rise in convictions following a not guilty plea, and therefore of increased effectiveness of prosecutions in 2015.

Table 5: Outcomes of trials in 2008–13, 2014 and 2015

Outcome of trial	2008–2013	2014	2015
Convicted	224 (78.6%)	168 (68.6%)	113 (77%)
Acquitted	17 (6.0%)	22 (9.0%) ^b	10 (7%)

⁴ The number of persons convicted after pleading not guilty can be calculated as the total number of convictions minus those pleading guilty.

⁵ It should be stressed that these are minimum figures. In particular, in 2015, when pleas were not recorded in a large number of cases, the numbers convicted after pleading not guilty was probably significantly higher.

Outcome of trial	Number (%) of persons		
	2008–2013	2014	2015
Discharged / cases withdrawn	42 (14.7%)	52 (21.2%)	24 (16%)
Outcome unknown	4 (1.4%)	3 (1.2%)	0
Total number of persons	287 (100%)	245 (100%)	147 (100%)

Figure 4: Outcomes of wildlife crime cases in Kenya in 2008–13, 2014 and 2015. Not convicted includes a small number of cases with unknown outcomes in 2008–13 and 2014

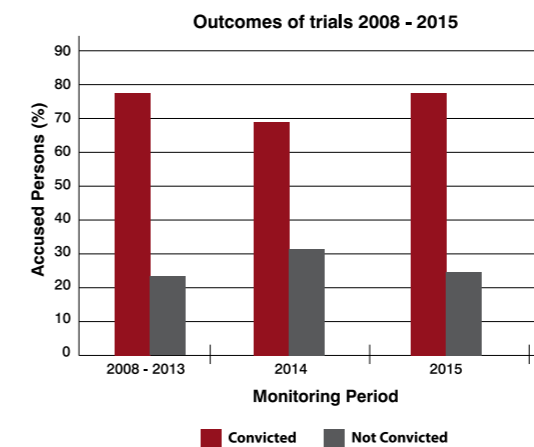
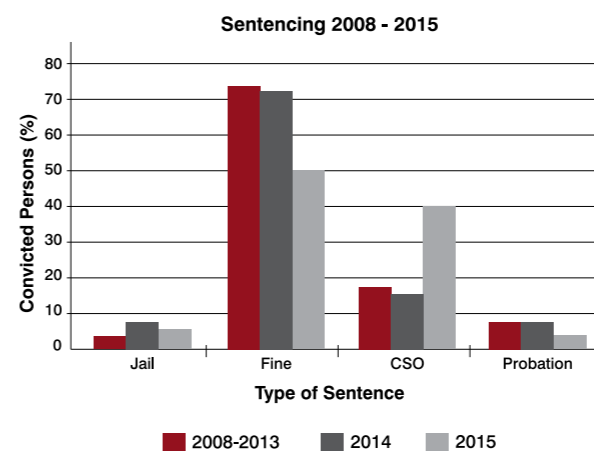


Figure 5: Sentencing of offenders convicted of wildlife crimes in 2008–2013, 2014 and 2015. CSO: Community service order. Probation includes one suspended prison sentence in the period 2008–13



Sentencing

Sentencing patterns showed some striking differences among the three monitoring periods. A total of 11 persons (6.5%) out of 168 cases for which information was available were sent to jail under the new law in 2014, compared to just 7 (3%) over the entire period 2008–2013. In 2015, 7 out of 113 persons in concluded cases were sent to jail, representing a similar proportion (6%) of concluded cases. In 2014 the vast majority of those convicted were sentenced to fines, with imprisonment if the fine was not paid. In 2015 there was evidence of growing preference for community service orders (CSOs) over fines; this was the most notable change between 2014 and 2015 (Table 6, Figure 5).

Thus while the percentage of offenders receiving custodial sentences rose following the passing of the new Act, the overwhelming majority of convicted offenders continue to receive non-custodial sentences, including community service, probation and fines. One reason for the low number of custodial sentences was the—possibly surprising—ability of convicts to pay the minimum fine of KSh 1 million. It should also be borne in mind that cases where the accused faced jail sentences were more likely to be unconcluded at the end of the year.

The increasing use of CSOs may reflect increasing awareness by magistrates of the pressures on the prison system in Kenya. On the other hand, it may reflect a continuing failure by some magistrates to view wildlife crime as a serious offence. Feedback from the judiciary on this change has not been ascertained and so the authors cannot say for certain.

