AN ASSESSMENT OF THE ROLE OF PROSECUTION AUTHORITIES IN COMBATING POACHING AND WILDLIFE TRAFFICKING IN KENYA

BY

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DECLARATION

This thesis is my original work and has not been presented for a degree in any other University.

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To all my friends and family, this would not have been possible without you. It is said that your network is your net worth. I count myself among the wealthy, because you have been the reason for my high net worth. I thank you all.

DEDICATION

To all those who have given their life to protecting our wildlife, so that future generations may see an elephant and a rhino; and not rely on our stories of these beautiful creatures.

ABSTRACT

This study assesses of the role of robust prosecution as a tool for addressing poaching and wildlife trafficking in Kenya. This study argues that prosecution in Kenya inadequately contributes to addressing the problem of poaching and wildlife trafficking in the country. Based on deterrence theory, it is viewed that effective prosecution, as an indicative factor of effective implementation of criminal law, should have a deterrent effect on would-be offenders. However, this study suggests that prosecution of crimes related to poaching and wildlife trafficking fails to deter offenders. This is on the premise that for the prosecution of crimes relating to poaching and wildlife trafficking in Kenya to be considered successful; it must deter prospective offenders or repeat offenders from participating in such activities. When the successful prosecutions deter offenders, the number of occurrences of poaching and wildlife trafficking should reduce. However, if the prosecution does not deter offenders, then it follows that the problem of poaching and wildlife trafficking would persist.

The first chapter introduces the study and gives a background to the issues. The second chapter is a literature review on the legal and institutional framework for prosecution of poaching and wildlife trafficking. The third chapter discusses the international and national legal framework governing wildlife crime in Kenya. The fourth chapter presents and analyses the results of the fieldwork. Lastly, the fifth chapter presents the conclusions and recommendations.

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ABBREVIATIONS AND ACRONYMS

CIFOR	Centre for International Forestry Research
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DEA	Drug Enforcement Administration
DPP	Director of Public Prosecutions
EMCA	Environment Management and Conservation Act
EU	European Commission
FBI	Federal Bureau of Investigation
GBP	Great Britain Pound
GDP	Gross Domestic Product
IFAW	International Fund for Animal Welfare
IUCN	International Union for Conservation of Nature
KLR	Kenya Law Review
KRA	Kenya Revenue Authority
KWS	Kenya Wildlife Service
LRA	Lord's Resistance Army
NCAJ	National Council on Administration of Justice
NESTs	National Environment Security Task Forces
ODPP	Office of the Director of Public Prosecutions
SOP	Standard Operating Procedure
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization

UNODC	United Nations Office on Drugs and Crime
USD	United States Dollars
USIP	United States Institute of Peace
WCED	World Commission on Environment and Development

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Poaching and wildlife trafficking are an intractable problem for criminal justice systems across the world.[1] Between USD 50 – 150 billion worth of illegal wildlife trade takes place globally every year.[2] Africa is not a stranger to the problems associated with poaching and wildlife trafficking.[3]Indeed, wildlife trafficking is an acute problem in Kenya, a country with rich flora and fauna where certain species and their products are on high demand in the international trade market.[4]

Kenya is known as a 'key player' in illegal wildlife trafficking owing partly to the strategic location of the Indian Ocean coast making it a suitable transit country for wildlife trophies and products.[5] The problem of poaching and wildlife trafficking in Kenya is a cause for serious concern because certain iconic species of wildlife, particularly large mammals and big cats, are critically endangered because they are being hunted to near-extinction.[6] This loss of wildlife

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1 United Nations Office on Drugs and Crime (UNODC), 'Why Fighting Crime can Assist Development in Africa: Rule of Law and Protection of the Most Vulnerable' (UNODC, May 2005); Julian Rademeyer, *Killing for Profit: Exposing the Illegal Rhino Trade* (1 edn, Zebra Press 2012); Enough Project, 'President Obama in Africa: Countering Violent Kleptocracies is a Prerequisite for Peace' (Enough Project, 22 July 2015).

2 UNEP, 'UNEP Year Book 2014 emerging issues update: Illegal Trade in Wildlife' (UNEP 2014).

3 United Nations Office on Drugs and Crime (UNODC), 'Why Fighting Crime can Assist Development in Africa: Rule of Law and Protection of the Most Vulnerable' (UNODC, May 2005); Julian Rademeyer, *Killing for Profit: Exposing the Illegal Rhino Trade* (1 edn, Zebra Press 2012); Enough Project, 'President Obama in Africa: Countering Violent Kleptocracies is a Prerequisite for Peace' (Enough Project, 22 July 2015).

4 Kariuki Muigua, Didi Wamukoya and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya* (Glenwood Publishers Limited 2015) 218 – 236; Task Force on Wildlife Security, 'Lifting the Siege: Securing Kenya's Wildlife' (Ministry of Environment, Water and Natural Resources, June 2014); Fiesta Warinwa, 'Fighting Wildlife Trade in Kenya' 51 UN Chronicle 2 (UN 2014); Hanibal Goitom, 'Wildlife Trafficking and Poaching: Kenya' (Library of Congress 2014) <http://www.loc.gov/law/help/wildlife-poaching/kenya.php> accessed on 5 August 2015; Kerri-Ann Jones, 'International Wildlife Trafficking Threats to Conservation and National Security' (US Department of State, 26 February 2014).

5 VarunVira, Thomas Ewing, and Jackson Miller, 'Out of Africa: Mapping the Global Trade in Illicit Elephant Ivory' (Born Free USA and C4ADS 2014); Justin Worland, 'These Countries Are at the Center of The Illegal Wildlife Trade' (TIME, 16 June 2015) <http://time.com/3984504/turmeric-supplements-curcumin/> accessed on 5 August 2015.

6 Katherine Lawson and Alex Vines, 'Global Impacts of the Illegal Wildlife Trade: The Costs of Crime, Insecurity and Institutional Erosion' (Chatham House 2014); Ronald Ornstein, *Ivory, Horn and Blood: Behind the Elephant and Rhinoceros Poaching Crisis* (Firefly Books 2013).

through illegal trade is considered a contributing factor to biodiversity[7] loss, and is therefore a patent threat to the sustenance of global biodiversity.[8]In this regard, President Uhuru Kenyatta did in April, 2016 led the world in setting ablaze the largest ivory and rhino horn stockpile, warning that Kenya will not tolerate trade of the commodity.[9]

The problem of wildlife poaching and trafficking may be addressed by the criminal justice system through effective prosecution.[10] The poaching problem is not new to Africa. However, its upsurge since the turn of the new millennium has seen considerable increase in its deleterious repercussions. Accordingly, since 2007, the annual reported killings of African elephants has exponentially risen to over 30,000.[11] This rise reached a peak in the year 2010, with killing rate surpassing the elephants' breeding rate, pointing to a significant decline in net populations. The same trend has been observed in Rhino populations.[12]

Prosecution of crimes related to poaching and wildlife trafficking and efficient operation of the criminal justice system is theorised to bring about a deterrent effect, dissuading potential offenders from engaging in the activities.[13] This is backed by the support for criminal sanctions in enforcing environmental laws.[14] Since wildlife is part of the environment, criminal law and specifically prosecution may be used for protection of the environment and the wildlife that

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7 Biodiversity is 'the variability among living organisms from all sources including ecosystems and the ecological complexes of which they are a part, compassing ecosystem, species and genetic diversity', Convention on Biological Diversity (1992), Article 2.

8 Report of the CITES Secretariat on the Interpretation and Implementation of the Convention, Species Trade and Conservation of Rhinoceroses (CoP16 Doc 54.2 Rev1, Sixteenth Meeting of the Conference of the Parties, Bangkok, Thailand, paras 1-2); Rosaleen Duffy and Freya A V St John, 'Poverty, Poaching and Trafficking: What are the Links?' (Evidence on Demand 2013); Bradley Anderson and Johan Jooste, 'Wildlife Poaching: Africa's Surging Trafficking Threat' *Africa Security Brief 28* (Africa Center for Strategic Studies 2014).

9 Gentleman, J. (2016, April, 30). Kenya Burns Elephant Ivory worth $105 Million to Defy Poachers, New York Times.

10 C Nellemann and others (eds)The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A UNEP Rapid Response Assessment (United Nations Environment Programme and GRID-Arendal 2014); Jason Lowther, Dee Cook and Martin Roberts, 'Crime and Punishment in the Wildlife Trade' (WWF and TRAFFIC 2002).

11 UNEP, CITES, IUCN, and TRAFFIC, Elephants in the Dust: The African Elephant Crisis (Norway: GRID-Arendal, 2013), 32-33.

12 John Bredar, The Ivory Trade: Thinking Like a Businessman to Stop the Business, National Geographic, (February 26, 2013), available at <http://newswatch.national geographic.com/2013/02/26/the-ivorytrade-thinking-like-a-businessman-to-stop-the-business/>.

13 European Union Network for the Implementation and Enforcement of Environmental Law, 'Criminal Enforcement of Environmental Law in the European Union' (Report, IMPEL Network 2000).

14 Robert I McMurry and Stephen D Ramsey, 'Environmental Crime: The Use of Criminal Sanctions in Enforcing Environmental Laws' Loyola of Los Angeles Law Review (1986).

forms part of it.[15]It therefore follows that prosecution plays an important role in meting out the criminal sanctions in addressing environmental challenges, among them poaching and wildlife trafficking.[16]

There are laws that prohibit illegal hunting, poaching and trading or otherwise handling wildlife products. These laws are intended to protect wildlife from exploitation and profiteering. However, a critical examination of the Kenyan context suggests that prosecution has not been effectively used as a means of combating the menace of poaching and trafficking.[17]Wildlife-related crimes are not prioritized on the prosecution agenda; therefore, there is little to dissuade participants in wildlife-related criminal enterprises from their illicit activities, and this is believed further to embolden these actors.[18]

It is not only in Kenya that wildlife crime is difficult to prosecute. Neither is it only in the present times that this high-profit-low-risk conundrum challenges prosecutors. From as early as the 16th Century, poaching presented a problem to the authorities in England, when in the gentry attempted to use legislation to prevent the activity, but 'the poor continued to poach in vast numbers'.[19]The challenge that faced prosecution authorities and still proves to be a persisting problem to date is that despite the enforcement of the crimes relating to poaching and wildlife trafficking which should be deterrent to potential offenders, many individuals still tend to engage in such activities. This, therefore, brings to question the deterrent effect of prosecution of crimes related to poaching and wildlife trafficking.

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15 Antonio Vercher, 'The Use of Criminal Law for the Protection of the Environment in Europe: Council of Europe Resolution (77) 28' *10 Northwestern Journal of International Law & Business 3* (1989 – 1990).

16 Patricia Kameri-Mbote, 'The Use of Criminal Law in Enforcing Environmental Law' in C O Okidi and others (eds) *Environmental Governance in Kenya: Implementing the Framework Law* (2008).

17 Kariuki Muigua, Didi Wamukoya and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya* (Glenwood Publishers Limited 2015) 218 – 236; Paula Kahumbu and others, 'Scoping Study on the Prosecution of Wildlife Related Crimes in Kenyan Courts' (Wildlife Direct 2014); Bernard Irigia Kaaria and Ndica Lawrence Muchiri, 'Enforcement Challenges Across Borders: Detecting and Prosecuting Illegal Wildlife Trafficking' (Ninth International Conference on Environmental Compliance and Enforcement 2011).

18 DLA Piper, 'A Ten-Country Review of Legislative and Judicial Approaches' (DLA Piper 2014); Environmental Investigation Agency, 'High Profit/Low Risk: Reversing The Wildlife Crime Equation: A Briefing For The Kasane Conference On Illegal Wildlife Trade' (EIA 2015).

19 Pearson Schools and FE Colleges, 'Crime and punishment (1B) and Protest, law and order in the 20th Century (3B)' *Secondary History for Ed Excel* (Pearson Education Ltd 2013).

Professional police forces were established in the 19th Century.[20]However, enforcement of the game laws was not a major priority for the enforcement agencies.[21] This is seen in the fact that it is only in 1862 when enforcement officers were vested with the power to arrest non-violent poachers.[22]This shows that the problem of poaching and wildlife trafficking has troubled prosecution authorities across the world for centuries, and the challenge is still alive today.

Wildlife crime is varied in nature.[23]The two most coveted wildlife products are elephants and rhino horns and also they are the most threatened wildlife species and indeed, 'international trade in among other products, horns, skin and ivory constitute the brunt wildlife trade'.[24] However, wildlife crime also includes other activities such as badger baiting, collecting birds' eggs, destroying habitats, disturbing rare birds, and wildlife trafficking.[25]This study focuses on poaching and wildlife trafficking because they are the most prevalent forms of wildlife crime.

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20 Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England' *17 Rural History 2* (Cambridge University Press 2006) 187 – 212; Harvey Osborne, 'The Seasonality of Nineteenth-Century Poaching' *The Agricultural History Review* (2000) 27 – 41; Mark Koyama, 'Prosecution Associations in Industrial Revolution England: Private Providers of Public Goods?' (CHERRY Discussion Paper Series, CHERRY DP 01/11, 2011).

21 Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England' *17 Rural History 2* (Cambridge University Press 2006) 187 – 212; Harvey Osborne, 'The Seasonality of Nineteenth-Century Poaching' *The Agricultural History Review* (2000) 27 – 41; Mark Koyama, 'Prosecution Associations in Industrial Revolution England: Private Providers of Public Goods?' (CHERRY Discussion Paper Series, CHERRY DP 01/11, 2011).

22 Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England' *17 Rural History 2* (Cambridge University Press 2006) 187 – 212; Harvey Osborne, 'The Seasonality of Nineteenth-Century Poaching' *The Agricultural History Review* (2000) 27 – 41; Mark Koyama, 'Prosecution Associations in Industrial Revolution England: Private Providers of Public Goods?' (CHERRY Discussion Paper Series, CHERRY DP 01/11, 2011).

23 Scottish Government Environment and Forestry Directorate 'Wildlife Crime in Scotland: 2012 Annual Report' (SG/2013/172, Scottish Ministers, 2013).

24 Kariuki Muigua, Didi Wamukoya and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya* (Glenwood Publishers Limited 2015)218 – 236; Colin Church, 'Mara Elephant Project: Not Just the Animals' (SWARA, January – March 2015); Keynote Address by Mr. Godber Tumushabe, Executive Secretary (ACODE) (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000); Peter Gastrow, 'Termites at Work: A Report on Transnational Organized Crime and State Erosion in Kenya – Comprehensive Research Findings (International Peace Institute 2011).

25 The Law Library of Congress, Global Legal Research Center, 'Wildlife Trafficking and Poaching' (2013); House of Commons Environmental Audit Committee, 'Wildlife Crime' (Third Report of Session 2012–13); Jane Holden, 'By Hook or by Crook' (The Royal Society for the Protection of Birds, The World Wide Fund for Nature, and TRAFFIC International 1998); The Environmental Justice Project, 'A Report by the Environmental Justice project' (EJP 2004).

The motive of those who engage in wildlife crime are diverse including personal appreciation, curiosity, sadistic cruelty, financial gain and a desire to remove inconvenient creatures such as bats from property.[26] The most discussed motive behind wildlife crime is financial gain, and it is theorized that money is a driving force in the perpetration of poaching and wildlife trafficking because the profits deriving from wildlife crime may be higher than those generated from illicit trade of minerals such as diamonds.[27]

Financial gain as a motivating factor is evident in many jurisdictions. For example, in the UK, in the year 2000, Renaissance Corporation was prosecuted for dealing in shawls made of shahtoosh, the Tibetan antelope which is highly endangered; the total value of the shawls seized in the swoop was GBP 353,000; but the company was only fined a meagre GBP 1,500.[28]The punishment received vis-à-vis the crime appear to confirm the fear expressed by the UK House of Commons.[29]

There is a perceptible trend towards the militarization and professionalization of poaching in Africa, which results in the loss of endangered species on an industrial scale.[30] For instance, in 2013 approximately 23,000 elephants were killed in Africa, a 2014 estimate suggests that 96 elephants are killed per day, on the African continent alone, and a 2015 study approximates that

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[26] Department for Environment, Food and Rural Affairs, 'Wildlife Crime: A Guide To The Use Of Forensic And Specialist Techniques In The Investigation Of Wildlife Crime' (Crown 2005); Ragnhild Sollund and Jennifer Maher, 'The Illegal wildlife trade: A case study report on the illegal wildlife trade in the United Kingdom, Norway, Colombia and Brazil' (Work Package 4 "Case Studies", European Union Action to Fight Environmental Crime, 2015); Stephen Christopher James, 'Winston Churchill Fellowship Report: To Study Emerging Methodologies, Intelligence Tools and Forensic Science to Investigate Wildlife Crime' (The Winston Churchill Memorial Trust 2011).

[27] Rebecca Catherine Drury, 'Identifying and Understanding Consumers of Wild Animal Products in Hanoi, Vietnam: Implications for Conservation Management' (Masters Thesis, University College of London 2009); Juliane O'Hora Diamond, 'Thinking outside the protected area box: Exploring conceptions of nature conservation in Cambodia' (Master of International Nature Conservation Thesis, Lincoln University, UK 2013); Maira Martin, 'Wildlife crime and corruption: U4 Expert Answer' (U4 Anti-Corruption Resource Centre, 2013).

[28] CITES, 'Demanding Too Much The Shahtoosh Trade In London' *CITES World - Official Newsletter of the Parties 6* (CITES, December 2000); Jason Lowther, Dee Cook and Martin Roberts, 'Crime and Punishment in the Wildlife Trade' (WWF and TRAFFIC 2002); RSPB 'First shahtoosh prosecution' *Legal Eagle 25* (RSPB July 2000).

[29] House of Commons Environmental Audit Committee, 'Environmental Crime: Wildlife Crime' (Twelfth Report of Session 2003–04).

[30] Varun Vira and Thomas Ewing, 'Ivory's Curse: The Militarization & Professionalization of Poaching in Africa' (Born Free USA and C4ADS 2014); Small Arms Survey, 'In the Line of Fire: Elephant and Rhino Poaching in Africa' (Small Arms Survey 2015); Mariel Harrison and others, *Wildlife Crime: A Review Of The Evidence On Drivers And Impacts In Uganda* (IIED Research Report 2015).

in the recent past an average of 1 elephant was killed every 15 minutes.[31] It is therefore conceivable that if this trend continues the future generations may not see certain iconic wildlife species.[32]

Ivory and rhino horn are two of the most sought after products of poaching and wildlife trafficking, with prices for ivory skyrocketing over the years from USD 100 per kilogram in 2002 to USD 1,800 per kilogram in 2010.[33] Poaching and wildlife trafficking have over time been associated with terrorist as well as criminal network organizations, with products involved in the trade valued at up to USD 213 billion per year.[34] In East Africa, the most lucrative forms of poaching and wildlife trafficking to fund organized crime and terrorism involve the elephant tusks and rhino horn, where in Kenya, Uganda, South Sudan and Sudan, the al Shabaab, Lord's Resistance Army (LRA) and Janjaweed rely on this illegal trade as a critical source of revenue used to fund their activities.[35] This calls for urgent and decisive steps to stop and deter poaching and wildlife trafficking. Wildlife trafficking has specifically been linked with drug trafficking, where pre-existing drug smuggling routes are used to facilitate the removal of wildlife from their original habitats.[36]

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31 Varun Vira and Thomas Ewing, 'Ivory's Curse: The Militarization & Professionalization of Poaching in Africa' (Born Free USA and C4ADS 2014); Sharon M Tso, 'Report of the Chief Legislative Analyst' (Resolution (Krekorian-Koretz-LaBonge-O'Farrell) to SUPPORT AB 96 (Atkins), California Legislature, 2015); IFAW and 96Elephants, 'Elephant v Mouse' (IFAW Craig list Ivory Report 2015).

32 African Wildlife Foundation, 'Tackling Poaching & Illegal Wildlife Trafficking in Africa' (AWF 2014); WWF and Dalberg, *Fighting Illicit Wildlife Trafficking: A Consultation With Governments* (WWF 2012); Dilys Roe (ed) *Conservation, Crime And Communities: Case Studies Of Efforts To Engage Local Communities In Tackling Illegal Wildlife Trade* (IIED 2015).

33 Peter Gastrow, 'Termites at Work: A Report on Transnational Organized Crime and State Erosion in Kenya – Comprehensive Research Findings (International Peace Institute 2011).

34 C Nellemann and others (eds)The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A UNEP Rapid Response Assessment (United Nations Environment Programme and GRID-Arendal 2014); Marina Ratchford, Beth Allgood and Paul Todd, Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade (IFAW 2013); WWF and Dalberg, Fighting Illicit Wildlife Trafficking: A Consultation With Governments (WWF 2012).

35 Liana Sun Wyler, 'International Illegal Trade in Wildlife: Threats and U.S. Policy' (CRS Report for Congress, Congressional Research Service 23 July 2013); C Nellemann and others (eds)*The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A UNEP Rapid Response Assessment* (United Nations Environment Programme and GRID-Arendal 2014); Marina Ratchford, Beth All good and Paul Todd, *Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade* (IFAW 2013); United Nations Office on Drugs and Crime (UNODC), 'Transnational organized crime in Eastern Africa: A Threat Assessment' (UNODC 2013).

36 Stephen Ellis, 'Of Elephants and Men: Politics and Nature Conservation in South Africa' *20 Journal of Southern African Studies 1* (1994) 53-69; Allison Thigpen Myers, 'The Blind Man's Elephant: Broadening

Poaching and wildlife trafficking have a number of effects to the environment: local communities suffer because they lose the economic benefit they would otherwise gain from tourism to the natural habitats of the wildlife; critically endangered species which are continually targeted in poaching and wildlife trafficking activities face extinction; and (3) the ecosystem ceases to be at balance when some species are eliminated, therefore creating a strain on the food chain and a resultant negative effect on other dependant species.[37]

Apart from the effects to the environment, where Kenya stands to lose its biodiversity through extinction of some species, poaching and wildlife trafficking also has a debilitating effect on the tourism industry, Kenya's leading foreign exchange earner where the wildlife is facing increased threat, considering the country takes pride in the same.[38]

Across the globe, merited attention is not accorded to wildlife crime from local as well as national and international contexts as regards law enforcement and/or political good will.[39] This is in part because firstly, wildlife crime is relegated to outside conventional crime and therefore not documented the same way as do murder, drug trafficking or rape, secondly, wildlife crime isa "victimless crime" and thirdly, prosecution efforts are "poorly structured, uncoordinated… intermittent … (and) mostly lacking a full comprehension of the scope or nature of the problem".[40]

Apart from the lucrativeness of poaching and wildlife trafficking, other contributing factors to the growth of the trade are the 'small risks of detection or prosecution and light fines and jail

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Perspectives to Save the African Elephant' (MA in Liberal Studies, Georgetown University, Washington, D.C., 2014).

37 Kariuki Muigua, Didi Wamukoya and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya* (Glenwood Publishers Limited 2015) 218 – 236; M Hoyle and M James, 'Global Warming, Human Population Pressure, and Viability of the World's Smallest Butterfly', *Conservation Biology* (2005); Katherine Lawson and Alex Vines, 'Global Impacts of the Illegal Wildlife Trade' (Chatham House 2014); Oriette Estrada, 'The Devastating Effects of Wildlife Poaching' (One Green Planet 2014) <http://www.one greenplanet.org/animals and nature/the-devastating-effects-of-wildlife-poaching/> accessed on 3 September 2015.

38 United Nations Office on Drugs and Crime (UNODC), 'Environmental Crime –The Trafficking of Wildlife and Timber' (UNODC 2012).