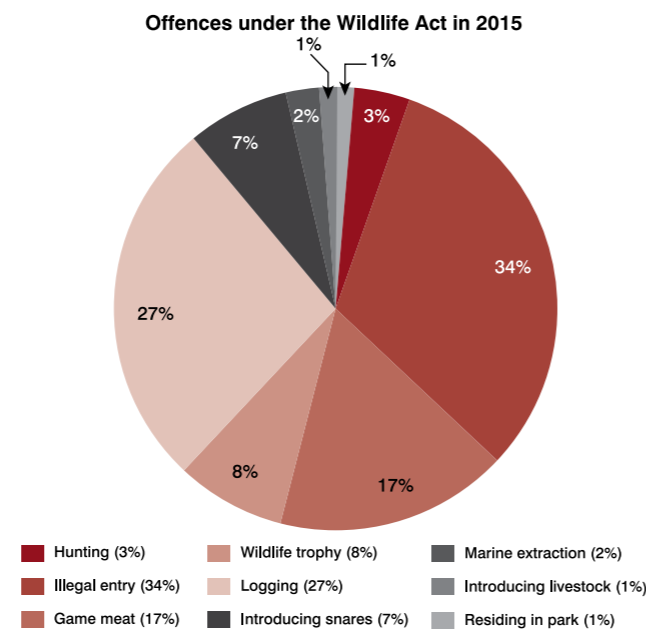
Table 6: Sentencing of accused persons found guilty of wildlife crimes 2008–13, 2014 and 2015

Sentence type	Number (%) of persons		
	2008–2013	2014	2015
Jail	7 (3%)	11 (6.5%)	7 (6%)
Fine (with imprisonment if the fine is not paid)	165 (74%)	120 (71.5%)	57 (50.5%)
Community service	39 (17%)	27 (16.1%)	45 (40%)
Probation	12 (5.5%)	10 (6%)	4 (3.5%)
Suspended prison sentence	1 (0.5%)	-	-
Total number of persons	224 (100%)	168 (100%)	113 (100%)

Type of Crime

Data on the types of crime are not directly comparable among the three periods monitored. Analysis of concluded cases in 2015 reveals that not all wildlife crimes involve animal species and products (Figure 6). It is notable that a large proportion of offences relate to illegal entry into protected areas and logging. On the other hand, there are very few prosecutions for introducing livestock into protected areas, although this illegal practice is known to be extremely widespread in around the country. However, preliminary data from the first quarter of 2016 reveals a possible increase in this number. For instance, in Makindu law courts, monitors have recorded cases involving about 100 accused persons charged with introducing livestock in a protected area.

Figure 6: Composition of offences in wildlife trials concluded in 2015



Crimes targeting wild animals involved a wide variety of species. Elephants and rhinos are killed by poachers for their horns and tusks, with recorded crimes involving elephants vastly outnumbering those involving rhinos. Offences involving wildlife meat (killing, possession and trading) mainly targeted a variety of ungulates, including dik-dik, hartebeest, warthog, wildebeest, giraffe, zebra, and kudu. Feline predators, including lion, leopard, serval cats and cheetah are killed for their teeth, skin and claws, while the illegal trade in reptiles and birds involves live animals, snake skins and birds' eggs.

Elephant and Rhino Cases

Data on the proportion of cases involving elephants and rhinos is not comparable across the three periods. The proportion of *offenders* charged with elephant and rhino related offences fell from 38.2% (120 out of 314 accused persons) to 33.5% in 2014 (156 out of 465 accused persons). The proportion

of elephant and rhino related cases remained stable between 2014 and 2015, when they represented 88 out of 330 cases (26.7%) and 57 out of 218 cases (26.1%), respectively. In all years the vast majority of these cases involved elephants, with just a handful involving rhinos. A notable statistic from 2015 is that of the 57 cases initiated, only 6 had been concluded by the end of the year. This is an indication of the seriousness of the crimes involved, leading to long drawn out trials.

In 2014, there were a total of 88 elephant and rhino cases out of the 330 cases, representing 156 accused persons out of the total 465. Of the 88 cases, 87 were elephant related (99%). Almost all (97%) of these cases represented possession⁶ and trafficking⁷ offences, compared to only 3% that represented poaching⁸. Presumably this is because poachers were generally identified through their possession of wildlife trophies and were therefore charged under the latter offence.

Of the 88 cases, 44 were prosecuted by the police, 15 by the ODPP-WCPU and 6 by the KWS; in the other cases (23) the prosecuting agency was not known. This data indicates that, in 2014, WCPU was still only taking on a minority of elephant and rhinos related cases. Almost all those accused pleaded not guilty: 141 out of 156 accused persons pleaded not guilty (90.1%) while only 4 pleaded guilty (2.6%). Pleas were not recorded in 11 cases (7.1%). The very large proportion of not guilty pleas most likely reflects the perception of accused persons that

6 Possession is the state of owning, having or controlling ivory

7 Trafficking is the illegal business of commercial transportation of ivory by land, sea and air. In the previous report, we referred to small time traffickers of less than 5 tusks as poachers

8 Poaching is the illegal killing of wildlife

they were likely to be sent to jail if found guilty of these serious crimes.

In 2015, courtroom monitors gathered information on a total of 57 cases dealing with elephants and rhinos, of which all but one involved elephants and/or ivory. The value of ivory in these cases ranged from KSh 7,000 for an ivory ornament to elephant tusks worth KSh 382 million.

Of these 57 cases in 2015, 50 were still pending at the end of the year; while 6 cases involving 8 offenders had been concluded. Of these 8 offenders 2 were foreigners and 6 were Kenyan citizens. All the offenders pleaded not guilty. Following trial, 7 of the offenders were convicted and 1 was acquitted. Those convicted were given fines of KSh 1 million or, on non-payment of the fine, jail sentences ranging from 3 to 5 years. For those pending cases the bail/bond granted ranged from KSh 50,000 to 3 million.

Areas of Concern Revealed By Courtroom Case Studies

Although some challenges have been addressed by the enactment of the new legislation, a number of concerns remain. These are highlighted by the selection of case studies presented below and relate to deficiencies in both the formulation and application of the WCMA, 2013.

- Republic versus Feisal Mohamed Ali in (Cm.Cr.C.No 1098/2014). This landmark case followed the seizure of 2 tonnes of ivory at Fuji Motors car yard in Mombasa in June 2014. Among the 6 suspects arrested was the suspected ivory kingpin Feisal Mohamed Ali. However, he was able to escape shortly after being arrested. Following a campaign by WildlifeDirect

and other NGOs, the Kenyan government requested Interpol to issue a red notice alert⁹, leading to his recapture in Tanzania in December. At the time of writing he remains in custody in Kenya, as the trial continues. This ground-breaking intervention by Interpol, leading to the first ever detention of a suspected high-level trafficker, represents a huge step forward. However the case has been dogged by recurrent delays caused by loss of vital evidence and procedural irregularities.

- Republic versus Henry Thurairaja Mabraki (Cm.Cr.C.No 701/2014) in Nanyuki law courts. In this case a rhino horn exhibit went missing after being adduced in court as evidence. The accused in this case was charged with being in possession of 3 wildlife trophies and five rounds of ammunition. He was fined KSh 1 million with five months' imprisonment in default for the first offence and five years' imprisonment for the second count.
- Republic versus Gao Gung Jian, Wang Tao and Mark Joseph (Cm.Cr.C.No 2681/14) in Kibera law courts. The two Chinese nationals were deported back to China before their case was heard and determined. Wang Tao and Gao Gung had been charged with possession of ivory and would have faced life imprisonment or a fine of KSh 20 million.
- Republic versus Kenneth Kamau Maina and Nfaly Doukoure (Cm.Cr.C.No 1673/2014) in Kibera law courts. The Guinean national, Nfaly Doukoure, was arrested following the recovery of about 1 tonne of ivory hidden in

a water tanker and charged with dealing in a wildlife trophy. However he was deported back to Guinea before his case was determined.

- Republic versus David Marunchu and Justus Kimanathi (CR 1760/14) in Thika. The two accused persons are members of the National Police Service and were intercepted on the Thika highway by fellow National Police Service officers following a tip-off by KWS officers. The case is still proceeding in Thika law courts and the accused, despite being police officers, were released on bond by the court. Further, we could not find any evidence of on-going disciplinary actions by the National Police Service Commission.
- Republic versus Nelson Ayoo and another (CR 754/2013) in Mombasa law courts. In this case involving 3 tonnes of ivory, one witness, Jacob Musa, is an accused person in other cases and yet is out on bond despite the circumstances.