39 Marina Ratchford, Beth Allgood and Paul Todd, Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade (IFAW 2013).

40 CITES, 'Wildlife Crime' (CITES) <https://cites.org/eng/prog/iccwc.php/Wildlife-Crime> accessed on 6 August 2015.

sentences.[41]Kenya continues to record widespread wildlife-related crimes, with 95% taking place outside protected areas such as the National Parks.[42] International forums such as the CITES Conference of the Parties in March 2013 have openly criticized Kenya[43] for failing to effectively address wildlife crimes. In this effect, the *Wildlife Conservation and Management Act, 2013*[44] ("New Act") was promulgated in the country on 10 January 2014. Compared to the previous legislation, the New Act comprises more undecorated penalties for wildlife offences. These include punishable offences by imprisonment, possibly categorized as "serious crimes" by the United Nations Office of Drugs and Crime ("UNODC").[45]

In the country, Office of the Director of Public Prosecutions ("ODPP") exercises prosecutional powers, or through special prosecutors appointed to handle an area of expertise.[46] According to the Constitution of Kenya, 2010, particularly Article 157(9), the ODPP may exercise prosecutorial powers on its own or through delegation to subordinate officers in the ODPP. The Director of Public Prosecutions (DPP) is vested with power to institute, undertake, take over or discontinue court proceedings against any person in Kenya except a court martial, as regards any alleged offence.[47] This article vests the ODPP with powers to conduct prosecutions of all wildlife crimes, including poaching and wildlife trafficking.

While the ODPP may exercise these prosecutorial powers independently, according to Article 157(12) of the Constitution, the ODPP may delegate these powers to prosecute to other

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41 Marina Ratchford, Beth Allgood and Paul Todd, Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade (IFAW 2013);

42 Kamweti, Denis. Osiro, David. & Mwiturubani, Daniel, 'Nature and Extent of Environmental Crime in Kenya' (2009) accessed on 27 February 2016, available at: http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&ved=0CEUQFjAC&url=http%3A%2F%2Fmercury.ethz.ch%2Fserviceengine%2FFiles%2FISN%2F111770%2Fipublicationdocument_singledocument%2Fecb23d15-68d1-400e4a67d56b50aed6%2Fen%2FM166FULL.pdf&ei=D7vfUrmDLKOV7Qbp4ICoBA&usg=AFQjCNFKMTVT-nAJP3kqdvOqZuGlc9Qay

43 Kibiwott Koross, Kenya: CITES Convention ?Fails to Protect the African Elephant? (20 March 2013), accessed on 27 February 2016, http://allafrica.com/stories/201303201434.html

44 Nellemann, Raphael, Elephants in the Dust, (2013) accessed on February 2016 from http://www.unep.org/publications/contents/pub_details_search.asp?ID=6303

45 "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. Article 2, United Nations Convention against Transnational Organised Crime and the Protocols There to. Accessed on 29 February 2016, http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf

46 Wildlife (Conservation and Management) Act (2013), s 107.

47 Constitution of Kenya (2010) art 157.

authorities. In line with this provision, the ODPP has delegated powers to prosecute wildlife crimes to specialised agencies dealing with matters concerning wildlife.[48] The power to prosecute crimes related to poaching and wildlife trafficking are therefore exercised by prosecutors in the Kenya Wildlife Service (KWS), the National Police Service, the Kenya Revenue Authority (KRA) and Immigration by virtue of section 29 of the Office of the ODPP Act (2013). These agencies have prosecutors who are trained in the areas of wildlife crime and carry out the duties of the ODPP including instituting, undertaking and discontinuing criminal cases in the courts of the land.

Good investigations are required to raise sufficient evidence to conduct the prosecution, therefore adequate investigations are crucial for successful prosecution of crimes associated with wildlife poaching and trafficking.[49] However, prosecution of these crimes is plagued with 'inadequate investigation'.[50] With inadequate investigations into crimes related to poaching and wildlife trafficking, prosecutions of these activities in Kenya stand low chances of success. Cases supported by poor investigations with uncoordinated evidence are therefore 'thrown out of court', leading to unsuccessful prosecutions.[51]

1.2 Statement of the Problem

It is argued that in Kenya, 'offence prosecution and judgement are not deterrent'.[52] Kenya is highlighted as a country where 'law is not currently implemented to its full force'.[53]For the prosecution of crimes relating to poaching and wildlife trafficking in Kenya to be considered successful, it must deter prospective offenders or repeat offenders from participating in such

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48 The *DPP* Keriako Tobiko for instance did in March 2014 set up a *Wildlife Crimes Prosecution* Unit in a bid to curb poaching. The unit is headed by the Deputy Director of Public Prosecutions Kioko Kamula, and has 35 Prosecutors who have undergone specialist training.

49 Felix Patton, 'London Conference Marks Turning Point in Wildlife Protection' (SWARA, April – June 2014); Kevin Bales and Steven Lize, 'Investigating Human Trafficking: Challenges, Lessons Learned and Best Practices' *FBI Law Enforcement Bulletin 4* (United States Department of Justice, Federal Bureau of Investigation, April 2007).

50 Paula Kahumbu and others, 'Scoping Study On The Prosecution Of Wildlife Related Crimes In Kenyan Courts' (Wildlife Direct 2014).

51 Patricia Kameri Mbote and Migai Akech, *Kenya: Justice Sector and the Rule of Law* (Open Society Initiative for Eastern Africa 2011).

52 Paula Kahumbu and others, 'Scoping Study On The Prosecution Of Wildlife Related Crimes In Kenyan Courts' (Wildlife Direct 2014).

53 Paula Kahumbu and others, 'Scoping Study On The Prosecution Of Wildlife Related Crimes In Kenyan Courts' (Wildlife Direct 2014).

activities.[54] When the successful prosecutions deter offenders, the number of occurrences of poaching and wildlife trafficking should reduce. However, if the prosecution does not deter offenders, then it follows that the problem of poaching and wildlife trafficking would persist.

The inadequacies of prosecution of crimes relating to poaching and wildlife trafficking have escalated to the point that the ODPP has taken up prosecutions relating to elephants and rhinos from KWS and the National Police Service.[55] From this action, it is evident that the delegates on their own have not succeeded in tackling the problem, and the ODPP has therefore become more actively involved in these cases which in the past would be delegated. While this may be an appropriate solution in the short-term, state agencies must focus on cooperation and coordination in investigating and prosecuting the illicit trade in order to tackle widespread problems such as poaching and wildlife trafficking,.[56] It is thus imperative from the foregoing to assess the role of prosecution authorities in combating poaching and wildlife trafficking in Kenya as per the Wildlife (Conservation and Management) Act, 2013 dispensation in view of the enhance delegation of prosecutorial roles, legislative provisions including penalties, institutional structures and inter-agency coordination.

1.3 Research Questions

This study sought to answer the following research questions:

i) What is the role of prosecution as a tool for addressing poaching and wildlife trafficking in Kenya?
ii) Does Kenya's legislative framework adequately address prosecution of poaching and wildlife trafficking crimes?
iii) Is the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya appropriately structured?

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54 Ronald L Akers and Christine S Sellers, Student Study Guide for Criminological Theories: Introduction, Evaluation, Application (6 edn, OUP 2013); Stephen E Brown, Finn-AageEsbensen and Gilbert Geis, Criminology: Explaining Crime and its Context (7edn, Matthew Bender & Company 2010).

55 Paula Kahumbu and others, 'Scoping Study On The Prosecution Of Wildlife Related Crimes In Kenyan Courts' (Wildlife Direct 2014).

56 National Council on Administration of Justice (NCAJ), *Enforcement Manual to Combat Illicit Trade in Kenya* (NCAJ 2014).

iv) Is inter-agency coordination a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya?

1.4 Objectives of the Study

This study set out:

i. To assess the role of prosecution as a tool for addressing poaching and wildlife trafficking in Kenya;
ii. To investigate whether Kenya's legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes;
iii. To determine whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is appropriately structured.
iv. To establish if inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya.

1.5 Research Hypothesis

The study was based on the following hypothesis: Robust prosecution may be used as a tool for addressing poaching and wildlife trafficking in Kenya

1.6 Significance of the Study

This study is significant to the KWS management, Public Prosecutors, the Courts, the Police, and KRA Customs Officials as it contributes to an appreciation of the interplay between prosecutorial agencies in combating poaching and wildlife trafficking in Kenya. The study is also of importance to policy-makers because it identifies areas of weaknesses and suggests recommendations to the legal and institutional framework to assist in formulation of an inter-agency coordination policy framework to address the problem of poaching and wildlife trafficking in Kenya.

1.7 Theoretical Framework

The discussion on the role of prosecution of wildlife crimes in wildlife management and conservation is associated with deterrence theory. While criminal law and punishment relies on a number of theories including incapacitation or removal of the offender from society, deterrence and rehabilitation, deterrence theory applies to reduction of wildlife crimes since it is theorised that in achieving successful convictions of wildlife crimes, potential offenders would be deterred from engaging in poaching and wildlife trafficking.[57]Therefore, this study is based on the theory of deterrence, which postulates that for reduction of occurrences of poaching and wildlife trafficking, the operation of the law and specifically prosecution must operate in a way that dissuades or deters individuals and members of the public in general from engaging in the particular activity.[58]

Deterrence theory is founded on the premise that the essential object of the criminal justice system is to deter individuals from engaging in crime.[59] In pursuit of this objective, the authorities would increase the severity of policy, law and extra-legal sanctions to heighten the dangers associated with apprehension for crime.[60]According to deterrence theory, the authorities may secure lower rates of criminal activity through exhibiting greater detriments to engaging in a particular activity than the possible advantages that may be derived.[61]This is founded on the basis that human beings acting rationally would choose pleasure over pain, where in making a choice of whether or not to perform an act, the individual would weigh the pain associated with

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57 Michael R Gottfredson and Don M Gottfredson, *Decision Making in Criminal Justice: Toward the Rational Exercise of Discretion* (Springer Science & Business Media 2013); Kathleen Daly, 'Aims of the Criminal Justice System' in Andrew Goldsmith, Mark Israel and Kathleen Daly (eds) *Crime and Justice: A Guide to Criminology* (3rdedn, Law book 2006); Stan Stojkovic, David Kalinich and John Klofas, *Criminal Justice Organizations: Administration and Management* (4thedn, Thomson Wadsworth 2008)

58 Kathleen Daly, 'Aims of the Criminal Justice System' in Andrew Goldsmith, Mark Israel and Kathleen Daly (eds) *Crime and Justice: A Guide to Criminology* (3rdedn 2006).

59 Ronald L Akers and Christine S Sellers, Student Study Guide for Criminological Theories: Introduction, Evaluation, Application (6 edn, OUP 2013); Stephen E Brown, Finn-AageEsbensen and Gilbert Geis, Criminology: Explaining Crime and its Context (7edn, Matthew Bender & Company 2010).

60 Valerie Wright, 'Deterrence in Criminal Justice: Evaluating Certainty vs Severity of Punishment' (The Sentencing Project 2010).

61 Franklin E Zimringand Gordon Hawkins,*Deterrence*: *The Legal Threats in Crime Control* (University of Chicago Press 1973).

punishment against the pleasure of freedom, financial comfort and good standing in the society; and decide not to engage in the act.[62]

Deterrence occurs in two broad forms: general and specific deterrence. Specific deterrence dissuades the perpetrator from committing a similar crime in the future, by displaying to the person the costs of his or her actions.[63]General deterrence on the other hand prevents members of the public from committing the particular crime from observation of the consequences of the perpetrator's actions.[64] Based on this theory, then, an effective criminal justice system is one which assures both the individual and the members of the public that participating in criminal activities will result in adverse consequences which should be avoided by one and all.

A criminal justice system that relies on the deterrence theory must ensure that there is not only swiftness of punishment, but also severity and certainty.[65] The individual and the general public must be certain that the system of criminal justice will respond in a particular way if one engages in the criminal activity. Secondly, the level of deterrence is theorized to be related to how severe the punishment is, where a harsh penalty yields greater compliance with the law than a lenient penalty. Thirdly, it is postulated that if the law enforcement agency deals with the prosecution in a timely manner and the penalty is delivered quickly, the danger of the pain associated with punishment will be more apparent.

Deterrence theory should inform Kenya's approach to combating poaching and wildlife trafficking. In terms of certainty, poachers and those involved in wildlife trafficking must be

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62 Ontario Ministry of Children and Youth Services, 'Review of the Roots of Youth Violence: Literature Reviews' (Queen's Printer for Ontario 2010); Anthony A Braga and David L Weisberg, 'Pulling Levers Focused Deterrence Strategies to Prevent Crime' Crime Prevention Research Review 6 (US Department of Justice, Office of Community Oriented Policing Services 2012); Valerie Wright, 'Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment' (The Sentencing Project 2010).

63 Alfred Blumstein, Jacqueline Cohen and Daniel Nagin (eds), 'Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates' (Report of the Panel on Research on Deterrent and Incapacitative Effects, National Academy of Sciences 1978).

64 Mohammed Hemraj, *Credit Rating Agencies: Self-regulation, Statutory Regulation and Case Law Regulation in the United States and European Union* (Springer 2015); Doris Layton MacKenzie, 'Criminal Justice and Crime Prevention' in Lawrence W Sherman and others, 'Preventing Crime: What Works, What Doesn't, What's Promising' (Report to the United States Congress, Prepared for the National Institute of Justice, 1998) ch9.

65 Daniel Nagin, 'Deterrence and Incapacitation' in Michael Tonry (ed), *The Handbook of Crime and Punishment* (OUP 1998); Valerie Wright, 'Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment' (The Sentencing Project 2010); Philip J Cook, 'Criminal Incapacitation Effects Considered in an Adaptive Choice Framework' (Working Paper 1985).

presented with a clear message that engaging in the crime yields consequences. Also, the criminal justice system does not apparently rely on severity, as lenient sentences are given for serious activities including poaching and wildlife trafficking.[66] Finally, the lengthy criminal justice system which at times could take years, does little to discourage perpetrators from participating in poaching and wildlife trafficking.

Certainty is supported over severity by some theorists support, and they observe that as opposed to punishment severity, crime is more deterred by punishment certainty than and the extra-legal penalties of crime considered as equally deterrent as the legal penalties.'[67] On the other end are the theorists who assert that all the elements of punishment are essential to effective working of the system, and none is above the other.[68]

The deterrence theory has received criticism in certain quarters. It is based on the assumption that human beings think and operate in a rational manner, and decisions are made based on the rational choice theories.[69] The efficacy of the deterrence theory is also challenged on the ground that the deterrent effect assumes that the individual and members of the public are aware of the painful and costly consequences of the crime.[70] This would presuppose that if the individual or member of the public is ignorant of the consequence, or has inaccurate knowledge of the pertinent criminal sanctions then the deterrent effect is diminished.[71] These critiques show that there is a need for an effective policy framework and public awareness on the consequences of wildlife crime, to support the efforts of prosecution authorities.

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66 DLA Piper, 'A Ten-Country Review of Legislative and Judicial Approaches' (DLA Piper 2014);Paula Kahumbu and others, 'Scoping Study On The Prosecution Of Wildlife Related Crimes In Kenyan Courts' (Wildlife Direct 2014).

67 Daniel Naginand Greg Pogarsky, 'Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence'*39 Criminology4* (2001); Valerie Wright, 'Deterrence in Criminal Justice: Evaluating Certainty vs Severity of Punishment' (The Sentencing Project 2010); Asongwe N Thomas, *Basic Concepts in Criminology* (Trafford Publishing, 2014).

68 William Chambliss, 'The Deterrent Influence of Punishment'*Crime and Delinquency* (January 1966)70 – 75; Sylvia M Mendes and Michael D McDonald, 'Putting Severity of Punishment Back in the Deterrence Package'*29 Policy Studies Journal 4* (2001) 588 – 610.

69 Valerie Wright, Deterrence in Criminal Justice: Evaluating Certainty versus Severity of Punishment (2010) 5.

70 Andrew von Hirsch and others, Criminal Deterrence and Sentence Severity: An Analysis of Recent Research (University of Cambridge 1999).

71 Kirk R Williams, Jack P Gibbs and Maynard L Erickson, 'Public Knowledge of Statutory Penalties: The Extent and Basis of Accurate Perception'*23 Pacific Sociological Review 1*(1980).

1.8 Conceptual Framework

This section presents the main concepts in this study. The concepts presented in this section are the main ideas involved in the study: prosecution, poaching and wildlife trafficking, wildlife management and conservation, and inter-agency coordination. The conceptual framework guiding this study is that inter-agency coordination of disjointed efforts of conducting prosecutions contributes to effective prosecution, leading to reduced instances of poaching and wildlife trafficking, therefore contributing to the effective wildlife management and conservation.

1.8.1 Relationship between Main Concepts of the Study

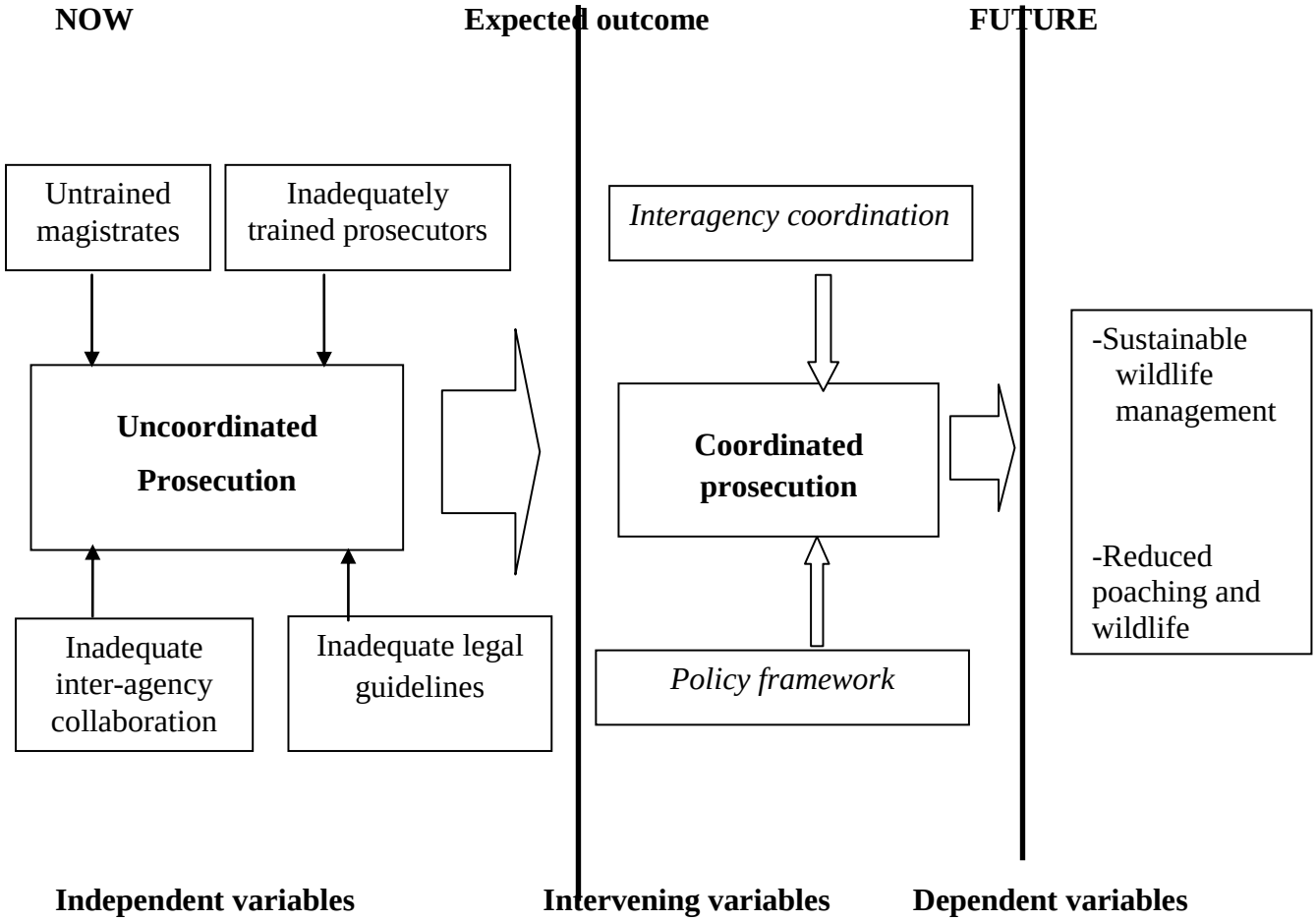
The following diagram shows that inter-agency coordination of prosecution of crimes related to poaching and wildlife trafficking prosecution leads to efficient prosecution. Where the agencies involved in conducting the prosecution work in tandem, investigations are carried out efficiently, evidence is presented accordingly, arguments are framed correctly, and the case presented justly. Focused efforts in prosecution of crimes related to poaching and wildlife trafficking results in more convictions. The stiff penalties that follow the convictions deter future offenders from participating in the activities and repeat offenders from recidivism, therefore reducing occurrences of poaching and wildlife trafficking. The end result is effective wildlife management and conservation, where the wildlife available in the environment is better provided for and appropriately maintained. However, where prosecution is wrought with imperfection leading to a loss of merited cases on the basis of conduct of the process, then the aims of achieving environmental conservation and protection are diminished.

The arrow used to depict the conceptual framework is symbolic of the ‘arrow analogy’ on the role of law and enforcement on wildlife crime: (1) the feathers of the arrow represent the science and studies on wildlife crime, providing direction to wildlife managers, policy-makers and legislators; (2) the shaft of the arrow represents management, policy and legislation which provide rigour and strength to the efforts involved in combating wildlife crime; and the arrow-

head represents operational law enforcement which according to this study is the prosecution of wildlife crimes, providing the impact and penetration to effectively deal with wildlife crime.[72]

[72] Dylan Horne, 'policy responses to transnational wildlife crime in the Asia-Pacific' (Working Paper 2/2013, Transnational Environmental Crime Project 2013).

Figure 1: Conceptual Framework



Source: Author, 2015

1.8.2 Key concepts

1.8.2.1 Prosecution

The term 'prosecution' is defined under the ODPP Act as:

> 'a prosecution under the jurisdiction of the Director, a proceeding respecting any offence, the prosecution or prospective prosecution which is under the jurisdiction of the Director and related to such a prosecution or proceeding and

includes extradition proceedings and any appeal, revision or other proceeding related thereto'.[73]

This may not serve as a precise definition, prompting a look at other sources to understand what this concept means. Prosecution has also been defined as:

'the act or process of holding a trial against a person who is accused of a crime to see if that person is guilty';[74]

and 'the institution and conducting of legal proceedings against someone in respect of a criminal charge';[75]

1.8.2.2 Poaching and Wildlife Trafficking

Poaching refers to illegal capturing, illegal hunting and harvesting of any wildlife not including vermin or pests '.[76] Wildlife refers to any indigenous, and wild animal, plant, microorganism.[77] Wildlife trafficking refers to 'the unlawful international trade in organic resources originating from the wild.[78] In Kenya, the Wildlife (Conservation and Management) Act, 2013 prohibits any person from exporting, importing, or re-exporting any wildlife species without approval by permit by KWS.[79] Wildlife trafficking, or illegal wildlife trade as it is referred to under the Act, refers to such activities involving trade of plants, animals, microorganisms or parts of these wildlife, without a valid licence.