⁹ The highest and most serious alert in the Interpol alert system

6

Discussion

Cooperation

The accuracy and completeness of the data presented in this report depends to a large extent on the cooperation of the law courts, prosecuting agencies and completeness of the information entered in the court files. The court registries were generally willing to assist us in the study being carried out. In 2015, law courts in Butali, Chuka, Embu, Kilgoris, Nakuru, Karatina, Naivasha, Maua, Makadara, Kwale, Makindu, Malindi, Mariakani and Voi were immensely cooperative. The ODPP teams in the following stations were also very helpful: Garsen, Mombasa, Narok, Makindu, Nakuru and Nyahururu.

We wish to record our gratitude to the above mentioned teams and to everyone else who has collaborated with our work over the past two years.

Effectiveness of the New Wildlife Act

This report reveals how the new law and legal reforms have impacted on outcomes in wildlife trials in Kenya by comparing court outcomes prior to the new law and the outcomes of court trials under the new law. While there is no doubt that the new Act has transformed the prosecution of wildlife crime in Kenya, we remain concerned that the new law is still inadequate to effectively address wildlife crimes, in particular due to ambiguities in the text and mistakes in cross-referencing to the schedules.

Most seriously, in a precedent setting case, the use of Section 92 relating to crimes against endangered species was declared ambiguous and therefore invalid¹⁰. This effectively removed the option for prosecutors to press for maximum penalties in elephant and rhino related cases.

It is encouraging that suspected high-level traffickers are now being arrested and charged in Kenyan courts. However, at present, prosecutors have to charge suspects in these cases with crimes against non-endangered species under Section 95¹¹ and add the 'penalty enhancing' provision under Section 92 in an effort to circumvent this lacunae. Otherwise Section 95 offences incur a minimum fine

¹⁰ High Court Criminal revision number 9 of 2014, Zhang Chunseng versus Republic in Milimani Court, Nairobi.

¹¹ Section 95 of the Wildlife Conservation and Management Act 2013 reads "Any person who keeps or is found in Possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item from a trophy without a permit issued under this Act or exempted in accordance with any other provision of this Act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine."

of KSh 1 million (compared to KSh 20 million under Section 92). This is a sum that most offenders—and certainly all high-level traffickers—can afford to pay. At the time of writing, amendments have been drafted to address this problem but no progress has yet been made towards seeing the passage of those changes through Parliament.

One way around this problem would be to charge suspected wildlife traffickers under additional legislation which includes provision for harsher penalties. Indeed, a key recommendation of the report covering the period 2008–2013 was that the ODPP's team of prosecutors should apply charges from other legislation, including but not limited to Proceeds of Crime and Anti-money Laundering Act (2010), Prevention of Organized Crime Act (2010) and the Anti-Corruption and Economic Crimes Act (2010). Ancillary orders such as property tracing and asset freezing are not available under the WCMA (2013). However, the Act does allow for forfeiture of any property used in the commission of a crime.

In 2014, there were no cases where additional charges such as economic or organized crime were brought against persons accused under the 2013 Wildlife Act. However, in 2015, ODPP took the landmark decision to charge 6 accused persons in Mombasa law courts with participation in organized criminal activity and exporting restricted goods in addition to charges of dealing in wildlife trophies¹².

On the other hand we were concerned in 2014 that numerous visitors to Kenya risk being arrested and charged under Section 95 for possession of trinkets and memorabilia (made from domestic animals or common wild species) purchased in local markets.

.....
¹² Republic Versus Abdulrahman Abdul Sheikh and 8 others. Criminal Case Number 1132/2015; Mombasa law courts.

Overenthusiastic application of the new law could put Kenya's tourism industry at risk. Judging by the very low numbers of foreign nationals appearing in court charged with offences under the 2013 Act in 2015 (see Table 1), we may surmise that this anomaly has been resolved. However, as further mentioned below, this lack of foreign nationals appearing before the courts is also a cause for concern at the end of 2015.

Outcomes in the Courts

Under the old Wildlife Act, maximum financial penalties were very low (KSh 40,000), while maximum jail sentences of 10 years could be applied. These maximum sentences were rarely used. This had many consequences in courtrooms including a high rate of guilty pleas by offenders and, consequently, a high rate of conviction.

There are two reasons why accused persons brought to court charged with wildlife crimes now face higher penalties than before. Firstly, minimum penalties are much higher under the new law (even in the current circumstances when the more severe Section 92 is inapplicable). Secondly, the government is taking elephant and rhino poaching as well as ivory and rhino horn trafficking crimes much more seriously. As a result of improved cooperation among law enforcement agencies, an increased number of cases are coming to court relating to these two species, usually involving trafficking offences.

The prospect of harsher penalties has resulted in a progressively lower rate of guilty pleas, with most offenders in 2014 electing to plead not guilty and take their chances in the courts. Bail and bond terms have also risen significantly to reflect the seriousness of the crimes, and a number of

offenders have been denied bail or bond due to the risk of flight and/or interference with witnesses.

Despite the larger proportion of accused persons electing to go to trial, data from our courtroom monitoring programme indicates that the effect on overall conviction rates was small (Table 5, Figure 4). The rate of convictions fell slightly in 2014 but recovered to near previous levels in 2015.

Reports produced by prosecuting agencies, i.e. KWS and ODPP-WPCU, suggest that their respective success rates were very different. In February 2015, KWS reported that it had successfully secured convictions in 51 of the 306 cases handled by its officers under the provisions of the new law in the previous year¹³. It is possible that a large number of the remaining cases were still underway in February 2015; therefore, without further information, it is not possible to calculate the conviction rate in KWS-led prosecutions. However, it is almost certainly significantly lower than the 96% conviction rate reported by ODPP for its Wildlife Crime Prosecution Unit, which secured convictions in 57 of the 59 cases that it prosecuted in 2014¹⁴.

This data from KWS and ODPP appear to underline the importance of professional competence and training of prosecutors in order to secure convictions in wildlife trials. However, further research is required to determine the reasons for apparent

.....
¹³ Kenya Wildlife Service. February 2015. KWS Statement on Status of Wildlife Conservation in Kenya KWS website <http://www.kws.go.ke/content/press-statement-5th-feb-2015> Accessed on 30th August 2015

¹⁴ Office of the Director of Public Prosecutions. June 2014. Second Progress Report. ODPP website http://beta.odpp.go.ke/index.php?option=com_content&view=article&id=162&Itemid=544 Accessed on 9th September 2015

discrepancies between our courtroom findings for 2014 and these official figures. In particular, the large number of cases reported by KWS is at odds with our findings that KWS prosecuted very few of the cases reviewed by the courtroom monitors. One reason for this discrepancy could be that KWS data for 2014 included cases initiated by their officials and subsequently handed over to other agencies.

Further analysis will also be required of the data for 2015 from WCPU when it becomes available. In particular this should enable us to confirm as suggested by our data the rising number of convictions in adversarial trials (i.e. where a not guilty plea is entered).

Courtroom monitoring data reveals that, in cases of conviction, the percentage of offenders being sent to jail without the option of a fine increased from 3% in 2013, to 6.5% in 2014 and 6% in 2015 (Table 6, Figure 5). However, the vast majority of convicted offenders continue to receive non-custodial sentences, for reasons discussed above. The fact that offenders can elect to pay fines to avoid going to jail, even in the most serious cases, undoubtedly weakens the deterrent effect of the new Act.

The increased imposition of CSOs in preference to fines in 2015 is a development that merits further research in 2016. Recently published sentencing guidelines state that CSOs are “underutilized” by Kenyan courts¹⁵. If CSOs are being imposed on those convicted of minor offences under the WCMA their use could be considered appropriate. However CSOs would clearly not be an appropriate sentence in cases involving elephants, rhinos and other endangered species.

.....
¹⁵ Republic of Kenya: The Judiciary (n.d.) Sentencing policy guidelines, p 22. Available at <http://kenyalaw.org/kenyalawblog/sentencing-policy-guidelines/>

A particular cause for concern in 2014 was that nearly all foreigners arrested under Section 95 of the Act at Jomo Kenyatta International Airport (JKIA), mostly in transit, pleaded guilty and paid the fine of KSh 1 million before leaving the country. For instance, in Makadara court in January 2014, a Chinese national, Tang Wong Jian, was fined KSh 20 million or 7 years imprisonment in lieu of smuggling 3.4 kg of ivory while on transit from Mozambique to China via Kenya. However, he has since paid his fine and been released. Another Chinese national, Wang Ndeyu, charged in Kibera court with possession of one worked ivory bangle and six worked ivory pendants, was able to leave Kenya after paying a fine of KSh 1 million.