Poaching and wildlife trafficking are associated environment-related crimes that involve the illegal, capture or collection, smuggling, and trade of endangered species as well as the derivatives or products of these animals, plants or microorganisms.[80]

1.8.2.3 Wildlife Management and Conservation

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73 Office of the Director of Public Prosecutions Act (2013), s 2.
74 Merriam-Webster Dictionary (Merriam-Webster 2015)
75 Oxford Dictionary (OUP 2015).
76 Wildlife (Conservation and Management) Act (2013), s 2.
77 Wildlife (Conservation and Management) Act (2013), s 2.
78 European Commission, 'The EU Approach to Combat Wildlife Trafficking' (EC 2015) <http://ec.europa.eu/environment/cites/trafficking_en.htm> accessed on 6 August 2015; IUCN, 'Wildlife Trafficking'(IUCN 2015) <http://www.iucn.org/about/union/secretariat/offices/europe/european_union/key_issues/wildlife_trafficking/> accessed on 6 August 2015.
79 Wildlife (Conservation and Management) Act (2013) s 85.
80 Western (2008) Rethinking wildlife: Bridging the conservation divide. In Re-conceptualization of Wildlife Conservation: Toward Resonation between Subsistence and Wildlife

Wildlife is one of the constituent parts of the environment, considered alongside other elements such as 'soil, sound, vegetation, water, climate, atmosphere, aesthetics and odour (and) fish'.[81] The concept of 'wildlife management and conservation' involves both the sustainable utilisation of wildlife and wildlife products and preservation of the classes of wildlife which should not be used due to their limited availability in the environment.[82] While wildlife conservation describes 'an effort aimed at maintaining and using natural resources in a wise manner in order to ensure that these resources are available for future generations'.[83]

The Constitution of Kenya creates rights and obligations in various areas including environmental protection and conservation. In respect of the environment, the Kenyan Constitution provides that the State shall 'ensure sustainable utilisation, exploitation, conservation and management of the natural resources and environment and ensure the impartial sharing of the accumulating benefits; embolden public participation in environmental protection, management, and conservation ; defend hereditary resources and biological diversity; and eradicate activities and processes that are likely to jeopardize the environment'.[84]

The Constitution also places a duty on all persons 'to work jointly with National organs and other entities to conserve and protect and the environment and ensure environmentally sustainable development and use of natural resources'.[85] Since wildlife forms part of the environment, then the conservation and management of wildlife forms part of the constitutional aspirations of the people of Kenya.

1.9 Research Methodology

A sound research methodology is essential for a valid study.[86] This study focuses on the role of prosecution in combating poaching and wildlife trafficking.

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81 Environment Management and Conservation Act (EMCA) (1999), s 2.

82 Patricia Kameri-Mbote, 'Land Use Rights and Wildlife Management: Implications for CITES' (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

83 Greg Yarrow, 'Wildlife and Wildlife Management' (Fact Sheet 36, Forestry and Natural Resources, May 2009).

84 Constitution of Kenya (2010) art 69 (1).

85 Constitution of Kenya (2010) art 69 (2).

86 Ranjit Kumar, *Research Methodology* (3rd edn, Sage 2011).

The research carried out to support this study adopts a structured approach, where the entire research process from the objectives, design, sample, and the questions asked to the respondents were predetermined.[87] The research used both primary and secondary sources of data. Primary information was collected from prosecutors in the ODPP (Land, Environment and Wildlife Unit), KWS, and KRA by conducting interviews and administering semi-structured questionnaires. While the National Police Service and Immigration are important bodies relating to this study, there were no respondents from these institutions as they were not readily accessible. Library services were instrumental to the research, and provided the relevant data from textbooks, scholarly articles, reports, and journals to support the arguments proffered in the study, and to carry out the objectives of the study.

This is a qualitative study because it addresses the role of prosecution in combating poaching and wildlife trafficking, and it involves 'the description of an observed situation' being the previous experiences of prosecution agencies in combating wildlife crime, and incorporates 'an account of the different opinions people have about an issue' being the views of prosecutors in prosecution agencies dealing with poaching and wildlife trafficking and their opinions on whether prosecution has been effective in combating wildlife crime.[88] As a descriptive research, it involves an inquiry into the views of different authors as well as the respondents to semi-structured questionnaires, exemplifying the view that the role of prosecution in combating poaching and wildlife crime is best obtained 'through the eyes' of those who deal with prosecution of wildlife crime on a day-to-day basis.[89]

To enable the researcher to give a good context to the study, the research involved a systematic review of literature from textbooks, scholarly articles, reports, and journals. Based on the available literature, the area of research was selected and identified as having received insufficient attention in academic literature. The data generated and analysed from available literature aided the presentation of a critical analytical perspective on the research questions in addition to providing questions used to create the semi-structured questionnaire.

A semi-structured questionnaire was developed to collect views of prosecutors. The population of this study was derived from the main prosecution agencies dealing with poaching and wildlife trafficking in Kenya. The study sampled respondents from the ODPP,

87 Ranjit Kumar, *Research Methodology* (3rd edn, Sage 2011).
88 Ranjit Kumar, *Research Methodology* (3rd edn, Sage 2011).
89 Jon Jonker and Bartjan Pennink, *The Essence of Research Methodology* (Springer 2010).

KWS, KRA, the Judiciary and from the Africa Wildlife Foundation (AWF). The questionnaires were delivered personally to the respondents, who filled them in while engaging the researcher in a discussion on the matter in the form of an interview.

The study is descriptive and analytical, seeking a solution to the problem of poaching and wildlife trafficking in Kenya through prosecution of wildlife crimes.

1.10 Limitations of the Study

This study is limited to information collected from the prosecution authorities and does not involve examination of views from other players in the system of criminal justice such as members of the Judiciary or the accused persons.

Secondly, the primary data collection stage of this study relies on semi-structured questionnaires involving areas which the respondents are required to fill in by themselves. This limits the data collected to the person's individual perspective which may be distorted if the respondent does not fully understand the question. To mitigate this limitation, the researcher personally administered the questionnaire and explained the questions to ensure accuracy with the response.

Respondents were a bit hesitant to provide information, which they considered confidential, on the internal workings of prosecution authorities for fear that the information may be used for purposes other than those for which it is requested. With this in mind, prior authority was sought from management and the respondents were assured of the confidentiality of the information provided, in so far as it may be prejudicial to the prosecution's interests.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

There is existing literature on the subject of prosecution in combating poaching and wildlife trafficking. This Chapter reviews existing literature on the key themes of wildlife management and conservation, wildlife crime, prosecution, and inter-agency coordination.

Available literature is examined in a bid to answer the research questions. First, the literature legitimates the quest of this study to establish the role of prosecution as a tool for addressing poaching and wildlife trafficking in Kenya. Secondly, the literature review examines whether Kenya's legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes. To do so, the literature studied includes texts on wildlife crimes, and prosecution in Kenya. Third, the literature sheds light on the insufficient concentration of authors on whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is appropriately structured to address poaching and wildlife trafficking. Lastly, the literature review explores texts on inter-agency coordination, finding that there is inadequate literature available on whether improved inter-agency coordination may be used as a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya.

In exploring the available literature on the key themes of wildlife management and conservation, wildlife crime, prosecution, and inter-agency coordination, this study seeks to fill the gap in knowledge on the role of prosecution of poaching and wildlife trafficking, the legislative and institutional framework dealing with poaching and wildlife trafficking, and inter-agency coordination as a solution to the inadequacies of prosecution of poaching and wildlife trafficking.

2.2 Wildlife Management and Conservation

The importance of wildlife management and conservation is recognised across the world.[90]Wildlife and conservation management laws in Kenya are part of the legal framework governing natural resources. **Muigua, Wamukoya and Kariuki** identify the Wildlife Conservation and Management Act as part of the national legal framework on environmental management and conservation. They acknowledge that the subject has received recognition under regional and international law; and note that the intense interest in wildlife conservation and management on the global scale may be attributed to the fact that wildlife forms an integral part of biodiversity, a natural resource which is renewable only if it is conserved and managed sustainably.[91]

Kameri-Mbote acknowledges that the fight against extinction of certain wildlife species is driven by the realisation that the disappearance of one specie affects the ecosystem as a whole.[92]**Kameri-Mbote** notes that extinction of certain species may be attributed to various human activities which shift the habitat of these animals and plants, including cultivation, pastoralism and urbanization.[93] Population growth across the world exacerbates the problem, with humans competing with other players in the environment for the same natural resources that wildlife requires for survival.[94]**Hundal** concurs, writing that the prominence of wildlife management and conservation on an international scope is fuelled by the link drawn between wildlife and the survival of the human species.[95] This forms the basis for the conversation of prosecution of poaching and wildlife trafficking because the purpose which the prosecution is to achieve is the survival of not only the wildlife, but the ecosystem as a whole.

Odote, Ochieng and Makoloo wrote about the implications of property rights for wetlands management in Kenya. Note that while there is a framework in place for management and

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90 Swarndeep S Hundal, 'Wildlife Conservation Strategies and Management in India: An Overview' (2010).

91 Kariuki Muigua, Didi Wamukoya and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya* (Glenwood Publishers Limited 2015) 6 – 7.

92 Patricia Kameri-Mbote, 'Land Tenure, Land Use and Sustainability in Kenya : toward Innovative Use of Property Rights in Wildlife Management' in Nathalie J Chalifour and others (eds) *Land Use Law for Sustainable Development* (Cambridge University Press 2007) 132 – 160.

93 Patricia Kameri-Mbote, *Property Rights and Biodiversity Management in Kenya* (African Centre for Technology Studies2002).

94 United States Institute of Peace (USIP), 'Natural Resources, Conflict, and Conflict Resolution: A Study Guide Series on Peace and Conflict For Independent Learners and Classroom Instructors' (USIP 2007); Adil Najam, David Runnalls and Mark Halle, 'Environment and Globalization: Five Propositions' (International Institute for Sustainable Development 2007).

95 Swarndeep S Hundal, 'Wildlife Conservation Strategies and Management in India: An Overview' (2010).

conservation of the environment in Kenya, there is continued degradation of wetlands; and state that these wetlands which are in danger produce forest products, harbour wildlife resource and fisheries while at the same time providing a habitat for various species of animals such as birds.[96]**Odote**, in a paper exploring the foundations for sustainable development and implications for higher education in Kenya, points out that the need for conservation and protection of Kenya's wetlands was incidentally discussed in the 1969 Wildlife Conference for Eastern Africa, a clear indication of the impact that management and conservation of wetlands has on the management and conservation of wildlife.[97]The authors address the issue of wildlife management and conservation predominantly from an environmental law perspective, but do not offer a criminal law observation on the means of achieving the goal of management and conservation.

Ding highlights that destruction of wildlife in the environment raises concerns because most of the species, genes and ecosystems that are destroyed are non-renewable.[98] This shows why it is a matter of alarm for the whole international community when actions in one country take place and promote poaching and wildlife trafficking. Also, due to the cross-border nature of poaching and wildlife trafficking, no source country operates in isolation. It takes the effort of the entire international community to ensure that biodiversity is preserved, for the integrity of the environment to persist for the benefit of future generations. Destruction of wildlife takes place through various ways including poaching that fuels wildlife trafficking. The author however does not explore the possible solutions to prevention of destruction of wildlife.

Wildlife management and conservation may be carried out in protected areas or outside protected areas. **Watson, Fitzgerald and Gitahi** discuss environmental easements as means to achieve wildlife management and conservation outside protected areas, with Kenya as the main area of focus.[99] According to **Watson, Fitzgerald and Gitahi**, for wildlife to thrive, it

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96 C Odote, B Ochieng and O Makoloo, 'The Implications of Property Rights for Sustainable Management of Wetlands in Kenya' (IASC Conference. Chelteham, UK 2007).

97 Collins Odote, 'Retracing our Ecological Footsteps: Customary Foundations for Sustainable Development and Implications for Higher Education in Kenya' (7th Annual Strathmore Conference under the theme "The Ethics of Sustainable Development in Higher Education", 28 – 29 October 2010).

98 Yifan Ding, 'Impacts of Affluence and Overexploitation of Natural Resources' (UNESCO 2003); United Nations World Commission on Environment and Development (WCED),'Report of the World Commission on Environment and Development: Our Common Future' (WCED 1987).

99 R Watson, Kathleen H Fitzgerald and Nyokabi Gitahi, 'Expanding Options for Habitat Conservation Outside Protected Areas in Kenya: The Use of Environmental Easements' (Technical Paper No. 2, African Wildlife Foundation, 2010).

needs both the protected areas including the 22 terrestrial national parks, 5 national sanctuaries and 28 terrestrial national reserves amounting to almost 8% of the country's surface; and the areas adjacent to this designated wildlife habitat which still form part of the ecosystem important for the sustenance of wildlife but fall under private land ownership.[100] The environmental easements suggested to support wildlife management and conservation are limits to the use of the land adjacent to protected areas in ways including prohibiting construction of fences and other barriers limiting free movement of animals, limiting the conversion of land use to cultivation or other development, and regulating the maintenance of livestock near areas with limited water and pasture.[101] The views of these authors are important to this study because they point to the widespread requirements for harmonising prosecution of wildlife crimes. The authors however do not posit prosecution as one of the possible contributory mechanisms of approaching wildlife management and conservation, a gap which this study seeks to fill.

Mawdsley, O'Malley and Ojima argue that due to climate change, the habitats of wildlife are increasingly being depleted, therefore bringing into focus a need to concentrate more on ex-situ conservation strategies for wildlife rather than in-situ conservation strategies.[102]**Lovejoy** supports this view, noting that in-situ conservation is becoming more and more difficult as climate change takes its toll on the environment, and as ecosystems are progressively altered due to the negative effects of climate change, then wildlife management and conservation efforts must also adapt accordingly.[103]**Hoyle and James** suggest that in view of the debilitating effects of climate change to the environment, the wildlife management and conservation efforts should focus on rare or extinction-prone species because they are the most likely to be wiped out of existence as climate change raises the base level requirements for species to survive in the highly competitive natural state.[104] This

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100 R Watson, Kathleen H Fitzgerald and Nyokabi Gitahi, 'Expanding Options for Habitat Conservation Outside Protected Areas in Kenya: The Use of Environmental Easements' (Technical Paper No. 2, African Wildlife Foundation, 2010).

101 R Watson, Kathleen H Fitzgerald and Nyokabi Gitahi, 'Expanding Options for Habitat Conservation Outside Protected Areas in Kenya: The Use of Environmental Easements' (Technical Paper No. 2, African Wildlife Foundation, 2010).

102 Jonathan R Mawdsley, Robin O'Malley and Dennis S Ojima, 'A Review of Climate-Change Adaptation Strategies for Wildlife Management and Biodiversity Conservation' 23 Conservation Biology 5 (October 2009).

103 TE Lovejoy, 'Conservation with a Changing Climate' in TE Lovejoy and L Hannah (eds) Climate Change and Biodiversity (Yale University Press 2005).

104 M Hoyle and M James, 'Global Warming, Human Population Pressure, and Viability of the World's Smallest Butterfly', *Conservation Biology* (2005).

approach of wildlife management and conservation presupposes a natural depletion of the wildlife resources through climate change. However, the authors do not address the reduction of the wildlife resources through man-induced reasons such as poaching and wildlife trafficking. This therefore presents a lacunae in the authors' approach to wildlife management and conservation.

The man-induced reasons of declining numbers of wildlife is addressed by **Nasi and** others who investigate the 'bush meat crisis', where they found an increasing number of wildlife species are nearing extinction due to hunting of these 'non-domesticated mammals, birds, reptiles and amphibians' for food.[105] According to **Nasi and others**, hunting of wildlife for bush meat is rampant because wildlife is an 'unmanaged mutual resource being unreasonably reaped because of the governance and policy structures which is insufficient '; and as a result making sure everything is put in place sound policies for the management of these natural resources would be a viable avenue of achieving effective management and conservation of wildlife.[106] The authors, however, limit the scope of their discussion to local hunting for food. They do not address hunting the wildlife for the trade of their products. This, therefore is a gap in the scope of their study.

Yarrow argues that landowners may derive tangible benefits from wildlife management and conservation through collecting fees from leasing rights to licensed hunters on game ranches, provision of services on game ranches such as lodges and charging fees, and offering wildlife recreational activities such as bird-watching also at a fee; while the intangible benefits include the pleasure of observing wildlife and the satisfaction of providing these species with a habitat.[107] The author does not extend the scope of the study to the consequences of unlicensed hunting, which creates a gap in that poaching and wildlife trafficking are not made a subject of the discussion.

Simasiku and others note with regret that the game management areas, set us as buffer zones to the country's national parks and providing a safe haven for viable hunting, do not

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[105] R Nasi and others, Conservation and use of wildlife-based resources: the bush meat crisis' (Technical Series No. 33, Secretariat of the Convention on Biological Diversity and Center for International Forestry Research (CIFOR) 2008).

[106] R Nasi and others, Conservation and use of wildlife-based resources: the bush meat crisis' (Technical Series No. 33, Secretariat of the Convention on Biological Diversity and Center for International Forestry Research (CIFOR) 2008).

[107] Greg Yarrow, 'Wildlife and Wildlife Management' (Fact Sheet 36, Forestry and Natural Resources, May 2009).

benefit the local communities but instead enrich the few elite; and further urge for better inclusion of local communities in wildlife management and conservation efforts and a focus for not only economic benefit of such areas, but also the social benefits that may be derived.[108]The author's study is limited to Zambia as a country of study, therefore not adding to the literature on wildlife management and conservation in Kenya as a distinct geographical region.

Inamdar, Brown and Cobb raise the argument that wildlife trade and use of wildlife products in many jurisdictions is under blanket criminalisation, a situation which they argue discourages regulation and defeats the meaning of 'management' and 'conservation'.[109]**Inamdar, Brown and Cobb** support a rights-based approach to wildlife management and conservation: recognising the rights of the communities that benefit from sustainable use of wildlife and wildlife products and negotiating with these user groups to achieve more long-lasting solutions to wildlife management.[110]**Njogu** notes that while on one hand there are those who advocate for legalisation of trade in wildlife products especially ivory, arguing that the proceeds from the trade may contribute to wildlife management and conservation efforts, those who oppose this view cite countries such as Kenya where trade in ivory fuels poaching and wildlife trafficking.[111] The authors that advocate for decriminalisation approach the issue from a perspective that not all trade in wildlife products should be criminalised. While focusing on the rights of the communities in areas which provide a home to the wildlife, their argument does not present the debilitating effects of widespread poaching and wildlife trafficking which is done at times by organised criminal gangs. While the subsistence hunting may hold true to their assertion that the blanket criminalisation is unwarranted, their approach does not explore the enforcement mechanisms of the offences created under the wildlife laws.

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[108] Simasiku and others, 'Impact of Wildlife Management Policies on Communities And Conservation in Game Management Areas in Zambia' (Natural Resources Consultative Forum, June 2008).

[109] Amar Inamdar, David Brown and Stephen Cobb, 'What's Special about Wildlife Management in Forests? Concepts and Models of Rights-Based Management, with Recent Evidence from West-Central Africa' *Natural Resource Perspectives 44* (Overseas Development Institute 1999).

[110] Amar Inamdar, David Brown and Stephen Cobb, 'What's Special about Wildlife Management in Forests? Concepts and Models of Rights-Based Management, with Recent Evidence from West-Central Africa' *Natural Resource Perspectives 44* (Overseas Development Institute 1999).

[111] James G Njogu, 'Wildlife Management and Conservation in View of International Conventions' *29 The George Wright Forum 1* (The George Wright Society 2012).

Smith and Molde discuss arguments proffered by pro-hunting organisations in the US which argue that legalisation of hunting is beneficial because the funds collected from licensing fees and other economic benefits of legalised hunting fund wildlife management and conservation; but present a stark difference in the actual position in their study which suggest that while the public may perceive that such activities should be legalised because of the funds that could be used to support wildlife management and conservation, policy should factor in that the perception may not be guided by fact.[112]The authors' view is informative to this study because it presents an argument for legalisation of hunting as opposed to enhanced enforcement of anti-hunting laws. The above study, though, is based on data collected in the US and does not offer a pound-for-pound translation to wildlife crime in Kenya.

Akama, Maingi and Camargo trace the history of formal conservation of wildlife in Kenya from its origin in the mid-20th Century, observing that it was developed based on the legal and policy framework of the British.[113]**Kameri-Mbote** notes that from as early as this period, local communities had difficulties identifying with wildlife conservation policies which were perceived as foreign, and continued to participate in activities which were branded illegal such as taking of wildlife and encroaching into protected areas, practices which were against the law of the land but part of normal activities.[114]While these authors look at wildlife management and conservation through the enactment of laws and putting in place appropriate policies and procedures, they do not examine the enforcement of these laws.

Gitahi and Fitzgerald uses the term 'wildlife' with reference to wild animals only.[115]They therefore use the term with a limited scope. The author's view identifies the role of wildlife in the country's economic development but does not explore the mechanisms of managing and conserving this resource, such as through prosecution. **Njogu** discusses wildlife management and conservation in Kenya amidst the international conventions and agreements which Kenya is party to, presenting the gains Kenya has made in adopting international environmental law

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112 Mark E Smith, 'Wildlife Conservation and Management Funding in the US' (Nevadans for Responsible Wildlife Management 2014).

113 John S Akama, Shem Maingi and Blanca A Camargo, 'Wildlife Conservation, Safari Tourism and the Role of Tourism Certification in Kenya: A Post colonial Critique' *36 Tourism Recreation Research 3* (2011) 281 – 291.

114 Patricia Kameri-Mbote, *Property Rights and Biodiversity Management in Kenya* (African Centre for Technology Studies 2002).

115 Nyokabi Gitahi and Kathleen H Fitzgerald, 'Conserving Wildlife on Private Land: The Legal Framework for Landownership and New Tools for Land Conservation in Kenya' *Smithsonian Contributions to Zoology* (2010) 96 – 103.

through (CITES), the Lusaka Agreement and the Convention on Wetlands of International Importance known as the Ramsar convention, the World Heritage Convention.[116]

According to **Njogu**, KWS has played an important role in ensuring Kenya complies with the international requirements of these and other international conventions and agreements advocating for wildlife management and conservation, including participating in sub-regional initiatives with the relevant wildlife management and conservation bodies in other countries in Eastern Africa.[117] The author's writing is limited to KWS as an institution involved in enforcement of wildlife crimes. There are other organisations which play a part in wildlife management and conservation, more specifically through their role in prosecution of wildlife crimes.

According to **Chalifour and others**, the Constitution is a significant step toward the realisation of adequate levels of wildlife management and conservation in Kenya because unlike the Independence Constitution, the present on contains specific explicit provisions on the environment, and most importantly on wildlife.[118] While the author presents the legislative framework on wildlife, the literature presented is broadly based on wildlife management and conservation. Prosecution is not identified as a mechanism through which wildlife may be managed and conserved. From this and the above literature, a gap is identified which this study seeks to fill.

2.3 Wildlife Crime

Literature on wildlife crime is important to examine because it sheds light on whether the legislative and institutional framework in Kenya adequately addresses poaching and wildlife trafficking. **Horne** concludes that while policy approaches may contribute to reduction of wildlife crimes, the proliferation of such crimes shows that the policy responses may not have as large an effect as they may be theorised to have.[119] Since policy is predominantly influential and not mandatory, ensuring compliance with policy is presumably more difficult

[116] James G Njogu, 'Wildlife Management and Conservation in View of International Conventions' *29 The George Wright Forum 1* (The George Wright Society 2012).

[117] James G Njogu, 'Wildlife Management and Conservation in View of International Conventions' *29 The George Wright Forum 1* (The George Wright Society 2012).

[118] Nathalie J. Chalifour, Patricia Kameri-Mbote, Lin Heng Lye, John R. Nolon, Land use Law for Sustainable Development(2007) 120-136

[119] Dylan Horne, 'policy responses to transnational wildlife crime in the Asia-Pacific' (Working Paper 2/2013, Transnational Environmental Crime Project 2013).

than it is to ensure that legislation is followed. Policy rarely has sanctions. On the other hand, legislation backed with sanctions may be enforced through mechanisms such as prosecution.