These and other similar cases have led to missed opportunities for Kenya to capture information on transnational criminals and to collaborate with other countries in disrupting the operations of international criminal networks and cartels. Kenya needs to treat these offenders as serious criminals who are potentially part of international criminal networks, taking all biodata and coordinating investigations with prosecutors in their countries of origin.

In 2015, very few foreigners appeared in Kenyan courts charged under the 2013 Act. While it is to be hoped that part of this decrease is a result of the deterrent effect of the much harsher penalties under the new Act, the very low numbers of foreign nationals appearing in cases recorded by our court monitors in 2015 (see Table 1) is curious. It is another development we shall be studying closely in 2016.

Record Keeping

While case management has significantly improved overall, prosecutions are still being hampered by

procedural errors and inconsistencies. Despite the fact that we could access more than 90% of the files in the court registries, in 2014 and 2015 (compared to less than 30% in 2008–2013), the files were often incomplete and lacking critical information. For instance, in 2014, in 18% of the files the prosecuting authority was not directly indicated, while 10% of the pleas of offenders were not documented and we were also unable to access bail and bond information on more than 100 accused persons.

In all the magistrate courts we visited, there were no court transcribers and magistrates were forced to write out the proceedings of the trials themselves by hand. Many of their texts were illegible. This in turn made perusal of the file impossible to the general public since one cannot tell what the documented trial proceedings indicate.

Nonetheless, some court stations had proper and efficient record keeping methods. For example, Malindi, Naivasha, Garsen, Chuka and Maua Law Courts had good record keeping. Files were easily accessible and traceable. Makadara and Machakos Law Courts have commendably embraced the use of IT which made it much easier to trace case information.

At a national level, it is unfortunate that there is no list of wildlife crime offenders, hence making it almost difficult to detect repeat offenders.

Case Management

Overall the standard of case management varied considerably among courts. In the majority of courts, authorities are now respecting both the letter and the spirit of the 2013 Act. However a few courts are still treating wildlife crimes as petty offences and as a result they are too lenient when granting bail and bond and imposing sentences.

The increased proportion of accused persons pleading not guilty has undoubtedly put pressure on the courts and led to lengthy trials. In 2014 and 2015, 50% and 60% of cases, respectively, initiated during the year were still on-going at the end of year. In other words, the duration of trials in 2014 and 2015 was significantly longer than in the previous period. Unfortunately, the culture of adjournments in Kenyan courts continues to affect wildlife crime cases, possibly even more so than before. Our records also reveal frequent changes of magistrates presiding over these cases.

These procedural deficiencies not only add significantly to the length and cost of the prosecutions; they also create additional opportunities for corruption, tampering of evidence, witness fatigue and absconding of accused persons. As evidenced by the cases reviewed above, corruption continues to undermine the criminal trial process and is often masked as incompetence or disorganisation. In particular, a more robust approach to 'low level' corruption within the police and judicial system is vital to ensure that prosecutions of high level traffickers are not undermined at the last hurdle of the criminal justice pathway.

The enhanced role of ODPP's Wildlife Crime Prosecution Unit (WCPU) in 2015 is a promising development. While ODPP reported an impressive 96% conviction rate in the 59 wildlife crime cases that it prosecuted in 2014, it was still handling only a small proportion of cases, including those involving endangered species that WCPU was specifically created to handle. In 2014, the bulk of these and other prosecutions were still being initiated by police prosecutors, who had not benefited from on-going training programmes in handling wildlife crime cases. As reported above, the proportion

of all cases handled by ODPP in 2015 appears to have increased considerably. The publication of ODPP's own data for 2015 will no doubt allow firmer conclusions to be drawn about the extent to which progress has been achieved.





Conclusions

Kenya stands apart in Africa with enactment of new legislation and the introduction of many legal reforms as well as the significant decline of poaching in the study period. The deterrence of wildlife crime in Kenya can be linked to a number of factors. First, anecdotal evidence suggests there has been an increased rate of detection of offenders, resulting from enhanced anti-poaching effort on the ground and improved cooperation between KWS and other law enforcement agencies, including trans-border cooperation.¹⁶ Secondly, thanks to training programmes and the creation of a specialized wildlife crime prosecution unit, trial procedures have improved, including the imposition of much more stringent bail and bond terms. Finally, the probability of convictions leading to serious penalties and jail has increased significantly.