Akella and Allan decry that there is an ever-growing challenge presented by wildlife crime which leads to the depletion of certain species from the environment; point out that the decreasing supply of wildlife products due to the depletion of the wildlife in the environment causes a shortage to the market, and coupled with the increase in demand for the products leads to a persistent rise in the prices of wildlife and wildlife products; and note that the shift of wildlife crime to a structure and operation largely linked to organised crime calls for 'highly targeted, adequately resourced interventions aimed at levers that can yield the most immediate impact on stemming the tide of wildlife crime'.[120] The author does not identify prosecution as a key component of these interventions. This study therefore adds to the discourse by presenting well-coordinated prosecutions as an adequately resourced intervention aimed at stemming wildlife crime.

Nellemann and others explore wildlife crime in the greater framework of environmental crimes; write that the persistence of wildlife crime poses a threat to sustainable development; and applaud the developments made on an international scope through CITES and the national commitments to fight wildlife crime because states have over time realised that the fight against wildlife crime cannot be adequately addressed by a single body or country.[121] Poaching and wildlife trafficking are the wildlife crimes examined in this study. The author's point of view, while recognising the effect of CITES and national commitments to address wildlife crime, does not explore the national enforcement of the laws, which this study posits may be boosted by effective prosecution of these wildlife crimes.

Eurojust discusses wildlife crime as a component of environmental crime; deplores the low number of cases concluded in the EU in relation to wildlife crimes even through wildlife crimes are in existence and arguable on the rise; and attributes the challenges in increasing formal dealings with wildlife crimes to (1) complex legal frameworks on the protection of endangered species comprised of multiple international and national rules on wildlife crime making the area of practice difficult for local practitioners; (2) the perception of wildlife

[120] Anita Sundari Akella and Crawford Allan, 'Dismantling Wildlife Crime' (Fuller Science for Nature Symposium on Conservation Crime, Washington DC, 14 November 2012).

[121] C Nellemann and others (eds)The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A UNEP Rapid Response Assessment (United Nations Environment Programme and GRID-Arendal 2014).

crimes as victimless crimes where the endangered species do not have a voice to advocate for tighter application of criminal law to protect them, coupled with low levels of seriousness of state officials in handling wildlife crimes and the resultant low penalties associated with wildlife crimes; (3) insufficient coordination among wildlife crime agencies; (4) challenges experienced by prosecution agencies in collecting evidence where inter agency coordination efforts with other prosecution agencies across borders are limited, considering the nature of wildlife crime in most instances as a transnational crime; and (5) the links of wildlife crime to organised crime which make it hard for any individual state to handle unilaterally.[122] The above study is limited to the EU as a geographical scope of study. It does not offer a Kenyan perspective on the wildlife crime. It also presents a generalised look at wildlife crime, while the present study zeroes in on poaching and wildlife trafficking in Kenya as the wildlife crimes in focus.

Patton writes about the 'London Conference on the Illegal Wildlife Trade' held on 13th February 2014, where pursuant to the efforts of African countries concerned with the proliferation of activities involving poaching and wildlife trafficking, unlawful wildlife trade is now a "serious crime" with severe effects.[123]**Patton** highlights that wildlife trafficking is now considered 'the fourth most important criminal activity after drugs, arms and human trafficking valued at up to US$20 billion a year.'[124] One of the most recent developments in international law dealing with poaching and wildlife trafficking was identified by the author. However, the national laws do not form part of the author's views, leaving room for more research on the overall legislative and institutional framework concerning poaching and wildlife trafficking.

2.4 Prosecution of wildlife crimes

2.4.1 Prosecution in General

A review of literature on prosecution is important to this study because it contributes to the question of the role of prosecution as a tool of addressing poaching and wildlife trafficking in Kenya. The review also supports the need for a study on the legislative and institutional

[122] Euro just, 'Strategic Project on Environmental Crime' (Report, Euro just, 2014).
[123] Felix Patton, 'London Conference Marks Turning Point in Wildlife Protection' (SWARA, April – June 2014).
[124] Felix Patton, 'London Conference Marks Turning Point in Wildlife Protection' (SWARA, April – June 2014).

framework dealing with crimes related to poaching and wildlife trafficking in Kenya. **Mwalili** gives a history of prosecution in Kenya, highlighting the position of the Attorney General under the Constitution of Kenya 1963 as the head of public prosecutions vested with the powers of appointment and direction of public prosecutors for any specific area in writing and the prosecutors shall answer to the Attorney General.[125] While conducting public prosecutions, therefore, the Police wore 2 hats which were at times difficult to reconcile: as representatives of the Attorney General for prosecutions and of the Commissioner of Police for investigations.[126]The author's perspective is prior to the promulgation of the Constitution of Kenya 2010, therefore begging a more recent view of prosecution in the country.

Mwalili states that for there to be successful prosecutions there is need for cooperation and understanding between agencies, sound policies addressing mechanisms of securing the presence of witnesses in court.[127]In line with this, any default of cooperation may result in inefficient prosecution and delayed trials.[128]While this part of the author's perspective gives insight to this study in that it highlights inter-agency coordination of prosecution bodies, it does not link prosecution to poaching and wildlife trafficking.

The conduct of prosecutions must be free and fair so that the criminal justice may operate effectively.[129]**Kiage** supports this view, stating that the DPP should act fairly, conscientiously and with due regard to principle as opposed to arbitrarily, oppressively or contrary to public policy.[130]When criminal cases are handled efficiently, the members of the public gain increased confidence in the rule of law and administrative justice.[131] It therefore follows that when members of the public have faith in the institutions of justice, there will be more adherence with the law and the executive branch of the state would have effectively discharged its duty with regard to enforcement of the law. The author's view is from a purely

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125 Jonathan John Mwalili, 'Issues Concerning Prosecution in Relation to Conviction, Speedy Trial and Sentencing' (10th International Training Course, 1997).

126 Jonathan John Mwalili, 'Issues Concerning Prosecution in Relation to Conviction, Speedy Trial and Sentencing' (10th International Training Course, 1997).

127 Jonathan John Mwalili, 'Issues Concerning Prosecution in Relation to Conviction, Speedy Trial and Sentencing' (10th International Training Course, 1997).

128 Jonathan John Mwalili, 'Issues Concerning Prosecution in Relation to Conviction, Speedy Trial and Sentencing' (10th International Training Course, 1997).

129 Republic of Ireland Office of the Director of Public Prosecutions, 'Guidelines for Prosecutors' (2001).

130 Patrick Kiage, 'The Role of The Prosecutor' in Essentials of Criminal Procedure in Kenya (2014) 56-

131 Republic of Kenya, State Law Office, Department of Public Prosecutions, 'National Prosecution Policy' (2007).

criminal law standpoint, and therefore does not delve into the realm of prosecution as a tool of enforcement of environmental law.

Blanche and Durrheim state that the main function of a prosecutor is to exercise discretion in making a decision to prosecute, and to present the criminal case in court. According to **Blanche and Durrheim**, prosecutors in some jurisdictions are also involved in investigating crime, supervising compliance by investigators with procedural rules, participating in the bail process, negotiating and entering into sentence and plea and agreements, diverting offenders to substitutes to prosecution, offering victim support, proposing recommendations concerning sentence, and supervising of the execution of sentences and treatment of persons in custody. [132] The authors' angle is not limited to a particular geographical location, and neither does it offer an in-depth analysis of the legislative and institutional framework involved in prosecution. This study, therefore, seeks to address this gap.

Beccaria writes that while in every country the prosecutors play an important role in investigation; in some jurisdictions prosecutors take a general accountability over all criminal enquiry, while in some they only take a restricted role.[133]**Beccaria** notes that in Germany, the Police department is a body within the office of public prosecution and the Police carry out the investigations under the supervision of the public prosecutors. **Beccaria** states that prosecutors are bestowed with related accountability in Korea, while **Akers** discusses the role of prosecutors in investigations in Japan, where while prosecutors may carry out investigations, the Criminal Procedure Code provides that investigation's primary accountability lies with the police.[134]The authors examine prosecution in general, and do not lend an eye to the prosecution in specific areas of law, such as wildlife law as this study seeks to.

On the contrary, **Kamweti and others** discuss countries sharing law traditions such as Pakistan, the United Kingdom, Papua New Guinea, Kenya and Tanzania where prosecutors do not have a direct role in investigation. According to **Kamweti and others**, in these countries prosecutors may only guide the police investigation by instructing or advising the police to go about their enquiry in a particular direction.[135] Again, the authors only discuss

[132] Blanche and Durrheim, Applied Methods for the Social Sciences (2002)
[133] Beccaria On crimes and punishments (1963).
[134] Akers, Criminological theories (2000)
[135] Kamweti and others, Nature and Extent of Environmental Crime in Kenya (2009).

prosecution in general terms, and not the prosecution of specific crimes such as wildlife crimes.

Kiage argues that prosecutors have a crucial place within the criminal justice process, and that 'the role (a prosecutor) plays has come under searching scrutiny by the public generally who are gravely concerned that public prosecutions in this country have a dismal record of success with too many cases being lost'.[136]In Kenya, many prosecutions fail for many reasons such as poor case management by prosecution, insufficient evidence, and shoddy investigations by the police, corruption and unavailability of witnesses.[137]**Kiage** states that the role of the prosecutor was rightfully captured in the case of *Juma and others vs. AG* where Msagha and Koloba JJ stated:

> "Always remember that the purpose of a criminal prosecution is not to obtain a conviction: it is to lay before the court what the state considers to be credible evidence relevant to what is alleged to be a crime. The prosecutor has a duty to see that all available legal proof of the fact is presented; and this should be done firmly and pressed to its legitimate strength but it must also be done fairly, the role of the prosecutor excludes any notion of winning or losing. His function is a matter of public duty which in civil life there can be none charged greater personal responsibility. It should be efficiently performed with an ingrained sense of the dignity, the seriousness and justice of judicial proceedings"

Kiage writes about the exercise of prosecutorial discretion, stating that the ODPP must make a number of decisions during the conduct of the case: (1) whether to initiate criminal measures against the accused; (2) whether to remove charges or not and terminate the process of prosecution; (3) whether to reject a claim for surety by the defendant who is arrested; (4) which evidence to produce during the trial; and (4) whether to petition a higher court in relation to a problem of law, a wrong sentencing or an unsuitable permitting of surety or to pursue proceedings review.[138] The author, yet again, offers a generalised viewpoint of prosecution. This study, however, examines prosecution of poaching and wildlife trafficking, an area which the above literature does not adequately address.

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136 Patrick Kiage, 'The Role of The Prosecutor' in Essentials of Criminal Procedure in Kenya (2014) 56-
137 Patrick Kiage, 'The Role of The Prosecutor' in Essentials of Criminal Procedure in Kenya (2014) 56-
138 Patrick Kiage, 'The Role of The Prosecutor' in Essentials of Criminal Procedure in Kenya (2014) 56-

Muigua, Wamukoya and Kariuki identify poaching as a challenge faced by the wildlife sector in Kenya; and theorise that the menace persists in Kenya due to poverty, accessibility of profitable markets and absence of institutional ability to enforce laws on anti-poaching.[139] The study does not analyse these contributing factors in-depth. The authors note that the Wildlife (Management and Conservation) Act of 2013 provides for very high penalties, but in the same breath state that the institutions are not well equipped for enforcement. This sets the stage for the present study which argues that concentration on inadequacy of the prosecution of the cases from an institutional perspective deserves attention.

2.4.2 Delegation of Prosecutorial Powers in Wildlife Management

This section of the review of literature points to the question of the legislative and institutional framework of prosecution of poaching and wildlife trafficking in Kenya. Prosecution of criminal cases in states including Kenya is the preserve of the executive arm of the government with the principal in charge of all prosecutions in the country being the ODPP. However, there is also provision under Kenyan law for the ODPP to delegate prosecutorial powers to subordinate officers.[140] Similarly, the Constitution of Namibia establishes the office of a Prosecutor-General who will be chosen by the President on the of the Judicial Service Commission's recommendation of and who has the powers to "delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any Court".[141]

The policy of power separation is imperative to the discussion of delegation of prosecutorial powers because it is observed that the function of prosecution vests in the executive but the role is performed through interaction with the judicial arm of government. **Marshall** writes that according to the policy of power separation, functions of government must be identified as executive, legislative or judicial, each function is exercised by a separate arm of government, and as a result there is functional independence of the legislature, executive and judiciary.[142]**Devenish** states that the policy of power separation further requires balances and

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139 Kariuki Muigua, Didi Wamukoya and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya* (Glenwood Publishers Limited 2015) 218 – 236.

140 Constitution of Kenya, art 157.

141 Constitution of Namibia, art 88(1) and 88(2)(d).

142 Margaret H Marshall, 'Separation of Powers: A Comparative View' in Jonathan Klaaren (ed) *A Delicate Balance: The Place of the Judiciary in a Constitutional Democracy* (2006) 16

checks and to avoid the concentration of state power in a particular person or entity.[143]These authors discuss the doctrine of separation of powers in an overall assessment of the state, and do not focus on the operation of the law enforcement agencies in specific.

Galligan writes that given the increasingly bureaucratic nature of governmental functions, delegation of State power with generous discretion to perform specific functions has become a matter of necessity.[144]**Galligan** explains this reality of modern legal systems in the following passage:

> "A notable characteristic of the modern legal system is the prevalence of discretionary powers vested in a wide variety of officials and authorities. A glance through the statute books shows how wide-ranging are the activities of the state…It is not just that the state has increased its regulation of these matters, but also that the method of doing so involves heavy reliance on delegating powers to officials to be exercised at their discretion."[145]

In the particular context of prosecution, the delegation of prosecutorial functions has become the inevitable consequence of the pressing need for accountability and public service delivery. This is because the department of prosecution is not in a position address all practical challenges that arise in criminal prosecution, and it therefore has to rely on delegation and outsourcing.[146]**Schonteich and and others** point out that the benefits of delegation and outsourcing of prosecution power have been confirmed and adopted in a number of other jurisdictions such as South Africa, where it is reported that delegation of prosecutorial function has resulted in significant reduction of case backlog which lessens the burdens on defendants in pre-trial detention.[147] The above authors contribute to knowledge in the area of the institutional framework of prosecution. The delegation and outsourcing of the prosecutorial function which leads to reduction of case backlog also contributes to the question on inter-agency coordination between prosecution bodies. However, the authors do not explore this angle, and neither are their approaches focused on poaching and wildlife trafficking in Kenya.

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143 G E Devenish, A Commentary on the South African Constitution (Butterworths 1998).

144 DJ Galligan (ed), A Reader on Administrative Law (1996).

145 DJ Galligan (ed), A Reader on Administrative Law (1996).

146 Simon Chestermanand Angelina Fisher (eds),Private Security, Public Order: The Outsourcing of Public Services and Its Limits (2009).

147 Martin Schonteichand and others (eds), Private Muscle: Outsourcing the Provision of Criminal Justice Services (2004) 93, 95-96.

Under the Constitution of Kenya 2010, Parliament is at liberty to confer prosecutorial powers on other authorities.[148]**Kiage** notes that the DPP, the officers of the ODPP and the public prosecutors exercising delegated authority must strive to reflect community opinion in making decisions as to whether to prosecute, thereby representing both the state and the society in criminal justice.[149] The author does not particularise the recipients of the delegated authority, bringing a necessity to identify the various prosecutorial agencies dealing with poaching and wildlife trafficking in this discourse.

The idea of delegation of prosecutorial power has received its fair share of criticism. Critics view delegation of prosecutorial power as an avenue for arbitrary exercise of power. Also, it is suggested that delegation of prosecutorial power contradicts the doctrine of separation of powers since it brings about a conflict of interest between the efficient working of the judiciary and the executive, breeds unhealthy competition and thereby fosters corruption. These critiques of delegated prosecution are discussed below.

Delegation presupposes that the delegator exercises discretion in allowing the delegate to exercise a function or power. It also implies an entitlement on the delegate. However, it may be viewed as imposing a requirement of mandatory compliance on the delegate, who may have no choice but to follow orders as directed. According to **Jowell and Oliver** the coercion of a subordinate to direct the delegate's functions may be used in the arbitrary exercise of power.[150]**Dicey** considered discretionary power in the exercise of public functions as the antithesis of the rule of law.[151] He opined that the rule of law stands diametrically opposed to "every system of government based on the exercise by persons in authority of wide, arbitrary or discretionary powers."[152] These authors lend credence to the discussion of delegation of prosecutorial powers by the ODPP to other specialised agencies which have a role to play in addressing poaching and wildlife trafficking. They however do not address the way in which the delegates of this power may coordinate their efforts to effectively fulfil the aims of prosecution.

Fairfax writes the ODPP has various powers, including the power to exercise prosecutorial discretion, the power to formulate prosecutorial policy, and the power to determine

148 Constitution of Kenya (2010), art 157(12).
149 Patrick Kiage, 'The Role of The Prosecutor' in Essentials of Criminal Procedure in Kenya (2014)
150 Jeffrey Jowell and Dawn Oliver, *The Changing Constitution* (2004).
151 AV Dicey, Introduction to the Study of the Law of the Constitution (1959).
152 AV Dicey, Introduction to the Study of the Law of the Constitution (1959).

enforcement priorities.[153]**Jackson**, a former judge of the Supreme Court of America observes that "the prosecutor has more control over life, liberty and reputation than any other person".[154]Critics opine that the delegation of prosecutorial power concentrates too much muscle on an individual and this is antithetical to objectives of the separation of powers. A related critique is that by delegating these extensive powers, the likelihood of abuse and arbitrary conduct inevitably becomes greater. The popular explanation for this is that since the enforcement of criminal law reposes with the prosecutor, it is conceivable that prosecutors may by their action or selective inaction cause a particular law to be ineffective.

Another critique is that prosecutorial power is a sovereign power and thus it cannot be delegated, particularly as regards prosecutorial discretion on whether or not to charge a suspect. Further, **Rosett** writes that delegation of prosecutorial power is challenged in that it leads to disparate standards and loss of certainty regarding the consequences of crime; indeed, it has been observed that "modern criminal justice is a highly selective process in which severe punishment is meted out to a few, while many other individuals who appear similarly situated escape with little or no punishment."[155] The above literature presents a gap in knowledge on the expression of delegation of powers to prosecute crimes related to wildlife. This study therefore is significant in that it addresses this gap in available knowledge.

2.4.3 Inter-Agency Coordination in the Management of Wildlife Crime

The literature on inter-agency coordination forms a basis to address the question of whether improved inter-agency coordination may be hailed as a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. Inter-agency coordination emerges in various contexts where government agencies are required to work in harmony to achieve a common goal including the contexts where several agencies have interrelated roles or where the performance of their mandate impacts on the delivery of the other's mandate or where resolving a problem traverse the mandate of more than one institution. According to **Bogdanos**, the benefits of inter-agency coordination are (1)

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153 Roger A Fairfax, 'Grand Jury Discretion and Constitutional Design'*93 Cornell Law Review* (2008) 703, 707-08; Leland E Beck, 'The Administrative Law of Criminal Prosecution: The Development of Prosecutorial Policy' (1978) 27 American University Law Review 310, 317.

154 Robert H Jackson, 'The Federal Prosecutor' *24 Journal of the American Judicature Society 18* (1940).

155 Arthur Rosett, 'Discretion, Severity and Legality in Criminal Justice' *46 Southern California Law Review* (1972).

enhanced speed of decision-making; and (2) increased breadth of plan; resulting in integrated solutions.[156]

First, the speed of decision-making is increased because prior consultations on matters concerning the relationship between the different agencies result in a situation where each party knows its position in the common framework. Where each agency has staff trained to plug in to the common plan, instantaneous notification of the emergence of a predetermined problem triggers action in a rightful manner. When the roles are clearly defined through mutual discussions, the clashes between the agencies performing similar functions are reduced.

Secondly, since each agency arrives at the discussion table with different expertise and backgrounds, they each contribute solutions based on their predispositions. The different perspectives provide varying experiences which, when put together can be used to form a larger plan than any single agency could have developed on its own. The birds-eye-view plan therefore becomes a reality and the common problem becomes significantly easier to solve. The two factors above result in integrated solutions. When a single agency develops a solution it may be short-lived because it only addresses the problem from one angle, leaving many possible avenues for the problem to express itself. If, however, the agencies work together, the problem may be tackled simultaneously and in a systematic fashion, and more sustainable solutions arrived at.

Bogdanos writes that the concept has been applied in military efforts combating terrorism and in harmonising efforts of various law enforcement and judicial bodies such as the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) , 2 agencies under the Department of Justice in the US which express 'sibling rivalry' and clash in their common goal of tacking crime.[157]Perez gives the example of the US Federal Interagency Working Group Committee on Inter agency Coordination within the Department of Justice, which was established to promote inter-agency harmonization 'by sharing ideas, developing tools, and spreading best practices' as well as providing an information-sharing

[156] Matthew Bogdanos, 'Transforming Joint Inter agency Coordination: The Missing Link Between National Strategy & Operational Success' (9, Case Studies in National Security Transformation, Center for Technology and National Security Policy 2013).

[157] Matthew Bogdanos, 'Transforming Joint Inter agency Coordination: The Missing Link Between National Strategy & Operational Success' (9, Case Studies in National Security Transformation, Center for Technology and National Security Policy 2013).

organisational framework to support inter-agency coordination.[158] The author limits the insight into inter-agency coordination to the US as a geographical location. The organs considered are those involved in law enforcement in general. This presents a gap in that the situation in Kenya as a geographical area of study, is not addressed. Further, inter-agency coordination of agencies dealing with wildlife crime does not form part of the author's scope.

Patton observes that poaching and wildlife trafficking may only be dealt with effectively through the combined efforts of ministries and agencies not only in the wildlife conservation docket, but also other bodies.[159] Further, **Patton** states that the coordination efforts should not only be on the national level, but must also extend to the international stage.[160] Though this forms part of the author's observation, the ways in which the inter-agency coordination may be implemented are nor discussed. Further, the local experience of Kenyan prosecutors in the pursuit of inter-agency coordination does not form part of the author's realm of discussion, an inclusion which the present study seeks to address.

Interpol proposes inter-agency coordination as a solution possible solution to the problems plaguing prosecution of crimes related to poaching and wildlife trafficking in East Africa.[161] Especially in relation to poaching of elephants and illegal trade of ivory, **Interpol** recommends that 'collection of countries East African elephants, and states via which ivory is smuggled, ought to install National Environment Security Task Forces (NESTs) – multi agency associations established from customs, police, environmental agencies, prosecutors and other specialised agencies, and where proper inter- governmental partners and non-governmental organisations'.[162] This supports the question of inter-agency coordination and its contribution to addressing poaching and wildlife trafficking in Kenya. However, in suggesting inter-agency coordination the author also does not dwell on Kenya in specific as a geographical area of study.

Lannan observes that inter agency coordination may be achieved in a number of ways, including (1) creating a concentrated body or committee with membership drawn from each

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158 Thomas E Perez, 'Title VI Inter agency Coordination' (Memorandum to Federal Funding Agency Civil Rights Directors, US Department of Justice Civil Rights Division, 20 May 2013).

159 Felix Patton, 'London Conference Marks Turning Point in Wildlife Protection' (SWARA, April – June 2014).

160 Felix Patton, 'London Conference Marks Turning Point in Wildlife Protection' (SWARA, April – June 2014).

161 'Interpol Details Ivory Seizures, Offers Guidance' (Swara News Roundup, Swara, April – June 2014).