In particular, the arrest suspected high level traffickers for the first time in Kenya, their prosecution

.....
¹⁶ Kenya Wildlife Service (2015) KWS Annual Report 2014. KWS, Nairobi, p 28

for serious crimes that carry a long jail sentence, and continued detention while on trial has sent a very strong deterrent message.

Fewer offenders pleaded guilty in 2014 compared to the period 2008–2013, and fewer still pleaded guilty in 2015. This is an indication that accused persons are more cognizant of the minimum penalties and realise that a conviction following a guilty plea will expose them to serious penalties of up to life imprisonment or fines of up to KSh 20 million. As a consequence, larger numbers of cases are now going to trial. This was predicted at the outset, when the new legislation was passed, and was the reason why strong reservations were expressed about the proposed high minimum penalties prior to enactment of the WCMA 2013. With a court backlog of hundreds of thousands of cases, and a system of endemic delay already present in the magistrate court system, this is a serious cause for concern.

Justice delayed is justice denied and with no benefit from a guilty plea by way of reduction in sentence, accused persons have little choice but to plead not guilty and hope that failures in investigation, multiple adjournments and continuing inefficiency and low level corruption in the court system will enable them to secure an acquittal. It is of particular concern that, at the time of writing, none of the prosecutions against suspected high-level traffickers initiated in 2014 and 2015 has yet been concluded. To date no high-level trafficker has been convicted and sentenced by Kenyan courts.

Despite these concerns, the effectiveness of prosecutions has improved in terms of correct charging decisions and evidence handling, and the significant increase in bail and bond terms. Most importantly, despite the steady increase in not guilty

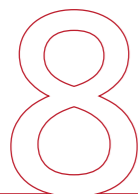
pleas, the overall rate of conviction has recovered to previous levels after a dip in 2014. While some courts continue to treat wildlife crime as a petty offence, the increasing involvement of the ODPP's Wildlife Crime Prosecution Unit, especially since the start of 2015, should ensure that an increasing proportion of offenders are prosecuted with the full force of the law.

Although the proportion of jail sentences increased from 3% in 2008–2013 to 6.5% in 2014, and 6% 2015 to 6%, punishments for wildlife crime are still too lenient given that the crimes of these offenders threaten the wildlife heritage and economy of Kenya. The ability of offenders to pay hefty fines is

suggestive of the level of organized crime involved, and unless jail sentences are imposed the desired deterrent effect will not be felt.

We conclude that while much has improved since the enactment of the new law, Kenya has not reached the desired situation, where the possibility or arrest, the certainty of a speedy trial leading to conviction and the probability of receiving a custodial sentence has a decisive deterrent effect on wildlife criminals.





Recommendations

- **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 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.
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 to conduct an evaluation of the need for amendments to other laws e.g. the Anti-Money Laundering Act.

3. Ministry of Environment and Natural Resources to lobby East African parliaments to implement East African Legislative Assembly resolutions to harmonize laws and penalties in the region.

- **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.
2. The ODPP to lead all investigations into major wildlife trafficking cases to ensure that SOP are followed and guidelines of the Rapid Reference Guide applied so that all evidence gathered in the investigations is admissible in court and has probative value.
3. ODPP 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.
4. ODPP anti-corruption team to initiate and lead investigations of corruption within the police and judicial system.
5. 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 travellers arrested in Kenyan airports.

6. ODPP to train relevant police prosecutors who are handling wildlife trials.
7. 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.
8. ODPP 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.

- **Judicial reforms** to improve monitoring and deterrent sentencing:

1. The Judiciary through the Office of the Chief Justice to create a publicly available offenders list and link all foreign nationals arrested in respect or convicted of wildlife crime to the national 'no-flier' list and circulate the same to all airlines operating in the country.
2. The Office of the Chief Registrar of the Judiciary to create a separate register for wildlife crime in the court registry system to make it easier to access these cases and minimize the rate of files getting lost.
3. Chief Justice to digitize court files in order to identify repeat offenders and to improve case file management.

4. Chief Justice to share the information from digitized court files with other relevant agencies in the region.
5. 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. This will require buy-in from the High Court to ensure that appeal decisions uphold, rather than undermine, efforts in this arena.