162 'Interpol Details Ivory Seizures, Offers Guidance' (Swara News Roundup, Swara, April – June 2014).

of the participating agencies; (2) designating permanent but small interagency liaison staff; or (3) constituting an ad-hoc team assembled in the face of a particular project.[163]The author's comment is however not made in relation to inter-agency coordination among prosecution agencies in particular. This study therefore addresses this gap in its discourse on inter-agency coordination among prosecution agencies in Kenya. Despite the benefits of inter-agency coordination, it is not straight-forward to achieve, and 'the principal challenge of agency to agency actions is to realize harmony of effort notwithstanding the various beliefs, opposing interests, and contradictory primacies of the partaking institutions, several of whom safeguard their relative sovereignty, impartiality and freedom of action.'[164] This study, in bringing inter-agency coordination among prosecution agencies dealing with wildlife trafficking and poaching in the country does not only show the challenge of inter agency operations,[165] but proposes possible solutions to the shortfalls of the system as it is.

2.5 Conclusion

There is available literature on prosecution in general, the exercise of delegated prosecutorial powers and the relationship between prosecution and environmental conservation and preservation. Further, from a constitutional law and administrative law perspective, literature adds to the discussion on whether the exercise of delegated prosecutorial powers is effective. However, there is little literature on the current role of prosecution in Kenya's efforts to combat poaching and wildlife trafficking and on the inter-agency coordination mechanisms available in ensuring prosecution activities are focused in the desired direction. This is the gap in existing literature that this study seeks to contribute to.

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163 Tim Lannan, 'Interagency Coordination within the National Security Community: Improving the Response to Terrorism' *Canadian Military Journal* (Autumn 2004).

164 'Joint Vision 2020' (US Government Printing Office, June 2000), 26.

165 For instance, even as investigators were collaborating in Belgium and France since the Paris attacks in November 2015, which by all accounts were planned in Belgium, the same were caught unaware by the Brussels attack in Belgium in March 2016, killing 31 people and wounding 300 in the airport and a busy subway station. This was largely attributed to Belgium's collaboration to apprehend the Paris attack suspects.

CHAPTER THREE

INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK GOVERNING WILDLIFE CRIMES IN KENYA

3.1 Introduction

This chapter outlines the international and national legal framework governing wildlife crimes in Kenya. It also describes the institutional framework involving prosecution of wildlife crimes in Kenya, and discusses the interplay between the current legal and institutional framework, and the problem of wildlife crimes on the ground. The chapter seeks to contribute to the question of whether Kenya's legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes, and whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya appropriately structured.

3.2 International Legal Framework

3.2.1 Convention on International Trade in Endangered Species of Flora and Fauna (CITES)

CITES was agreed upon on 3rd March 1973 and promulgated on 1stJuly1975 in Washington DC. Kenya became a party to CITES when it signed the Convention in 1978 and sanctioned it in 1979, March.[166] CITES plays a major role in limiting the international trade of wildlife and its products. This is evident in the wide definition of the terms "specimen" and "species". Where, "specimens" consist of living or dead wildlife, also "any readily recognisable part or derivative thereof". Secondly, "species" includes any subspecies, species, or spatially

[166] Christine Mathenge, 'Implementation of International Wildlife Conservation Treaties with Emphasis on Effectiveness of National Legislation, Policies and Practices for Implementation of CITES: Case Study of Kenya' (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

dispersed population thereof. This therefore covers wildlife products including skin, ivory, and horn, which are the main components of wildlife trade.[167]

In order for the specimen or species to be considered protected under CITES, the technical authority of a state that is exporting must determine whether the particular export of the specimen would be harmful to the subsistence of the species. The question of the amount of evidence required to declare that the export is prohibited under CITES was discussed in the US case of *Defenders of Wildlife Inc Endangered species Scientific Authority 659, F. 2n 168. (DC Circ). Certenied 454 Us. 963 (1981)* where the Court stated that:

"Any doubt whether the killing of a particular number of bob cats will adversely affect the survival of the species must be resolved in favour of protecting the animals and not in favour of approving the export of their pelts…The approach of the scientific authority often seemed primarily concerned with an acceptable basis for authorizing bob cat exports despite the absence of convincing factual grounds for making non-detrimental findings"

With regard to prosecution of wildlife trafficking, CITES is insightful because it provides that state law enforcing CITES ought to comprise provisions for the following punishments for offenders: (1) appropriation of unlawful specimens; (2) responsibility to compensate expenditures sustained as a result of appropriation of specimens traded in flouting of the resolution; (3) incarceration; (4) repossession of stuffs used in enabling the prohibited acquirement and trade in the specimen involved; and (5) seizure of the profits of prohibited acquirement and trade in specimen.

CITES, therefore, forms a basis for the evaluation of the national legislative framework dealing with prosecution of crimes related to poaching and wildlife crime in Kenya. In proscribing the penalties for crimes related to poaching and wildlife trafficking of endangered species which include the elephant and rhino, CITES adds value to the discourse on prosecution of wildlife crimes. It creates the framework for the penalties that the prosecution agencies would be seeking to enforce, and therefore is the starting point in evaluating the adequacy of Kenya's laws on poaching and wildlife trafficking.

[167] Keynote Address by Mr. Godber Tumushabe, Executive Secretary (ACODE) (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

Biannually, the parties to the pact meet to assess its enactment and development towards guaranteeing that worldwide trade is not a hazard to wildlife. Resolutions are made at conferences of parties (COPs) to decide if species ought to be included to or listed from Appendix I and Appendix II. For example, at COP13, Kenya petitioned party states to discard applications to reopen the marketable trade in ivory in Africa and in its place to agree on an action plan to check unregulated local ivory markets. At COP14, Kenya and Mali formed a union of 23 African state parties to abolish c trade in ivory. At COP 15, the African states accepted the African Elephant Action Plan and the enforcement of the African Elephant Fund by the CITES secretariat.[168]

3.2.2 Lusaka Agreement on Co-operative Enforcement

The Lusaka Agreement of 1994 is Africa's regional application of CITES. The Lusaka Agreement was considered during the first African Wildlife Law Enforcement Co-operation Conference, organised by CITES in Lusaka in 1992.[169] At the regional level, the agreement of CITES is called the Lusaka Agreement (1994). It was abstracted under the sponsorships of CITES in Lusaka in 1992. The treaty founds a background of collaboration between implementation agencies in the trading in all species of plants and animals and thus has a rather larger command than CITES and has frequently been used in enforcing other pacts. Kenya was chosen as the headquarters of the Lusaka Agreement at the KWS headquarters in Nairobi.

The Agreement provides for inter-agency cooperation for enforcement agencies involved in combating trafficking in all wildlife, and therefore has a broader scope than CITES. In the present study, the Lusaka Agreement informs the question whether Kenya's legal framework adequately address prosecution of poaching and wildlife trafficking crimes, whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya appropriately structured, and further whether improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya.

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168 UNEP (2013). Negotiating and Implementing Multilateral Environmental Agreements (MEAs): A Manual for NGOs. Nairobi: UNEP.

169 The Lusaka Agreement on Co-operative Enforcement (1994), Available here: *https://treaties.un.org/doc/Treaties/1996/12/.../Ch_XXVII_11p.pdf*

3.2.3 London Declaration on Illegal Wildlife Trade

This is the result of the Illegal Wildlife Trade Conference held in February 2014 in London. The Declaration predominantly addresses the question of whether Kenya's legislative framework adequately addresses poaching and wildlife trafficking. As part of Kenya's international law framework, the Declaration adds to the legal backing for increased efforts at improving prosecution of poaching and wildlife trafficking.

The London Declaration is important to this study because it specifically notes that poaching and wildlife trafficking have reached unprecedented levels; many species may become extinct if this wildlife crime is not addressed; illegal wildlife trade robs states of their resources; and especially decries the loss of elephants and rhinoceroses, stating that tackling poaching and wildlife trafficking of elephants and rhinoceroses would assist in the fight against poaching and wildlife trafficking of other endangered species.[170] This calls for enhanced concentration on the prosecution of poaching and wildlife trafficking with specific focus on elephants and rhino.

With reference to prosecution of poaching and wildlife trafficking, the London Declaration is instrumental because it specifically provides as follows:

> "To curb the illegal wildlife trade it is important to ensure that the criminals involved, in particular those 'kingpins' who control the trade, are prosecuted and penalised to provide an effective deterrent."[171]

This clause holds true to the deterrence theory that underscores this study, and provides support for the thesis that strengthening prosecution of poaching and wildlife trafficking should lead to deterrence of offenders, reducing the illegal activities and ensuring safety and continuance of the species in question. It also supports the view that prosecution of poaching and wildlife trafficking must not only involve the petty offenders who actually carry out the ground-work, but also the top brass of the organised criminal networks that perpetrate the offences through their agents. This calls for an all-inclusive approach when prosecuting offenders of crimes related to poaching and wildlife trafficking.

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[170] London Declaration, clause 2, 3, 4, 5.
[171] London Declaration, clause 16.

The London Declaration provides that to ensure that there is an effective legislative framework and deterrents, States should:

> "Strengthen the legal framework and facilitate law enforcement to combat the illegal wildlife trade and assist prosecution and the imposition of penalties that are an effective deterrent (and) Effective multidisciplinary enforcement should be used to ensure effective investigations and prosecutions, and to secure sentences that act as an effective deterrent."[172]

The above provision contributes to the question of whether improved inter-agency coordination a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. Apart from dealing with strengthening the legislative framework, the London Declaration proposes inter-agency coordination as a means of ensuring effective prosecution and to ensure that the potential offenders do not consider perpetrating the crimes due to the deterrent effect of the prosecutions. The London Declaration is therefore an important international law instrument that Kenya must use as a guide to ensuring effective prosecution of poaching and wildlife trafficking.

3.2.4 The Convention on Biological Diversity (CBD)

CBD is a worldwide agreement accepted in Rio de Janeiro, in 1992 at the Earth Summit. It encompasses three specific objectives: to use its constituents sustainably; to share impartially and justifiably the profits emanating from the use of hereditary resources; and to preserve biological diversity. As opposed to other global treaties that set obligatory goals and responsibilities, the CBD's approach to enforcement is flexible. It recognizes overall policies and goals , and states are allowed to choose how they wish to enforce them. One of the CBD's utmost accomplishments thus far has been to produce a huge quantity of attention in biodiversity, both in developing and developed countries.[173] The convention supports the rationale behind the present study, as wildlife management is Centre stage in the biodiversity conservation discourse.

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[172] London Declaration, clause 16.

[173] Available here: *https://www.cbd.int/*

3.2.5 African Convention on the Conservation of Nature

It was adopted in July 11th 2003, and the activities forbidden in "strict nature reserve" under section (a) of this article are similarly forbidden in national parks excluding in so far as they are essential to allow the authorities of the park to enforce the provisions by putting to use, for instance, suitable administrative practices, and to allow the general public to visit the parks.[174] The convention thus underpins the present study as sets the basis for assessing how prosecution has helped in the management of particularly threatened animal.

3.2.6 The East African Community (EAC) Treaty

Article 116 of the East African Community (EAC)[175] treaty directs Partner States take to institute a harmonized and shared policy for the sustainable use of wildlife as well as other tourist sites. More specifically, the Partner States shall:

> (a) Match their guidelines for the wildlife conservation of both outside and within protected areas;
> (b) Share knowledge and accept mutual strategies on wildlife conservation;
> (c) Harmonize efforts in governing and checking infringement and activities of poaching;
> (d) Inspire the joint use of research and training facilities and established mutual management strategies for trans-national protected areas; and
> (e) Adopt measures to sanction or agree to, and, enforce relevant global pacts.

The treaty thus informs the understanding how best the countries legislative and institutional frameworks can be leveraged to enhance cross-border wildlife.

3.3 National Legal Framework

This section addresses the question of whether Kenya's legislative framework adequately address prosecution of poaching and wildlife trafficking crimes, and whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya appropriately structured. Kenya has in place mechanisms in the law that prohibit poaching

[174] Available here: related:www.au.int/en/sites/default/files/treaties/7763-file-african_convention_conservation_nature_and_natural_resources.pdf African Convention on the conservation of Nature

[175] Article 116 of the East African Community (EAC)

and wildlife trafficking, and deal with the prosecution of such crimes. Since criminal law is country specific, the significance of the local laws is that the crimes must be enshrined in the national law and offences created, for the prosecutions to take effect. Due to the importance of the environment to the people of Kenya, and recognition of the rights relating to natural resources as provided for under the Constitution, poaching and wildlife trafficking may also have an effect on the constitutional rights. Failure to effectively prosecute poaching and wildlife trafficking may also impinge on civil law, with trespassers on private conservancies and forests with the aim to poach infringing the rights of citizens under civil law. A look at the legislative and institutional framework presents a basis for an evaluation of whether they are well placed to address poaching and wildlife trafficking.

There are various offences for which one may be charged with, relating to poaching and wildlife trafficking. The Wildlife (Conservation and Management) Act, 2013 creates a number of offences related to poaching and wildlife trafficking, but the provisions under the Act are not exhaustive and persons may still be charged under other statutes. These are the offences which the prosecution agencies would be most preoccupied with in charging an offender involved in activities relating to poaching and wildlife trafficking. Since criminal law is specific to a particular jurisdiction, the particular offences must be created in the national legislation for them to be enforced. This section therefore provides the basis for a discussion on the particular offences under national law.

A person convicted for an offence relating to endangered and threatened species trophy is prone to a minimum fine of Kshs 20 million, imprisonment for life, or both.[176] An endangered species or threatened species is one which is listed in the Schedules of the Act or in CITES as a species which is limited in its presence in the environment, usually due to depletion over the years.[177] Where a person is found to be in possesion of a trophy of wildlife or dealing in a wildlife trophy, or produces any item from a trophy in absent of a permit issued under the Act, is charged and convicted, that person is liable to a minimum fine of Kshs 1 million, imprisonment for 5 years or both.

While in some other countries sport hunting is permitted, in Kenya a person who hunts for sport or for other recreational activity commits an offence and is liable upon assurance to

[176] Wildlife Conservation and Management Act 2013, s 92.
[177] Wildlife Conservation and Management Act 2013, s 2.

either (1) a minimum fine of Kshs 20 million or life imprisonment; (2) a fixed fine of Kshs 5 million, imprisonment for 5 years or both; or (3) a fixed fine of Kshs 1 million, imprisonment for 2 years or both; depending on the category of wildlife the person was hunting.[178] Though in the past there was room in the society for hunter-gatherers who relied on game for their subsistence, under the Act a person charged and convicted for subsistence hunting is prone to a fine of Kshs 30,000 and imprisonment for a minimum of 6 months, or both.[179] The Act provides for different levels of punishment depending on the purpose for which the person was hunting. A person charged and convicted for hunting for bush-meat trade, one is liable to a minimum fine of Kshs 200,000, imprisonment for a minimum of 1 year, or both.[180]

A person who engages in illegal wildlife trade and is charged and convicted, is penalised a minimum fine of Kshs 10 million or imprisonment for a minimum of 5 years where it is Category A wildlife; or a minimum fine of Kshs 1 million, imprisonment for a minimum of 1 year, or both, where it is any other wildlife category.[181]

National parks, reserves or conservancies are areas classified as such for the conservation and preservation of wildlife. Where a person enters such a place without a licence, sets fire, carries out logging, clears and cultivates any land, wilfully causes damage, conveys or is found in the area with an unlicensed weapon, carries out extractive activities in marine protected areas, or performs other similar action, that person is liable upon conviction to a minimum fine of Kshs 200,000 and an imprisonment of a minimum of 2 years, or both.[182]

It is not only individuals who may be charged and convicted for poaching and wildlife trafficking. A body corporate or partnership may also be held liable for such offences, and every colleague who had information or should have recognized of the offence commission and who did not perform due to diligence to ensure compliance with the Act also commits an offence.[183] Also, a principal may be found guilty for an offence committed by an agent; and an employer may also be found liable for an offence committed by an employee; unless the

178 Wildlife Conservation and Management Act 2013, s 96, schedule 9.
179 Wildlife Conservation and Management Act 2013, s 97.
180 Wildlife Conservation and Management Act 2013, s 98.
181 Wildlife Conservation and Management Act 2013, s 99 (3).
182 Wildlife Conservation and Management Act 2013, s 102.
183 Wildlife Conservation and Management Act 2013, s 103.

principal or employer shows that the commission of the offence was committed against standing or express directions.[184]

These offences show that there is a rich assortment of offences created under Kenya's national law relating to poaching and wildlife trafficking. However, as this study argues, it is not enough that there are offences: prosecution must also be effective for the offences to have force. It follows, then, that the problem is not that there are no offences under the national law relating to poaching and wildlife trafficking, but rather that the prosecution of the offenders is not robust. This calls for an examination of the legislative and institutional framework on the prosecution of these offences.

3.4 Institutional Framework

The following diagram shows the interplay between the institutions involved in dealing with cases relating to poaching and wildlife trafficking. It shows that the prosecution agencies such as the ODPP, KWS, National Police Service and KRA play a joint role of prosecution. The judiciary is also involved in handling cases relating to poaching and wildlife trafficking. In order to achieve successful prosecution of crimes related to poaching and wildlife trafficking, there needs to be coordination between all the institutions, and cooperation as they work to achieve the common goal

3.4.1 Office of the Director of Public Prosecutions (ODPP)

ODPP is one of the core institutions involved in prosecution of wildlife crimes in Kenya, and is the first institution that this study explores in assessing whether the legislative frameworks and institutional framework dealing with prosecution of poaching and wildlife trafficking in Kenya is effective. In Kenya prosecution is the core mandate of the ODPP led by the DPP. ODPP is a law enforcement agency which is vital in the fight against poaching and wildlife trafficking. Its function is clearly established in Article 157 of the Constitution of Kenya, 2010. Article 157(9) of the Constitution of Kenya, 2010 envisages the concept of delegated prosecutorial powers; it states that the "powers of the DPP may be exercised in person or by subordinate officers acting in accordance with general or special instructions." Article 157(12) also supports the idea of delegated powers of prosecution by providing that:

[184] Wildlife Conservation and Management Act 2013, s 103.

"Parliament may enact legislation conferring powers of prosecution on authorities other than the Director of Public Prosecutions."

The ODPP Act, 2013 provides the legislative basis for the operation of the ODPP. The Act provides that pursuant to Article 157 of the Constitution the DPP has the power to direct the Inspector-General of the National Police Service to conduct investigations; carry out prosecutions; and formulate and review public prosecution policy. The DPP may assign a subordinate officer to assist or guide in the investigation of a crime, bringing into the ODPP the aspect of supervision of investigations as they are conducted. The inter-agency coordination as provided in the law is the subject of the examination of whether it can serve a solution to the inadequacies of prosecution of poaching and wildlife trafficking in Kenya.

The Act makes provision for the ODPP to retain prosecution counsel for the proper provision of prosecution services.[185] As part of this, the ODPP has a special wildlife crime prosecution unit to deal with the prosecutions with regard to poaching and wildlife trafficking. Also, pursuant to Article 157(9) of the Constitution on delegation of prosecutorial powers, the DPP may also appoint prosecution assistants.[186]The DPP has delegated powers of prosecution to certain governmental agencies such as KWS and the National Police Service.[187] The Act provides that the DPP may appoint any qualified personnel to take legal action on his or her behalf, where a person appointed as such will be known as a public prosecutor, he or she shall be responsible to the DPP and shall be bound to comply with all instructions issued by the DPP in respect of prosecutions.[188]

The DPP may direct the summoning of an annual Nation-wide Prosecution Service Agreement, which shall deliberate strategic issues comprised in trial for the purposes of enhancing the values of trial and service delivery.[189] This provision would be important in addressing the aspect of prosecution of poaching and wildlife crimes because it may be a forum through which findings of this study and other similar studies on the role of prosecution in combating these crimes, may be presented.

185 Office of the Director of Public Prosecutions (ODPP) Act (2013), s 19.
186 Office of the Director of Public Prosecutions (ODPP) Act (2013), s 20.
187 Wildlife Conservation and Management Act 2013, s 107.
188 Office of the Director of Public Prosecutions (ODPP) Act (2013), s 29.
189 Office of the Director of Public Prosecutions (ODPP) Act (2013), s 50.

The convention would assist to enhance inter-agency coordination between prosecution bodies in general, and the prosecution agencies dealing with poaching and wildlife trafficking would benefit from this event. However, since inter-agency coordination is not a one-time event, it may not adequately suffice to only rely on the National Prosecution Service Convention. Further, since the Convention deals with prosecution in general, there is still a need for similar events, though specialised for prosecution agencies dealing with poaching and wildlife trafficking.

Section 85 of the Criminal Procedure Code provides for appointment of public prosecutors and conduct of prosecution. Section 85(1) of the Code provides that the Attorney-General, may appoint public prosecutors for Kenya or for any specified area and either generally or for any specified case or classes of cases by notice in the Gazette. While this was the position before the Constitution vested the ODPP with the powers of prosecution, the principle still holds true: the ODPP may appoint public prosecutors to conduct prosecutions. This provision further buttresses the delegation of prosecutorial powers to KWS, KRA, the National Police Service and Immigration especially relating to prosecution of crimes related to poaching and wildlife trafficking.

The ODPP is an important institution in the prosecution of poaching and wildlife trafficking in Kenya. While the law provides for the delegation of prosecutorial powers under the ODPP Act, and need for inter-agency coordination is seen where the delegates of the prosecutorial power should act in harmony to ensure the effective prosecution of crimes related to poaching and wildlife trafficking. The inadequate reference to inter-agency coordination in the legislative framework establishing the ODPP points to the inadequacy of the laws in entrenching coordinated efforts between the ODPP and the delegates of prosecutorial power. This translates in an inadequate legal provision for inter-agency coordination between the prosecution bodies dealing with crimes related to poaching and wildlife trafficking.

3.4.2 Kenya Wildlife Service (KWS)

The Wildlife (Conservation and Management) Act, 2013 provides for various aspects of prosecution of wildlife crimes. The importance is that Part II of the Act provides for the establishment of KWS. This is the body responsible with the legal mandate of wildlife management and conservation in Kenya, and therefore it plays a crucial role in prosecution of

crimes relating to poaching and wildlife trafficking across the country.[190] An examination of the structure and operation of KWS therefore contributes to the question of whether the legislative and institutional framework dealing with prosecution of poaching and wildlife trafficking is adequate.

KWS is established as a body corporate. Notable among its functions, one of the functions of KWS is to assume and perform implementation activities such as poaching-prohibiting procedures, protection of wildlife, intellect gathering, inquiries and other implementation practices for the operative enforcing the provisions of the Act.[191] To assist in its anti-poaching activities, and in combating illegal trade in wildlife trophies, KWS is required by the Act to record wildlife trophies from the culling and cropping operations.[192]

While cropping and culling are legal activities done in the interests of the entire ecosystem, if there are insufficient records kept of the wildlife harvested or removed, then the efforts to crop or cull may be misused. Fraudulent individuals may simultaneously poach and hide their illegal activity in the midst of the legal efforts. KWS has a national mandate. However, the Act provides for "devolution", meaning the rights transfer, responsibilities and authority by the nation-wide wildlife agencies to the national demarcated spatial domains.[193] The implementation of the Act is to be guided by a number of principles, one says that wildlife protection shall be devolved, wherever suitable and likely to those land owners where wildlife occurs.[194] To this end, the Act provides for the establishment of a County Wildlife Conservation and Compensation Committee for each of the 47 counties.[195]

Besides, the Act provides that community wildlife associations and wildlife managers approved by the Cabinet Secretary on the recommendation of KWS in discussion with the county wildlife conservation committees shall, among other functions, assist KWS in fighting illegal activities, including poaching and bush meat trade.[196] A community wildlife association is a body registered by a community, landowner, group of landowners or existing

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190 Patrick Mwiti, 'Strengths And Weaknesses of CITES Institutional Framework in Kenya' (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).
191 Wildlife (Conservation and Management) Act (2013), s 7(k).
192 Wildlife (Conservation and Management) Act (2013), schedule 8.
193 Wildlife (Conservation and Management) Act (2013), s 2.
194 Wildlife (Conservation and Management) Act (2013), s 4.
195 Wildlife (Conservation and Management) Act (2013), s 18.
196 Wildlife (Conservation and Management) Act (2013), s 41(b).

representative organization.[197] Where it is an individual owner who wishes to carry out similar functions, the person may be registered as a wildlife manager.[198]

KWS has an anti-poaching unit with base stations in key wildlife habitats, and the KWS Air wing flies missions for security, anti-poaching efforts, but mostly for species counts and surveys.[199]The personnel of KWS who are specifically appointed and by law are allowed to prosecute cases relating to the Wildlife (Conservation and Management) Act are the National Park Director and Wardens across the national parks across the country..[200] These officers are appointed as public prosecutors in their respective parks or reserves.