- **National and international outreach** to create awareness and improve efficiency through cooperation:

1. KWS to utilize existing citizen participation structures within the judiciary such as the Court Users Committees to create awareness among the general public on wildlife conservation and wildlife crime reporting.
2. KWS to meet regularly with NGOs and donor groups in order to improve understanding of each group's activities, coordinate their efforts, and make effective use of resources to improve enforcement efforts on the ground.
3. The Ministry of Environment and KWS to work with NGOs to conduct major awareness and outreach campaigns targeting visitors to Kenya at all borders, ports and international airports. The campaigns should inform visitors about the new legislation and its implications, in order to reduce demand for illegal wildlife products and attract whistle blowers.

4. KWS to strengthen relations with effective law enforcement entities in neighbouring countries to address cross border incursions.
5. The Ministry of Foreign Affairs to initiate dialogue with source, transit and demand countries to cooperate on investigations, and to support convictions.

6. The Ministry of Devolution and Planning to work with NGOs and County governments and the local media to create public awareness about the new law and its implications.

Any judicial process is no stronger than its weakest link. In many cases, the weakest link in the system is a low-level official, out of the public spotlight, who is easiest to corrupt. Complex cases, prepared at huge cost, can easily flounder in a mire of petty corruption that manifests itself in lost evidence, arbitrary decisions in the courtroom, mislabeled files or “innocent errors” on charge sheets.

There is little point in launching large-scale investigations against high-level criminals as long as low-level officers are able to compromise the cases with impunity.

~ **Shamini Jayanathan**

Appendix 1: Law Courts Monitored in 2014 & 2015

Court name	2014	2015
Bomet	1	1
Bungoma	1	1
Busia	1	1
Butali	1	1
Chuka		1
Eldama Ravine		1
Eldoret	1	1
Embu		1
Garissa	1	
Garsen	1	1
Gatundu	1	1
Githunguri	1	
Homabay	1	1
Isiolo		1
Iten	1	1
Kabarnet	1	1
Kajiado	1	1
Kakamega	1	1
Kandara	1	
Kangema	1	
Kapsabet	1	
Karatina		1
Kenhancha	1	
Kericho	1	1
Kiambu	1	1
Kibera	1	1
Kigumo	1	
Kikuyu	1	1
Kilgoris	1	1
Kilifi	1	1
Kisii	1	1

Court name	2014	2015
Kithimani		1
Kitui		1
Kitale	1	1
Kwale		1
Lamu		1
Limuru	1	1
Machakos	1	1
Makadara	1	1
Makindu	1	1
Malaba	1	
Malindi		1
Mariakani	1	1
Maseno	1	
Maua		1
Meru		1
Milimani	1	
Molo		1
Mombasa	1	1
Mukurweini	1	
Murang'a	1	
Naivasha	1	1
Nakuru	1	1
Nanyuki	1	1
Narok	1	1
Ndwiwa	1	
Nyahururu	1	1
Nyamira		1
Nyeri		1
Othaya	1	
Runyenjes		1
Siakago		1
Siaya	1	1
Taita	1	
Taveta		1
Thika	1	1
Voi	1	1
Wundanyi	1	
YEAR TOTAL	50	52


Appendix 2: Legal Interns Involved in Court Monitoring, 2014 and 2015

LAWYERS	QUALIFICATION
Jim Karani	LL.B, Kenya School of Law, LLM (ongoing)
Wilfred Maranga	LL.B, Kenya School of Law
Naomi Muliro	LL.B, Kenya School of Law
Kenneth Kirimi	LL.B, Kenya School of Law
Leslie Olonyi	LL.B, AciArb.
Benson Mutua	LL.B
Evelyne Gathoni	LL.B
Emmah Kimemia	LL.B
Calvin Ondigi	LL.B
Dickson Olweny	LL.B
Timothy Mutambuki	LL.B
Mercy Mwari	LL.B
Peggy Mideva	LL.B
CHINA LIAISON OFFICERS	
Christopher Kiarie	
Janet Njeri Mwai	

THE PRICE OF IVORY IS LIFE IMPRISONMENT



**HANDS OFF
OUR ELEPHANTS**



My fellow Kenyans, poaching and the destruction of our environment has no future in this country. The responsibility to protect our environment belongs not just to the Government, but to each and every one of us.

~ President Uhuru Kenyatta

WildlifeDirect is a Kenya and US registered charitable organization founded by Richard Leakey and Chaired in Kenya by Senior Advocate and former Director of Public Prosecutions, Philip Murgor. WildlifeDirect is committed to **Justice for Wildlife** by changing minds, behavior and laws to ensure Africa's magnificent wildlife endures forever.