While the Wildlife (Conservation and Management) Act, 2013 provides for the establishment of KWS as the national body involved with prosecution of poaching and wildlife trafficking, and the County Wildlife Conservation and Compensation Committee for each of the 47 counties, the Act does not provide for a mechanism of inter-agency coordination of KWS with its parent organisation in prosecution matters being the ODPP, nor does it dictate the bounds of inter-agency coordination with the County Wildlife Conservation and Compensation Committees. This presents a situation where there may be a disconnect between the efforts of KWS and the ODPP or the county-level Committees in matters concerning poaching and wildlife trafficking. This, therefore, is an inadequacy in the legislative and institutional framework dealing with poaching and wildlife trafficking in Kenya.

3.4.3 National Police Service

Enforcement of wildlife crimes is the focus of this study, and the National Police Service is a key institution in the framework for prosecution of poaching and wildlife trafficking in Kenya. The National Police Service is a creature of the Constitution, established under Article 243. National Police Service consists of the Administration Police and the Kenya Police Service, both of which function throughout Kenya.[201] The National Police Service is

197 Wildlife (Conservation and Management) Act (2013), s 40.
198 Wildlife (Conservation and Management) Act (2013), s 40(1).
199 Christine Mathenge, 'Implementation of International Wildlife Conservation Treaties with Emphasis on Effectiveness of National Legislation, Policies and Practices for Implementation of CITES: Case Study of Kenya' (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).
200 G.N. 1424/1957 and G.N. 1664/1960.
201 Constitution of Kenya (2010), art 243.

headed by an Inspector-General, who is deputised by the Deputy Inspector-General of the Kenya Police Service and the Deputy Inspector-General of the Administration Police.[202]This section addresses the question of whether the legislative framework establishing and prescribing the operation of the National Police Service as an institution dealing with prosecution of poaching and wildlife trafficking in Kenya, is adequate.

The Act of National Police Service 2011 gives effect to the provisions of the Constitution and it outlines the structure and powers of the National Police Service. It provides for the establishment of the Directorate of Criminal Investigations, an office which is under the direction, command and control of the Inspector-General.[203] The Director of Criminal Investigations oversees the Directorate which detects and prevents crime, collects and provides criminal intelligence; maintains law and order, undertakes investigations on serious crimes; apprehends offenders; maintains criminal records; conducts forensic analysis; executes directions to investigate given to the Inspector-General by the DPP; coordinated Interpol Affairs; and investigates matters referred to it by the Independent Police Oversight Authority.[204]

The ODPP Act, 2013 gives direction on the relation between the National Police Service and the ODPP.[205] While this gives an overall inter-agency coordination framework for the ODPP and the National Police Service, the legislation does not give special focus to poaching and wildlife trafficking in Kenya. Police officers are appointed as prosecutors under section 85(1) which gives power to the ODPP to appoint public prosecutors. The rank of police officers appointed to prosecute cases is important because if the person conducting a prosecution is not qualified to do so, then the case would fail on the basis of that illegality. In *Joseph Karanja Mungai v Republic Criminal Appeal No. 157 of 2003*, the Court quoted *Elirema & Another v Republic [2003] KLR 537*where it was held that:

> "For one to be appointed as a public prosecutor by the Attorney General one must be either an advocate of the High Court of Kenya or a police officer not below the rank of an assistant inspector of police. We suspect the rank of assistant inspector must have been replaced by that of an acting inspector but the Code has not been amended

[202] Constitution of Kenya (2010), art 245.
[203] National Police Service Act (2011) s 28.
[204] National Police Service Act (2011) s 35.
[205] National Police Service Act (2011) s 26.

> to conform to the Police Act. Kamotho and Gitau were not qualified to act as prosecutors and the trial of the appellants in which they purported to act as public prosecutors must be declared a nullity."

In *Joseph Karanja Mungai v Republic* (supra),a police constable conducted a large portion of the prosecution, being a servant of the Police Service below the rank of assistant inspector. The Court stated as follows:

> "…if a police constable who was unqualified to conduct prosecution conducted part of the prosecution…the whole trial must be invalidated. In view of the foregoing, the appellant's trial in which PC Muasya purported to act as a prosecutor must be declared a nullity. We now do so with the result that all the convictions recorded against the appellant must be and are hereby quashed and the sentences are set aside."

The role of the National Police Service is crucial in tacking poaching and wildlife trafficking, and the efforts of police officers who have supported anti-poaching initiatives must continue to be recognised.[206] While police officers are involved in criminal prosecutions, it is argued that their level of legal knowledge is incomparable to that of the advocates acting for the accused, making it challenging to address all loopholes in the cases, therefore posing a challenge to achievement of successful prosecutions.[207] The wildlife laws in Kenya do not adequately address the type of cases that are handled by advocates, and those conducted by police officers, especially with reference to poaching and wildlife trafficking in Kenya. The institutional framework therefore is at a loss because neither it does not sufficiently address the training required for the police prosecutors who conduct cases related to poaching and wildlife trafficking. This leads to situations where the police prosecutors at times do not address the required legal angles required to successfully prosecute offenders charged with crimes related to poaching and wildlife trafficking.

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[206] C Nellemann and others (eds)The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A UNEP Rapid Response Assessment (United Nations Environment Programme and GRID-Arendal 2014).

[207] Patricia Kameri Mbote and Migai Akech, *Kenya: Justice Sector and the Rule of Law* (Open Society Initiative for Eastern Africa 2011).

3.4.4 Kenya Revenue Authority (KRA)

The legislative and institutional framework dealing with poaching and wildlife trafficking includes prosecution agencies which deal with crimes associated with poaching and wildlife trafficking, but not the actual activities of hunting or hauling the wildlife or wildlife products. One of these prosecution agencies is the Kenya Revenue Authority (KRA) established under the Kenya Revenue Authority Act, 1995 as a body corporate charged with collection and receipt of all revenue due to the government, administration and enforcement of revenue collection laws, and advice of the government on revenue collection.[208] KRA is governed by a Board of Directors and the Chief Executive is the Commissioner-General.[209]

KRA administers and enforces legislation which is important to this study due to the effects of the law on cross-border trade associated with poaching and wildlife trafficking, namely the Customs and Excise Act (Cap 472), the East African Community Customs Management Act (2004) and the Annexes to the procedure on the Establishment of the East African Community Customs Union.[210] These Acts provide for payment of customs duty, a tax levied on the import and export of goods in Kenya. In the conduct of wildlife trafficking, KRA officers are important because they may detain goods for which customs duty has not been paid.

The Act provides that an officer may seize goods, vehicle, vessel, an aircraft, animal, or other thing liable to penalty under the Act.[211] One category of the goods liable to forfeiture is "illegal goods", meaning goods which are prohibited under the provisions of this Act or any other written law.[212] While animals, plants and micro organisms are not listed as prohibited goods under the Act, where they are illegally hunted or collected they are protected under the Wildlife (Conservation and Management) Act and are therefore prohibited. Detention is in line with CITES which includes this as a sanction for offenders of wildlife trafficking of endangered species.

Delegation of the power to prosecute to KRA is evident where it is delegated that any customs officer under the Act may prosecute in a prosecution before a subordinate court for

208 Kenya Revenue Authority Act (1995), s 3, 5.
209 Kenya Revenue Authority Act (1995), s 6, 11.
210 Kenya Revenue Authority Act (1995), schedule 1.
211 Customs and Excise Act (Cap 472), s 199.
212 Customs and Excise Act (Cap 472), s 2.

an offence.[213] The importance of KRA customs officials in prosecution of crimes related to poaching and wildlife trafficking is apparent because most large-scale seizures of wildlife and wildlife products being illegally traded have been at maritime ports, where the items are hidden among lawfully packed goods.[214] However, the laws conferring the KRA customs officials the powers of carrying out these prosecutions is inadequate because it is silent on the operation of this delegated prosecutorial authority. It is also silent on the manner in which the KRA customs officials should coordinate with the other bodies carrying out prosecutions dealing with poaching and wildlife trafficking. This being an institution involved in the overall framework of bodies handling crimes relating to poaching and wildlife trafficking, this shows that the institutional framework is wanting.

3.4.5 Immigration

The Directorate of Immigration and Registration of Persons is important in the discourse on prosecution of poaching and wildlife trafficking because these criminal activities are normally related with the illegal entry and exit of the offenders from different countries, especially owing to the transnational nature of wildlife crime. The Directorate of Immigration and Registration of Persons, which is the body responsible for entry and exit of all persons, has the responsibility to ensure that the persons entering and leaving Kenya have legitimate reasons. Where these individuals have illegitimate reasons, they may be arrested and prosecuted. However, there is no explicit provision in the law outlining a pro-active coordinated approach between the Department of Immigration and the other institutions associated with prosecution of crimes related to poaching and wildlife trafficking.

3.5 Conclusion

Kenya has an existing legislative and institutional framework addressing poaching and wildlife trafficking. While the laws and the institutions are in place, as shown in case law there is much to be done in improving the state of prosecution relating to poaching and wildlife trafficking. The regulation of inter-agency activities comes out as a stark area of attention which needs to be addressed to ameliorate the role of prosecution in combating poaching and wildlife trafficking.

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213 Customs and Excise Act (Cap 472), s 213.

214 'Interpol Details Ivory Seizures, Offers Guidance' (Swara News Roundup, Swara, April – June 2014).

The Convention on International Trade in Endangered Species of Flora and Fauna (CITES) plays an important role in limiting the international trade of wildlife and wildlife products. CITES forms a basis for the evaluation of the national legislative framework dealing with prosecution of crimes related to poaching and wildlife crime in Kenya. In proscribing the penalties for crimes related to poaching and wildlife trafficking of endangered species which include the elephant and rhino, CITES adds value to the discourse on prosecution of wildlife crimes. It creates the framework for the penalties that the prosecution agencies would be seeking to enforce, and therefore is the starting point in evaluating the adequacy of Kenya's laws on poaching and wildlife trafficking.

The Lusaka Agreement of 1994, Africa's regional application of CITES, proposes inter-agency coordination as a means of improving enforcement of crimes related to wildlife trafficking. It also creates fertile ground for the implementation of policies and regulations to govern the operation of inter-agency coordination in among prosecution bodies in the country, to effectively combat wildlife trafficking and the poaching menace that fuels it.

Kenya participated in the London Conference on the Illegal Wildlife Trade in 2016, and is a party to the London Declaration. Apart from dealing with strengthening the legislative framework, the London Declaration proposes inter-agency coordination as a means of ensuring effective prosecution and to ensure that the potential offenders do not consider perpetrating the crimes due to the deterrent effect of the prosecutions.

There is a rich assortment of offences created under Kenya's national law relating to poaching and wildlife trafficking. However, it is not enough that there are offences: prosecution must also be efficient for the offences to take effect. It follows, then, that the problem is not that there are no offences under the national law relating to poaching and wildlife trafficking, but rather that the prosecution of the offenders is inefficient.

The ODPP is an important institution in the prosecution of poaching and wildlife trafficking in Kenya. While the law provides for the delegation of prosecutorial powers under the ODPP Act, and need for inter-agency coordination is seen where the delegates of the prosecutorial power should act in harmony to ensure the effective prosecution of crimes related to poaching and wildlife trafficking. The inadequate reference to inter-agency coordination in the legislative framework establishing the ODPP points to the inadequacy of the laws in entrenching coordinated efforts between the ODPP and the delegates of prosecutorial power.

This translates in an inadequate legal provision for inter-agency coordination between the prosecution bodies dealing with crimes related to poaching and wildlife trafficking.

KWS is charged with the legal consent of wildlife management and conservation in Kenya, and therefore it plays a crucial role in prosecution of crimes relating to poaching and wildlife trafficking across the country.[215]The Wildlife (Conservation and Management) Act, 2013 provides for the establishment of KWS as the national body involved with prosecution of poaching and wildlife trafficking, and the County Wildlife Conservation and Compensation Committee for each of the 47 counties. However, the Act does not provide for a mechanism of inter-agency coordination of KWS with its parent organisation in prosecution matters being the ODPP, nor does it dictate the bounds of inter-agency coordination with the committee of County Wildlife Conservation and Compensation. This presents a situation where there may be a disconnect between the efforts of KWS and the ODPP or the county-level Committees in matters concerning poaching and wildlife trafficking. This, therefore, is an inadequacy in the legislative and institutional framework dealing with poaching and wildlife trafficking in Kenya.

The role of the National Police Service is crucial in tacking poaching and wildlife trafficking. While police officers are involved in criminal prosecutions, it is argued that their level of legal knowledge is incomparable to that of the advocates acting for the accused, making it challenging to address all loopholes in the cases, therefore posing a challenge to achievement of successful prosecutions.[216] The wildlife laws in Kenya do not adequately address the type of cases that are handled by advocates, and those conducted by police officers, especially with reference to poaching and wildlife trafficking in Kenya. The institutional framework therefore is at a loss because neither it does not sufficiently address the training required for the police prosecutors who conduct cases related to poaching and wildlife trafficking. This leads to situations where the police prosecutors at times do not address the required legal angles required to successfully prosecute offenders charged with crimes related to poaching and wildlife trafficking.

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215 Patrick Mwiti, 'Strengths And Weaknesses of CITES Institutional Framework in Kenya' (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

216 Patricia Kameri Mbote and Migai Akech, *Kenya: Justice Sector and the Rule of Law* (Open Society Initiative for Eastern Africa 2011).

The importance of KRA customs officials in prosecution of crimes related to poaching and wildlife trafficking is apparent because most large-scale seizures of wildlife and wildlife products being illegally traded have been at maritime ports, where the items are hidden among lawfully packed goods.[217] However, the laws conferring the KRA customs officials the powers of carrying out these prosecutions is inadequate because it is silent on the operation of this delegated prosecutorial authority. It is also silent on the manner in which the KRA customs officials should coordinate with the other bodies carrying out prosecutions dealing with poaching and wildlife trafficking. This being an institution involved in the overall framework of bodies handling crimes relating to poaching and wildlife trafficking, this shows that the institutional framework is wanting.

The Directorate of Immigration and Registration of Persons, that is responsible for control and regulation of entry and exit of all persons, has the responsibility to ensure that the persons entering and leaving Kenya have legitimate reasons. Where these individuals have illegitimate reasons, they may be arrested and prosecuted. However, there is no explicit provision in the law outlining a pro-active coordinated approach between the Department of Immigration and the other institutions associated with prosecution of crimes related to poaching and wildlife trafficking.

Prosecution agencies such as the ODPP, KWS, National Police Service and KRA play a joint role of prosecution. The judiciary is also involved in handling cases relating to poaching and wildlife trafficking. In order to achieve successful prosecution of crimes related to poaching and wildlife trafficking, there needs to be coordination between all the institutions, and cooperation as they work to achieve the common goal.

A prosecution handling poaching may involve charging the accused person with multiple offences. The importance of efficient prosecution cannot be overstated. Matters concerning charges have a heavy bearing on whether or not the prosecution will succeed. Prosecutors, therefore, must be well versed with the provisions of criminal law and criminal litigation. This is to the point of ensuring that no mistake is made with the charge sheet. Any error on the charge sheet may lead to an automatic acquittal by the Court.

[217] 'Interpol Details Ivory Seizures, Offers Guidance' (Swara News Roundup, Swara, April – June 2014).

Though prosecution of poaching and wildlife trafficking has been handled in the courts, there is insufficient judge-made law on the inter-agency coordination of prosecution bodies dealing with poaching and wildlife trafficking in the country. There also appears to be little documentation and publishing of the cases involving offenders of laws dealing with poaching and wildlife trafficking in Kenya. In failing to adequately make the judgements available, it becomes difficult to grow the body of jurisprudence on poaching and wildlife trafficking in Kenya, limiting guidance that could be provided to prosecutors, and therefore limiting the achievement of successful prosecutions of poaching and wildlife trafficking.

CHAPTER FOUR

RESULTS AND DISCUSSIONS

4.1 Introduction

Inspired by the need for the present study as spelled out in the statement of the problem, this chapter presents findings to a field survey conducted in Voi sub County.Taita Taveta County, sampling 14 respondents from prosecutors in the ODPP (Land, Environment and Wildlife Unit), KWS, and KRA. The chapter sought to address the study objectives, which included: to assess the role of prosecution as a tool for addressing poaching and wildlife trafficking in Kenya; to investigate whether Kenya's legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes; to determine whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is appropriately structured; and to establish if improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. Results are further discussed by corroborating the same with similar findings from previous studies covered in the literature review.

4.2 Demographic Statistics

This section captures respondents' demographics including responses by organisation, age, gender and designation. Findings are analysed in frequencies and percentages and presented in tables and figures detailed here below.

4.2.1 Response by Organization

It is apparent from the foregoing literature that various institutional actors are involved in the prosecution process with a view to combat poaching and wildlife trafficking in Kenya. The study thus deemed it adequate to include diverse institutions with different mandates in the prosecution process in order to capture the different experiential perspectives. Responses across the different organizations are illustrated in Table 1.

Table 1 Response by Institution

Respondent Institution	Frequency	Percent (%)
ODPP	7	50.0
KWS	3	21.4
KRA	2	14.4
Judiciary	1	7.1
AWF	1	7.1
Total	**14**	**100.0**

Source: Survey data, 2015

As illustrated in Table 1, employing purposive sampling technique, the research process involved 14 respondents. There were 7 respondents from the ODPP, 3 respondents from KWS, 2 respondents from KRA, 1 respondent from the Judiciary and 1 respondent from the Africa Wildlife Foundation (AWF). It can thus be deduced that the study captures diverse perspectives from different institutional actors in the prosecution process as informed by the various tasks and scope characteristic of the respective institutions towards combating poaching and wildlife trafficking in Kenya.

4.2.2 Response by Age

Age was deemed as an important demographic characteristic in the present study as a relative indicator of respondents' length of experience hence reliability of responses on pertinent issues defining the role of prosecution in combating poaching and wildlife trafficking. Figure 2 presents the findings.

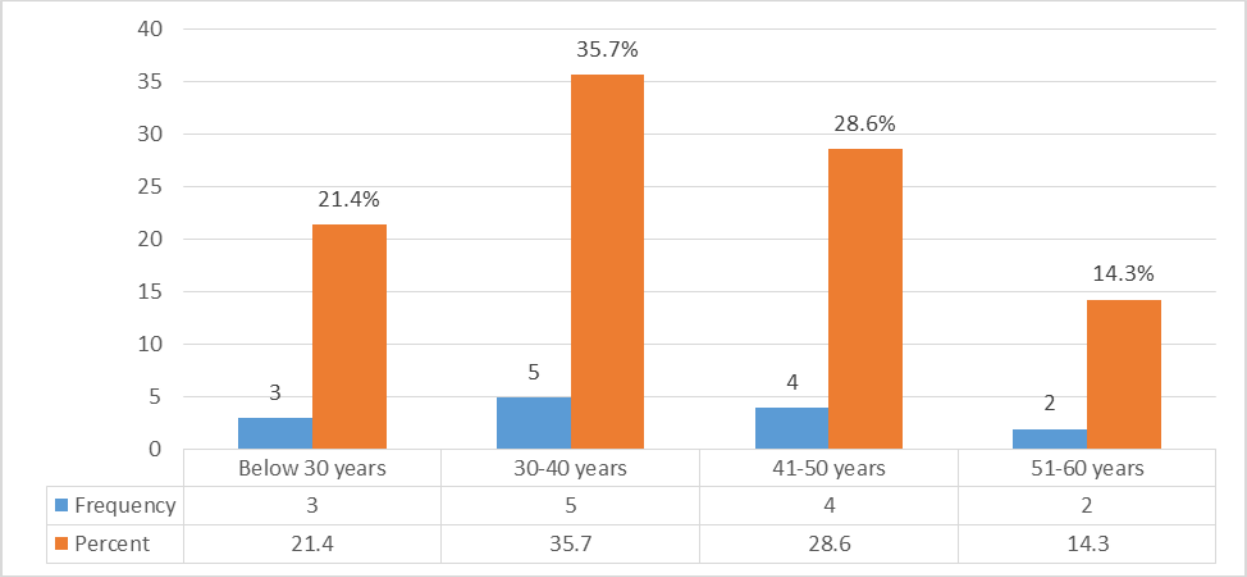

Figure 2 Response by Age

Source: Survey Data, 2015

Results as illustrated in figure 2 revealed a rather fair distribution in response by age. As show, a majority of respondents, 35.7% fall within the 30 - 40 years age category, closely followed by those within the 41 - 50 years age category as indicated by 28.6% of the respondents. Only 21.4% and 14.3% of respondents fall below 30 years and between 51 - 60 years categories respectively. As such, it can be deduced that age, across the respondents reached is majorly youthful to middle aged, distributed, between 30 and 50 years. A rich diversity in experience was thus established, and responses can thus be deemed reliable as informed by experience. Respondents were thus deemed as possessing adequate knowledge on aspects associated with the role of prosecution authorities in combating poaching and wildlife trafficking in Kenya.

4.2.3 Response by Gender

For the gender distribution and parity shown across the institutions included in the survey, the study sought to determine the respondents' gender. Results are presented in Table 2.

Table 2 Response by Gender

Gender	Frequency	Percent
Male	8	57.1
Female	6	42.9
Total	14	100.0

Source: Survey Data, 2015

As presented in Table 2, male respondents, 8 (57.1%), registered the most as compared to their female counterparts, 6 (42.9%). It follows then from the findings, that whereas the males made the dominant gender among the respondents, female respondents were considerably close. This is a notable finding with the implication that the empowerment of the female gender has made great strides in the country much to their numbers almost matching those of their male counterparts in positions. This is in tandem with UNEP,[218]which asserts that in order to effectively combat the illegal trade in wildlife, there is need to not only influence expertise, but also empowering women and building strong institutions, all of which support the rule of law.

4.2.4 Response by Designation

Prosecution authorities in combating poaching and wildlife trafficking in Kenya leverage various expertise. To further ascertain representation and diversity in perspectives thereof, respondents were asked to indicate their respective designations. Figure 3 presents the findings.

[218] C Nellemann and others (eds)The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A UNEP Rapid Response Assessment (United Nations Environment Programme and GRID-Arendal 2014).

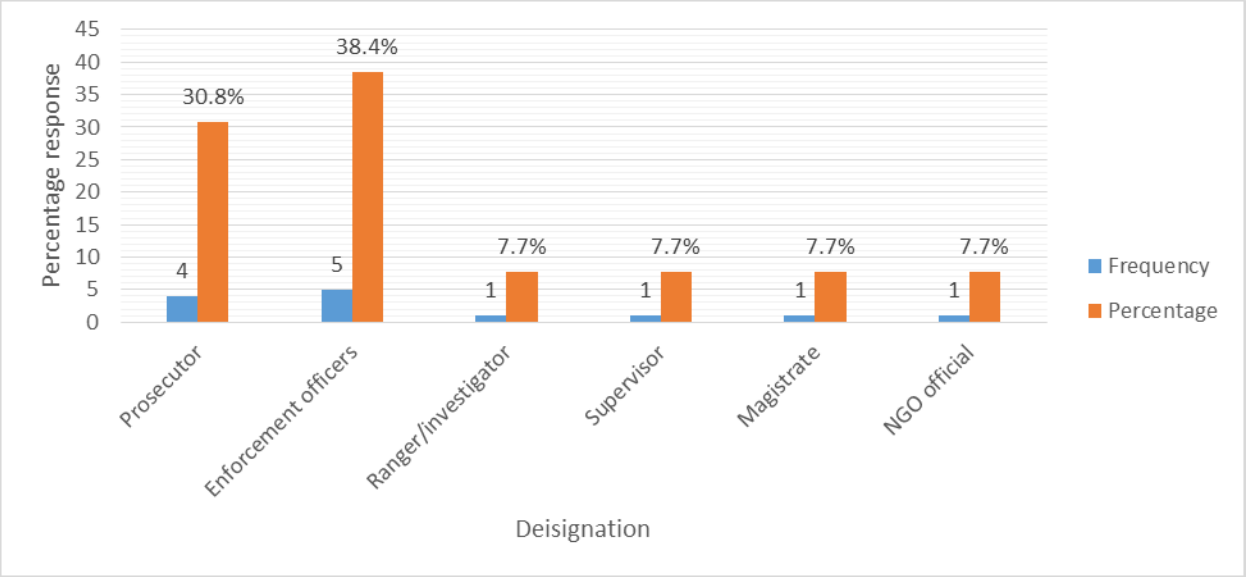

Figure 3Response by Designation

Source: Survey Data, 2015

It was established as illustrated in figure 3 that a majority, 38.4% of respondents were enforcement officers, closely followed by prosecutors (30.8%), while the rest 7.7% represented an investigator, a supervisor, a magistrate and an NGO official from AWF. This indicates the diverse perspectives as informed by tasks and duties characteristic of the respective designations. The different expertise as indicated by the designations can be leveraged to form partnerships and national networks to enhance prosecution and collaboration by various involved institutions towards an effective eradication of poaching and wildlife trafficking in Kenya.

4.3 Role of prosecution as a tool for addressing poaching and wildlife trafficking

Various institutional actors play key prosecutorial roles aimed at combating poaching and wildlife trafficking in Kenya. It is imperative to establish how these roles contribute towards the reduction of the same, in order to enhance both institutional capacity for improved prosecution of poaching and wildlife trafficking thereof. The study sought to assess the role of prosecution as a tool for addressing poaching and wildlife trafficking in Kenya. This section presents findings to pertinent questions posed to respondents with a view to address this objective.

The study sought to establish the trend in reported poaching and wildlife trafficking cases over the past 5 years. This would give an indication of whether or not there has been a significant inclined or decline in pouching, and link the same to prosecutor roles played. Findings are as illustrated in figure 4 below.

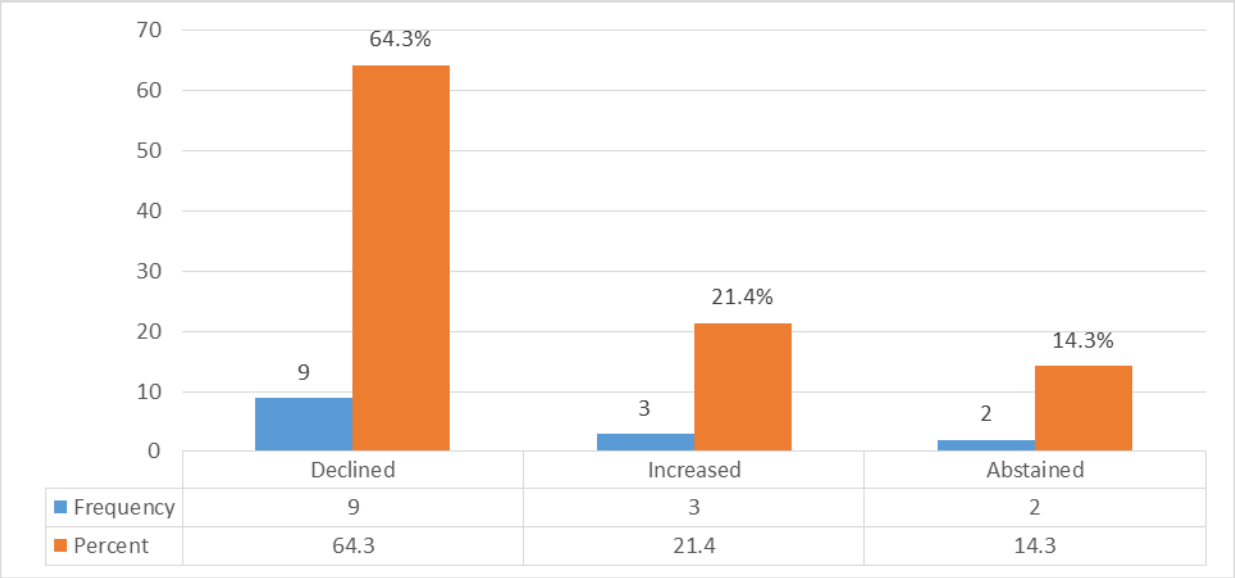

Figure 4Poaching and Illegal Trade Trend

Source: Survey data, 2015

From the results shown in the figure 4, reveal that, 9 of all 14 respondents (64.3%) opined that cases of poaching and wildlife trafficking have declined from the year 2010 to 2015; 3 respondents (21.4%) considered that the number has increased during this period; while the rest (14.3%) abstained. Many of the respondents attribute the perceived decline to the enactment of the Wildlife (Conservation and Management) Act of 2013. A respondent for instance argued:

> *"…….Since the passing of the WCMA in 2013, there has been a notable decline in wildlife related cases due to the harsh penalties. Only 1 case is reported every 2 months in the current year as opposed to 1 case every month in 2014 and 2013……"*

Others attribute this decline to a claw-back of the prosecutorial powers that had initially been almost completely delegated to other prosecution agencies, and assumption of these cases by the centralized ODPP. The respondent offered that:

> *"……..In 2010 - 2013, Kenya experienced a high point in the level of poaching and other wildlife crimes. However, following the change in legislation and the ODPP taking over prosecution of these cases, the same have been on a downward trend……."*

A respondent added that the number of prosecuted cases on poaching and wildlife trafficking have increased from the year 2010 to 2015. According to the respondent:

> *"…….enhanced law enforcement and detection capacity has led to increase in the number of arrests hence the number of wildlife cases……."*

In this response, a distinction is made between this perspective of a prosecuted case and a commission of the poaching and wildlife trafficking act. Based on the foregoing, it can be deduced that indeed the increased prosecutorial efforts, marked by an increase in the institution of criminal proceedings against accused persons, fueled by the increased number of arrests carried out by the law enforcement officers, have considerably lead to a decline in the number of reported poaching and wildlife trafficking cases.

Respondents were further asked to describe the challenges experienced in prosecuting these cases and whether there were ways of improving the same. A majority of respondents affirmed that prosecution in Kenya faces a number of challenges. The challenges identified include poor investigation; insufficient evidence; uncertain chain of custody; lack of DNA testing (in the respective agencies) to enable a match of exhibits with the species; delays from government forensic experts to verify that the trophies are actually from wildlife; lack of collaboration between agencies; inadequate training; staff shortages in scouting national parks and game reserves to adequately effect arrests; and insufficient capacity to investigate cross-border crimes.

The purpose of investigation is to collect evidence. The evidence must be appropriate to support a given set of facts. To address the issue of inadequate evidence to carry out a successful prosecution, a respondent recommended equipping and funding the forensic lab housed under the KWS. Another concurred, alluding to the fact that the quality of evidence adduced during cases involving poaching and wildlife trafficking, is wanting. The respondent offered:

"Forensic laboratory should be made active to improve quality of expert evidence given. Evidence collected by new technology such as camera traps, CCTV etc should be admissible. Courts should accept photographic evidence where the exhibits are live animals, too bulky or susceptible to speedy decay."

Insufficient data is a challenge facing prosecution of wildlife crimes in Kenya. Recidivism is "the reversion of an individual to criminal behaviour after he or she has been convicted of a prior offense, sentenced, and (presumably) corrected."[219] Recidivism is a concept in criminal justice system that arises where an offender is prosecuted, convicted, and sentenced, but later goes back to the same activity. Respondents were asked whether there have been cases of repeat offenders. Responses varied, and there was no common thread in the positions taken. This points to the challenge in prosecution, where the exact number of repeat offenders cannot be established. This is well brought out in the following response:

"I don't have specific statistics on this. However, due to lack of a database, it's hard to identify such offenders. One is required."

This would help to reconcile the opinions with fact.

Record-keeping among the prosecutorial agencies and the criminal justice system at large, is also wanting. Only 2 of the 7 ODPP respondents stated that the investigators in poaching and wildlife trafficking cases in the parent prosecutorial organization have ledgers, files or databases of known criminals. KWS is the pioneer in this area of record-keeping, and while a KWS respondent qualifies the response stating that the same applies only to files and fingerprints, another KWS respondent is of the opinion that most data in the fields are collected and sent to KWS HQS to a more centralized database. This is a positive step toward identifying repeat offenders. With more information collected and concentrated in a centralized database, the investigators and prosecutors would be better placed in building a case against the suspects.

The finding is in line with the findings by Paula*et al.*[220]who reported that there is no public central record or which gives reliable access to information regarding the prosecution of wildlife offences in Kenya. The website of the National Council for Law Reporting in Kenya,

[219] Michael D Maltz, *Recidivism* (Academic Press Inc, Orlando, Florida 1984).

[220] Paula Kahuma, Levi Byamukama, Jackson Mbuthia & Ofir Drori for WildlifeDirect, 'Scoping study on the prosecution of wildlife related crimes in Kenyan courts January 2008 to June 2013' (2014) 89-137.

(which is a semi-autonomous state corporation)Is included with the case search, the search function is limited and it has only produced limited results of appellate decisions following searches. It was supported by Jackson that the publicly available information is limited to a review of annual legal reports prepared by the Kenyan judiciary, charities undertaken by research, including a recent comprehensive study undertaken by Wildlife Direct and news reports.

From the foregoing results, it can be deduced that despite the challenges faced, increased prosecution has over the last 5 years lead to a decline in poaching and wildlife trafficking cases. The study thus hereby affirms the first hypothesis that states that prosecution may be used as a tool for addressing poaching and wildlife trafficking in Kenya.

The finding is in agreement with Wildlife Direct,[221] was reported that the people arrested for offences linked to poaching and trafficking in Kenya each year, based on an analysis of records from around 15 courts in the country around 2,000. The KWS website publishes reports detailing arrests and prosecutions of suspects accused of wildlife offences under the 1976 Act. From a review of the 2013 news archive[222], there are 18 news reports concerning the detainment of suspects.

4.4 Kenya's legislative framework and prosecution of poaching and wildlife trafficking crimes

Various pieces of legislation governing the prosecution of poaching and wildlife trafficking crimes exist in the country. To this end, the study sought to investigate whether Kenya's legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes. This section presents findings to questions asked in this regard.

[221] Sarah Morrison, Charity Appeal:'The way to stop poaching is to use people like me,' says man jailed for cutting off dead elephant's tusks , The Independent, December, 22 2013, available here: http://www.independent.co.uk/environment/nature/charity-appeal-the-way-to-stoppoaching-is-to-use-people-like-me-says-man-jailed-for-cutting-off-dead-elephants-tusks-9020178.html

[222] KWS, Tortoise dealer fined by a Nairobi Court, lions injure Maasai Moran in Kajiado, March, 21 2013; Chinese smuggler fined Sh30,000 as KWS rangers net 435 pieces ivory, March, 26 2013; Chinese woman to serve a total of 31 months in jail for smuggling ivory, August, 22 2013; Kenyan court sentences British snake smuggler and local accomplice to five years imprisonment, September, 25 2013, accessed on January, 17 2014, available here: http://www.kws.org/info/news.html

Table 3 Kenya's legislative framework for prosecution of poaching and wildlife trafficking crimes

Statement	Yes		No		I don't know	
	F	(%)	F	(%)		
The current legislative framework sufficiently addresses prosecution of poaching and wildlife trafficking	7	58.3	5	41.7	0	0.0
Attempts, conspiracy and incitement to poaching and wildlife trafficking are criminalized	7	50	3	21.4	4	28.6

Survey Data, 2015

As illustrated in Table 3, 7 of the 12 respondents who gave their opinions on this matter (58.3%) were of the view that the current legislative framework suitably addresses the hearing of poaching and wildlife trafficking. On the contrary, 5 out of12 respondents (41.7%) viewed that the current legislative framework poorly addresses prosecution of poaching and wildlife trafficking. Here, a judiciary respondent noted that:

> *"…….The legislative framework should consider allowing an inquisitorial system to prosecute wildlife matters unlike the adversarial system in place……."*

This would assist the magistrate to step in the matter where the prosecution inadequately handles the case. In the inquisitorial system, it follows that the case would not be unnecessarily prejudiced by the inadequacy of prosecution. It acts as a means for the judge to extract the truth from the matter, without per se relying entirely on the prosecution.

Respondents were further asked to indicate whether in their opinions, the way criminal cases of poachers and wildlife traffickers are handled in Kenya at the moment, is a deterrent to other would-be offenders. A majority of respondents stated that the prosecution of crimes in Kenya at the moment has a deterrent effect. Reference was made in this regard to 'extremely stringent' fines and bonds which discourage would-be offenders. A AWF respondent offered that:

"…Denying of bond or giving very high bond makes other potential offenders fear as nobody wants to remain in jail. High penalties are being meted out and this has led to a reduction in the number of wildlife crimes…"

Respondents were also asked to indicate some of the changes they would want made to the law, to improve prosecutions of poaching and wildlife trafficking. A majority of respondents proposed that section 92 of the Wildlife (Conservation and Management) Act, 2013 be repealed. The section states:

> "92. Any person who commits an offence in respect of an endangered or threatened species or in respect of any trophy of that endangered or threatened species shall be liable upon conviction to a fine of not less than twenty million shillings or imprisonment for life or to both such fine and imprisonment."

The respondents viewed this provision as 'ambiguous'. Their views were that it is difficult because it refers to any offence of any in danger of extinction or threatened species. They urged that the provision instead should address individual types of wildlife crimes.

Respondents were further asked whether attempts, conspiracy and incitement to poaching and wildlife trafficking are criminalized. As tabulated in Table 3, a majority, 7 of the 14 respondents (50%), held the view that these unclear offences are criminalized; 3 respondents (21.4%) stated that the unclear offences are not criminalized; and 4 respondents (28.6%) did not respond or admit to possession of no knowledge of the matter. Those suggesting that unclear offences are argued that the requirements to establish accountability for these unclear offences include a relationship between the two parties e.g. financing the accused; possession of tools and equipment; involvement in planning a poaching activity; linking to other offenders to prove organized crime.

Respondents were asked on whether there was accountability for wildlife and forest offences extended to persons aiding, abetting, analysis or facilitating the offence, as well as to other accomplices. A majority argued that the accomplices to wildlife crimes are also liable under the law. Some of the requirements identified to establish liability of persons indirectly committing the crime include proof of incitement; direct financing of the crimes; organised structure of a group engaging in the crime.

In general, there was support for the Wildlife Act, 2013. This statute was applauded on behalf of the stiffer penalties, it suggests for offenders engaging in poaching and wildlife trafficking. The re-consideration of Section 92 appears to be a minor change in view of the overall positive impact of the Act.

Case Law

A prosecution handling poaching may involve charging the accused person with multiple offences. In *Samuel Macharia Mwangi v R [2009] eKLR*[223] the appellants were charged with 3 offences:1) Poaching without authority contrary to Section 34(1) (b) (v) of the Wildlife Conservation and Management Act Cap 376 Laws of Kenya; 2) Being in possession of game trophy contrary to Section 39(7) of the Wildlife conservation and Management Act Cap 376 Laws of Kenya; and 3) Trespass upon private land contrary to Section 3(1) of the Trespass Act Cap 294 Laws of Kenya. In this case, the two men were arrested by KWS Forest Rangers at Ragati forest, Karatina, when they were found slaughtering a buffalo. The two were tried at the Chief Magistrate's Court and they were convicted and sentenced to 10 years imprisonment on each count. The Appeal to the High Court became successful, and the two individuals were set free due to defective charges as presented on the Charge sheet. The Senior Principal State Counsel conceded that:

> "…the charge sheet did not disclose an offence known under the law even if the provisions of Wildlife conservation and management Act were to be invoked. The charge sheet talked of Poaching whereas the particulars thereof talk of hunting… The appellants were found slaughtering a Buffalo. They were however charged with illegal hunting, implying that there are some hunting that are authorised and or legal. The charge sheet is not specific as to whether the appellants were authorised or unauthorised hunters. The charge sheet is also silent as to whether the appellants were hunting illegally and without a licence thereby making them poachers. The appellants perhaps should have been charged under section 47 of the Wildlife Conservation and Management Act. However the application of this section is dependant on the minister making regulations to deal with possession or movement of

[223] Criminal Appeal 130 of 2007 & 131 of 2007 (Consolidated), High Court at Nyeri, (Appeal from original Conviction and Sentence in the Chief Magistrate's Court at Nyeri in Criminal Case No. 587 of 2006 by R. Nyakundi – C.M.)

the game meat. I have looked at the entire Act and I am satisfied that no such regulations have been gazetted by the minister."

On section 47 of the Wildlife Conservation and Management Act, Cap 376 (Repealed) on 'Game meat' states that 'the Minister may, by regulation, prohibit, control or regulating the possession of or movement of, or any dealings of any nature whatsoever in, any meat', where with regard to the offences, the regulations 'penalties imposed in respect of any breach of the regulations, not exceeding a fine of twenty thousand shillings or imprisonment for a term not exceeding three years or both; and provide for the forfeiture of any meat in respect of which any breach of the regulations occurs.'[224] The court in *Samuel Macharia Mwangi and another v R [2009] eKLR* was of the position that the prosecution should have been based on this offence, but noted that there were no regulations in place to govern the licensing of dealings with game.

In addition, the individuals were improperly sentenced, where the Chief Magistrate's Court handed them 10 years for each count, while the prescribed penalty for the offences charged was Kshs. 20,000. From the above, therefore, it is clear that had there been proper drafting of the charge and direction to the Honourable Judge on the minimum and maximum penalties for the particular offences, the prosecution may have been successful. However, due to the technicalities presented by the unlawful drafting of charges and illegal penalties awarded, the prosecution failed.

The importance of efficient prosecution cannot be underscored enough. Matters concerning charges have a heavy bearing on whether or not the prosecution will succeed. Prosecutors, therefore, must be well versed with the provisions of criminal law and criminal litigation. This is to the point of ensuring that no mistake is made with the charge sheet. Any error on the charge sheet may lead to an automatic acquittal by the Court. *Simon David Harris & another v Republic [2013] eKLR* the accused persons were charged on the first count, for being in Possession of a Government trophy contrary to Section 4(1)(b) as read with Section 521(1) of the Wildlife (conservation and Management) Act Cap 476 Laws of Kenya. There were 2 other charges. The accused persons pleaded guilty to all counts. The accused persons applied for revision of the Chief Magistrate's Court conviction. Count 1 failed for the reasons, per Wendoh RPV:

[224] Wildlife Conservation and Management Act, Cap 376 (Repealed), s 47.

> "On the first charge, the accused persons were charged under Section 41(1)(b) of the Wildlife Act. **Section 41(1) (b) does not exist**. Perhaps they should have been charged under Section 42(1) (b) of the Act Cap 376 Laws of Kenya. Since Section 41(1)(b) t discloses no offence as charged, the accused persons are hereby acquitted of the charge." (Emphasis added)

The care which must be exercised when drafting charges is evident in the above passage. If there is any doubt as to which provision the accused person is charged under, the charge fails. The severity of the matter is evident in the words of Wendoh RPV in *Simon David Harris & another v Republic (Supra)*:

> "Before sentence the court considered the fact that accused persons were first offenders, the value of the subject matter, which the prosecution said stood at Kshs.300,000/- in Kenya and Kshs.1 million abroad, and the fact that the offences are prevalent in the country, that the said snakes are a rare species found only in Kenya and it seems the 1st accused had come to Kenya specifically to get the snakes and therefore to commit the said offences. Taking all the above into account, the fact that poachers are coming into the country and in collusion with the local people, depleting the country of its treasured wildlife."

The issue of wildlife trafficking and poaching and the importance have been canvassed in the Courts. In *Kahindi Lekalhaile & 4 others v Inspector General National Police Service & 3 others [2013] eKLR*, Justice Mumbi Ngugi considered a constitutional petition challenging the structural composition of KWS, and she was seeking to have an audit of the ivory stock and other government trophies held by KWS and other private establishments set up for the conservation of wildlife following reports that stock may have illegally found its way into the black market. While the petition failed because the petitioners did not show a breach of fundamental rights, and only dwelt on abstract issues, the Honourable Judge gave credence to the on-going efforts in battling poaching and wildlife trafficking:

> "For the above reasons, this petition is hereby dismissed. However, it is important to observe in closing that the issues raised by the petitioners with regard to the need to avert the rampant poaching of wildlife and bring about transparency with regard to government-held trophies are not idle issues. Further, the petitioners' passion for the conservation of the wildlife of our country is to be commended. The conservation and

> protection of the country's wildlife for the benefit of both the current and future generations should not only be of great concern to the citizens but especially the arms of government tasked with the duty of protection and conservation such as the KWS. It is the constitutional duty of the national government to protect the country's environment and natural resources with a view to establishing a durable and sustainable system of development."

Though prosecution of poaching and wildlife trafficking has been handled in the courts, there is insufficient judge-made law on the inter-agency coordination of prosecution bodies dealing with poaching and wildlife trafficking in the country. There also appears to be little documentation and publishing of the cases involving offenders of laws dealing with poaching and wildlife trafficking in Kenya. Since the courts also have a part to play in the formation of the law through judicial pronouncements, the inadequate sharing of information through publication of the recent judgments in cases of poaching and wildlife trafficking is a flaw in the overall institutional framework. This is because the prosecution agencies are therefore not on the same page when it comes to formulation of a common approach.

The inadequacies in publication of judgments leads to a situation where the prosecutors may not properly handle the prosecution because they may make the same mistakes that the prosecutors in failed prosecutions made. In failing to adequately make the judgments available, it becomes difficult to grow the body of jurisprudence on poaching and wildlife trafficking in Kenya, limiting guidance that could be provided to prosecutors, and therefore limiting the achievement of successful prosecutions of poaching and wildlife trafficking.

However, based on the significantly highly approval ratings of the present legislative framework in the country, attributed to its deterrence poaching and wildlife trafficking crimes for would-be offenders, the study hereby deduces that robust prosecution may be used as a tool for addressing poaching and wildlife trafficking in Kenya. The study thus accepts the hypothesis of the study that states that robust prosecution may be used as a tool for addressing poaching and wildlife trafficking in Kenya.

The finding is in agreement with Robert and Myron[225] who assess that overall, a more broad piece of legislation than the previous provisions has tried to deal with issues inherent in the previous legislation provided by the New Act. Accordingly, enforcement of the necessities of the New Act was going to be a key to its success it was argued by Odour[226]. Investment of officers of the KWS should help with this, but maintaining focus on enforcement will be essential if the New Act is going to achieve its aim to deter wildlife criminals.

[225] Robert Winslow & Myron Epps, Crime and Society - a comparative criminology tour of the world; Africa; Kenya (2014) 33-69

[226] Odour Omondi, CJ: Kenya's Criminal Justice system is 'criminal', News24 Kenya, (July, 3 2013), accessed February 17 2016, available here: http://m.news24.com/kenya/MyNews24/CJ-Kenyas-Criminal-Justice-system-is-criminal-20130703

4.5 Institutional framework and prosecution of poaching and wildlife trafficking crimes

Institutional framework structure is important in the success of prosecution, in that, clarity of roles and scope of engagement and collaboration is effective when line institutions work in unison as opposed to an overlapping manner. To this end, the study sought to determine whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is appropriately structured. The findings to questions asked with a view to address the objective are presented in this section.

4.5.1 Institutional Roles in Prosecution

The prosecution of wildlife related cases under the present institutional framework in the country cuts across a number of institutions each with a particular scope of duties spanning various activities. The study thus sought to first establish the various roles respondent institutions played in prosecution, aimed at combating poaching and wildlife trafficking.

4.5.1.1 ODPP Prosecutors

According to the respondents from the ODPP, the institution plays is tasked with four main roles including: prosecuting cases including those involving prosecution of wildlife crimes; directing investigations when called upon to do so; make policies and laws on anti-trafficking and poaching; and advising other prosecutorial agencies on the criminal matters they handle. Formed in late 2013, it was also established that the institution has a 35 person specialised unit dealing with poaching and wildlife trafficking only. It was also found that a majority of the prosecutors view the number as sufficient enough to adequately handle the prosecution cases the organisation handles. A respondent offered:

> *"……We have a 35 person Wildlife Crime section. Moreover, we have Prosecution Counsel in all courts in Kenya, which invariably end up hearing wildlife cases……"*

4.5.1.2 KWS Prosecutors

It was established that KWS is responsible for the arrest and prosecution of the particular sector of wildlife. A respondent provided that the organisation is mandated to conserve and manage wildlife though; provision of security for wildlife by; investigation and prosecution

of wildlife crime; intelligence gathering; operation, both internally and inter-agency; and provision/adoption of technology in wildlife security operations'. A respondent provided that:

> *".....The organisation's mandate is to manage and conserve wildlife. This is achieved through prevention measures combat i.e. arrest of the offenders and post-crime investigations. All these 3 activities are achieved by the following units within the KWS: overt operators; covert officers (intelligence/investigation units; canine units; wildlife prosecutors. KWS is therefore able to address a crime from the time of criminal activity to court……"*

It was also noted that the institution has specialised units dealing with poaching and wildlife trafficking including the Investigation Unit, Intelligence Unit, Canine Unit, and the wildlife crime unit. While all these units have a part to play in the prosecution of wildlife crimes, it is evident that even within an organisation there is need for coordination among the units. Where there is a section that handles investigation and intelligence, it must be in harmony with the wildlife crime unit, which would take part in the actual prosecution.

It was further found that the institution has 2 prosecutors who according to a respondent traverse the country on major cases while there are '3 prosecution assistants'. Respondents were asked how many prosecutors are assigned to each court, and whether the number is sufficient. It was learnt that the institution relies on 1 prosecutor in Nairobi, to which a respondent added that the prosecutor is 'overstretched, overwhelmed'.

4.5.1.3 KRA Prosecutors

The study found that KRA is involved in prosecution of wildlife crimes at the border points. A respondent asserted that:

> *"…….The role of KRA in light of this study is 'prevention of export of wildlife products, and transit of prohibited wildlife products……"*

A respondent added:

> *"……The organisation has a role to play in 'border control' being the 'power to prevent wildlife material which is restricted or prohibited under Customs Act' as well as 'trade facilitation……."*

These points of view capture the utility of including KRA in this study, as the organisation is a key stakeholder in considerations of prosecution of poaching and wildlife crimes. It was further established that there are 15 prosecutors in the organisation. In response to the question on whether KRA has a specialised unit dealing with poaching and wildlife trafficking, a respondent affirmed that there is one in place, known as the 'Investigation and Enforcement Department'. The respondent added that the number of prosecutors is sufficient to handle the case load of cases involving poaching and wildlife trafficking.

4.5.1.4 The Courts

Prosecution agencies do not operate in a vacuum. Rather, they are in constant interaction with the courts. Prosecutors build a case and present it in the courts. Cases are prosecuted in the criminal courts. In response to the question of how many Judges or Magistrates are based in each station, and how many handle cases of poaching and wildlife trafficking, a respondent provided that there are 3, all of whom handle wildlife crimes. Most ODPP stations were found to have 1 judge and between 2 to 6 magistrates, all of whom handle matters related to poaching and wildlife trafficking with most taking an average of 8 months to conclude wildlife crimes. A KWS respondent offered that:

> *"……..At the KWS facility that are no judges or magistrates, but at the area of jurisdiction which is Nairobi, the cases are spread to any Magistrate within the respective Courts i.e. Makadara, Milimani, City Court and Kibera Law Courts……."*

A second KWS respondent works at a station where there are 2 magistrates; and states that the period it takes to prosecute cases of poaching and wildlife trafficking:

> *"……Depends with which type; cases of bush meat trade and illegal grazing around 2 - 3 months; cases involving wildlife trophies as long as 5 - 6 months……."*

This shows that there is a significant challenge faced by the courts, in contributing to the institutional framework for addressing poaching and wildlife trafficking.

4.5.2 Institutional Structure Utility in Addressing Poaching and Wildlife Trafficking

Respondents were first asked to indicate the number of cases of poaching and wildlife trafficking respective stations handle on a daily basis. There was no consensus the number of poaching and wildlife trafficking that ODPP has prosecuted to date. A majority of ODPP respondents placed the number at 500 and above. According to KWS respondents, the organisation has handled over 300 cases of poaching and wildlife trafficking from the inception of the wildlife-focused body. KRA respondents did not give statistics on the number of cases of poaching and wildlife trafficking the organization has handled to date, neither did the judiciary and the AWF.

Respondents were then asked to give their views on whether it was a good idea to have the ODPP prosecute wildlife crimes involving poaching and trafficking of elephants and rhino. All respondents who gave their opinion stated that this was a positive move. Firstly, it was viewed that the prosecutors in the ODPP are trained lawyers, placing them in a better position than the prosecutors in other agencies to effectively build a criminal case. Secondly, it was viewed that the other agencies may have geographical limitations, while ODPP has prosecutors all across the country and therefore would be better placed to handle weighty matters. Special focus was given to KWS, where for example a respondent backed up the response by stating that:

> *"…….the KWS prosecutors cannot cover the whole country'. Consequently, all the respondents viewed that the hand-over of the prosecutions dealing with poaching and wildlife trafficking of elephants and rhino has improved the effectiveness of prosecution……."*

Overall, the performance of the judiciary in respect of speed of handling cases, jurisprudence, quality of judgments, and case management, was rated as 'fair'. Respondents gave their views on-the-job training given to the persons joining the wildlife enforcement unit dealing with poaching and wildlife trafficking in their respective organisations. This question is qualified by the fact that not all the prosecution agencies have designated wildlife enforcement units. It was established in this regard that trainings conducted among ODPP prosecutors include seminars on new laws, trial advocacy, and inter-agency sensitisation. KWS prosecutors receive training on basic and advanced investigation and intelligence skills,

advocacy skills, and the use of technology in security operations. The institutions also conduct planned trainings, apart from the on-the-job training. According to the respondents, the ODPP holds planned trainings every 2 to 3 months. An ODPP respondent provided that:

> *"This area has benefited from the highest amount of training efforts over the last two years. At least each quarter, there is one or more trainings arranged."*

Inadequate training was identified by the respondents themselves as a challenge facing prosecution. The possible reason behind this is that the respondents may have been alluding to the fact that the frequency of the trainings is adequate, but the quality of training is inadequate. To rationalise the responses in this way would lead to a conclusion that the topics addressed during the trainings should tie in with the key challenges facing the prosecutorial agencies. There should be a focus on the quality of the trainings rather than their frequency.

According to KWS prosecutors, the planned trainings at KWS are 'periodical and are always organised and coordinated through the ODPP'. A KWS respondent lamented that 'the training sessions are not that often due to the small number of prosecutors'. According to the KRA prosecutors, the institution does not receive any on-the-job training relevant to handling cases concerning poaching and wildlife trafficking. Further, with regard to planned trainings, a KRA respondent opined that the training offered on poaching and wildlife crimes in the institution, is inadequate. In view of the fact that there is no specialised wildlife crime unit, it is not certain whether the KRA prosecutors are involved in trainings on the sector at all.

It was not queried whether ODPP should have assumed all the cases or instead worked at better supervision of the agencies it delegates its prosecutorial powers to. However, the more hands-on approach taken by ODPP and the support by all respondents of more direct influence indicates that the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is not appropriately structured. This confirms the third hypothesis of the study that states that institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is not appropriately structured; and that successful prosecution of poaching and wildlife trafficking crimes may be enhanced through regulated supervision of the prosecutorial powers delegated by the ODPP to the KWS, National Police Service and KRA.

It was asserted that although the New Act has increased the importance of wildlife offences in Kenya, impacts of the New Act relies heavily on effective and well-coordinated prosecution process of suspected wildlife offenders and appropriate sentences for convictions being delivered by magistrates' courts this finding is in tandem with Sarah[227]. An agreement which recommends a detailed sentencing guidelines in respect of wildlife offences and ancillary legislation are published to help out magistrates in taking a reliable approach to sentencing across Kenya this is the agreement by Koross[228]. Sentencing guidelines which are clear are actively applied by the magistrates' courts should reduce scope for inconsistency between courts and corruption

4.6 Inter-agency coordination and the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya

Enhanced inter-agency coordination is imperative in ensuring prosecutorial roles are not duplicated and that institutions complement each other based on respective strengths and weaknesses as regards institutional capacity in prosecution of crimes related to poaching and wildlife trafficking in Kenya. Against this backdrop, the study sought to establish if improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. This section presents findings to questions asked in this regard.

Table 4: Inter-agency coordination and the inadequacies of prosecution

Statement	**Yes**		**No**		**I don't know**	
	F	**(%)**	**F**	**(%)**	**F**	**(%)**
Inter-agency coordination among prosecution agencies in Kenya is adequate	7	63.6	4	36.4	0	0.0

[227] Sarah Morrison, Charity Appeal: 'The way to stop poaching is to use people like me,' says man jailed for cutting off dead elephant's tusks , The Independent, (December, 22 2013), available here: http://www.independent.co.uk/environment/nature/charity-appeal-the-way-to-stoppoaching-is-to-use-people-like-me-says-man-jailed-for-cutting-off-dead-elephants-tusks-9020178.html

[228] Koross Koech, KWS suspends 32 officers over elephant, rhino poaching, The Star, (June, 8 2013), accessed February 17 2016, available here: http://www.the-star.co.ke/news/article-123595/kws-suspends-32-officers-over-elephant-rhino-poaching#sthash

There are inter-agency task forces or other agencies that work on poaching and wildlife trafficking	6	42.9	0	0.0	8	57.1
The results of investigations, prosecutions and court decisions are shared among the relevant enforcement agencies, in particular the agencies that handed over the case in question	8	72.7	3	27.3	0	0.0
Responsibilities in conducting an investigation are unambiguous	5	50.0	4	40.0	1	10.0

As illustrated in Table 4, a majority, 7 of the 11 respondents who gave their views on the question of inter-agency coordination (63.6%), considered that inter-agency coordination among prosecution agencies in Kenya is adequate; and 4 of the 11 respondents (36.4%) viewed that inter-agency coordination is inadequate.

The frequency of inter-agency meetings to review cases is uncertain. An ODPP respondent stated that these meetings take place 'on case to case basis'; according to another ODPP respondent, the meetings are carried out 'periodically'; another was of the view that they are held 'occasionally'. KWS affirmed that there are frequent meetings with the ODPP, especially with the introduction of State Counsels being involved in prosecutions. ODPP and KWS acknowledge that there are inter-agency coordination efforts between themselves. However, KRA respondents claimed inter-agency coordination activities with both ODPP and KWS; while the acknowledgement in the responses was not mutual. A KRA respondent stated that interagency meetings to review cases they handle take place on a 'case by case basis', while another stated that the meetings are 'rarely' held.

Mixed responses were also there on whether there are any inter-agency task forces or other agencies that work on poaching and wildlife trafficking, with 6 respondents claiming the existence of such bodies. Reference was made to an investigative task force at the border and ports, INTERPOL, Lusaka and NIS. It is assumed that the conception of an inter-agency task force had an effect on the responses, with the response premised on the view that the term 'inter-agency task forces' refers to 'international task forces'. The NIS, however, is a national institution which does qualify as an 'inter agency task force'.

Respondents were asked to indicate whether or not the responsibility for managing an investigation is definite so as to ensure a synchronized investigation and avoid the loss of evidence. While 5 of the 10 respondents (50%) considered that the responsibilities in conducting an investigation are unambiguous, 4 of the 10 respondents (40%) opined that the responsibilities are ambiguous.

A majority, 8 of the 11 respondents who gave an answer to the question on whether results of investigations, prosecutions and court decisions are shared among the relevant enforcement agencies, respondents were of the view that there is information sharing both through Court Users Committees (CUC's) Correspondence and Social Media. A further 2 of the 11 respondents who answered did not agree that there is information sharing among the relevant enforcement agencies. According to an ODPP respondent:

> *"……Although this should be done, it is assumed since they follow up with the trial they know the outcome of the cases".*

While this is so, 8 of the 11 respondents who gave their views on this matter consider that some agencies tend to hoard information on poaching and wildlife trafficking. Hoarding information was recognised as hindrance to prosecution because it weakens investigations and as a result leads to acquittal of suspects who would otherwise have been convicted.

Partnerships between agencies are a starting point toward improving inter-agency coordination. Respondents gave their views on what partnerships exist among prosecution agencies. A KWS respondent gave an example of a partnership as the Wildlife Crime section at the ODPP created in collaboration between KWS and ODPP with other stakeholders.

It was further revealed that inter-agency efforts are bolstered by written protocols, MOUs or committees. An ODPP respondent stated that there are standard operating procedures for investigation and prosecution of wildlife crimes which apply to all relevant agencies. These Standard Operating Procedures (SOPs) work alongside 'RRG's between the various agencies involved in prosecution, investigation and adjudicating'.

To improve inter-agency coordination, the respondents proposed recommendations that firstly, there should be openness among the institutions and avoidance of suspicion. Secondly, training was proposed to assist in furthering inter-agency coordination. Thirdly, it

was viewed that implementation of the SOPs would go a long way in improving inter-agency coordination. An ODPP respondents stated:

> *"…….Constant meetings to update on progress should be held. Agencies should also conduct trainings for their staff members. For example, those officers working inside the parks can be trained on how to preserve evidence. This can be done by the police or ODPP and this will help improve coordination……."*

Inter-agency coordination and training are two seemingly inseparable ideas. One of the inter-agency activities that may be carried out to strengthen ties, are inter-agency forums to discuss current issues on prosecution of crimes relating to poaching and wildlife trafficking.

Inter-agency cooperation was proposed as a mechanism of improving prosecution. For example, a respondent stated that the ODPP can improve by cooperating with other agencies who deal with investigations and forensic analysis. In addressing the challenge of lack of collaboration between agencies, a respondent proposed capacity-building to rectify the problem. Inter-agency coordination may be a manner to address the challenge raised concerning prosecution of cross-border offences. The concept stretches to the coordination among agencies not only within Kenya's legal framework, but also with agencies outside the country. In focusing on inter-agency coordination efforts, Kenya's prosecution agencies may collaborate both internally and externally.

The foregoing findings, based on responses by a majority supporting inter-agency coordination, point to the assertion that improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. The study thus affirms the fourth hypothesis of the study that states that improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya.

Accordingly, the Environmental Investigation Agency,[229] agrees that key stakeholders should collaborate and lead a formal specialist training to all magistrates regarding the New Act and additional legislation and the maximum penalties available. Clear sentencing guidelines,

[229] Environmental Investigation Agency, 'High Profit/Low Risk: Reversing The Wildlife Crime Equation: A Briefing For The Kasane Conference On Illegal Wildlife Trade' (EIA 2015)

which are actively applied by the magistrates' courts should reduce scope for inconsistency between courts and corruption this is according to the agreement with Dylan.[230]

4.7 Discussion

It was revealed from the foregoing findings that despite the challenges faced, increased prosecution has over the last 5 years lead to a decline in poaching and wildlife trafficking cases. The study thus affirmed the first hypothesis that states that that prosecution may be used as a tool for addressing poaching and wildlife trafficking in Kenya.

The government permits trial of crimes associated with the arising out of the illegal wildlife trade under ancillary legislation, it seems the judiciary has been undecided to take legal action under such ancillary legislation. Kenya increased penalties for wildlife crimes so that they can reflect penalties under ancillary legislation more closely, although not entirely under the New Act. Although prosecutors consider bringing charges under ancillary legislation in relation to crimes associated with the illegal wildlife trade, it is unclear whether this will have much impact on the illegal wildlife trade in Kenya in practice in the long term.

Further, based on the significantly highly approval ratings of the present legislative framework in the country, attributed to its deterrence poaching and wildlife trafficking crimes for would-be offenders, the study hereby deduces that indeed legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes. The study thus failed to accept the second hypothesis of the study that states that legislative framework does not adequately address prosecution of poaching and wildlife trafficking crimes.

The principle piece of legislation governing poaching and illegal trade in wildlife in the country is the Wildlife Conservation and Management Act, 2013 ("New Act"), which came into force in Kenya on 10 January 2014 following criticism of Kenya's previous law as "weak and antiquated". The New Act contains more severe punishments for wildlife offenders than the previous legislation including creating four offences which are punishable by

[230] Dylan Horne, 'policy responses to transnational wildlife crime in the Asia-Pacific' (Working Paper 2/2013, Transnational Environmental Crime Project 2013).

imprisonment, and which could potentially be classified as "serious crimes" within the meaning of the United Nations Office of Drugs and Crime ("UNODC").[231]

There is an alternative penalty of a fine for each of these offences, which may mean that these are not in fact classified as serious crimes. The view that the legislation does not in fact create offences classifiable as "serious crimes" may be supported by the fact that the practice in Kenya has been to impose the economic penalty in preference to the custodial penalty, including in relation to the first reported prosecution which resulted in a fine under the New Act.[232]Levels of fines which may be forced, whereas not as severe as a custodial sentence, are significant in the context of an average income of just under USD 1,800 per annum in Kenya under the New Act.

The primary offences, in the New Act also creates ancillary offences which are aimed at discouraging those who assist poachers and traffickers. It also creates rights for members of the public, including property damage by wildlife and compensation for crop, an obligation to offer public engagement, including public consultation in relation to the creation of national parks and reserves, also the right for members of the public to petition the court directly in relation to offenders. Though the effectiveness of the New Act is yet to be proven in the long term, it is a positive step following the criticism of the previous system.

The more hands-on approach taken by ODPP and the support by all respondents of more direct influence indicates that the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is not appropriately structured. This lead to the affirmation of the third hypothesis of the study that states that institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is not appropriately structured; and that successful prosecution of poaching and wildlife trafficking crimes may be enhanced through regulated supervision of the prosecutorial powers delegated by the ODPP to the KWS, National Police Service and KRA.

Kenya in recent years has been facing challenges including corruption and lack of resources to provide an efficient state tribunal service and judiciary. This has undoubtedly hampered

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231 UNODC, Wildlife and Forest Crime: Analytic toolkit. (2012), http://www.cites.org/eng/resources/pub/Wildlife Crime Analytic Toolkit.pdf

232 UNODC, Globalization of Crime: Environmental resources. (2010) http://www.unodc.org/documents/eastasiaandpacific//indonesia/forest-crime/Globalization of Crime EnvironmentalResources.pdf

efforts to effectively prosecute and sentence individuals for wildlife crimes. Over the last 5 years the study has established that there have been examples of custodial sentences handed down to individuals convicted of wildlife offences, this does not appear to be a sentence which is widely or consistently imposed by the magistrates' courts in Kenya. In addition, these prosecutions were under the old legislation, with the New Act yet to be truly tested in the long term.

Finally, based on responses by a majority supporting inter-agency coordination, the study asserts that improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. The study thus affirmed the fourth hypothesis of the study that states that improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya.

At a national level, there is appreciation that supports across the prosecutorial authorities that would benefit wildlife conservation efforts. Whereas there has been some progress in this regard, with a joint census operating between the authorities, there can be some doubt that the effectiveness of efforts to preserve wildlife would be helped by more co-operation, particularly between adjoining key prosecutorial authorities. Inter-agency trainings would particularly prove effective in equipping these authorities with necessary skills to more effectively prosecute wildlife crime cases in the country. This can be done through coordination of trainings for the association of prosecutors. This would ensure that the agencies achieve harmonised training on similar issues.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This study sought to assess the adequacy of prosecution as a tool for addressing poaching and wildlife trafficking in Kenya; investigate whether Kenya's legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes; determine whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is appropriately structured; and to establish if improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. The four study objectives have been achieved. This chapter presents the conclusions and recommendations based on the findings, analysis and discussion in the preceding chapters.

5.2 Conclusion

Firstly, the study has provided an assessment of the role of prosecution as a tool for addressing poaching and wildlife trafficking in Kenya. This study has argued that prosecution in Kenya inadequately contributes to addressing the problem of poaching and wildlife trafficking in the country. Based on deterrence theory, it is viewed that effective prosecution, as an indicative factor of effective implementation of criminal law, should have a deterrent effect on would-be offenders. However, this study suggests that prosecution of crimes related to poaching and wildlife trafficking fails to deter offenders. This is on the premise that for the prosecution of crimes relating to poaching and wildlife trafficking in Kenya to be considered successful, it must deter prospective offenders or repeat offenders from participating in such activities. When the successful prosecutions deter offenders, the number of occurrences of poaching and wildlife trafficking should reduce. However, if the prosecution does not deter offenders, then it follows that the problem of poaching and wildlife trafficking would persist.

A conceptual analysis of 'prosecution' and its role in addressing wildlife crimes was undertaken, and the finding supported by views of the key industry players. While prosecution may be used as a tool for addressing poaching and wildlife trafficking in Kenya, there in insufficient data on the extent to which it has played its part. This is complicated by

the inadequacy of efforts at maintaining databases on crimes relating to poaching and wildlife trafficking. The views collected from the field on whether this role has been effectively carried out are subjective, and not based on actual figures. There is room for further research on this area. A quantitative study on the impact of prosecution on poaching and wildlife trafficking to assess the extent of its application would be welcome. The first objective of the study was therefore achieved.

Secondly, this study sought to investigate whether Kenya's legislative framework adequately addresses prosecution of poaching and wildlife trafficking crimes. A presentation of the law governing prosecution of poaching and wildlife trafficking in the country was done, giving an overview of the international and national laws governing the area. This study identified one of the challenges facing Kenya's prosecution framework in combating poaching and wildlife trafficking as inadequate inter-institutional coordination to sustain efficient investigations and prosecutions. It stood on the premise that the Wildlife (Conservation and Management) Act, 2013 is inadequate in that it while it provides that the ODPP may delegate authority to prosecute, it does not provide for the constitution of an inter-agency framework. Neither does the Act provide confines within which the exercise of delegation is to be exercised. As a result, the study viewed that the efforts of managing the delegated authority are left ungoverned. The coordination between the different delegates of the ODPP's authority is not expressly provided for. Therefore, the study suggested that due to inherent limitations of the prosecution agencies involved in combating poaching and wildlife trafficking, this may result in disjointed strategies.

While the study noted this as an inadequacy of the legislative framework, this was not corroborated by responses from the fieldwork. The study urged that there is therefore need for the Wildlife (Conservation and Management) Act, 2013 to 'establish a framework of coordination, with regulations and inter-agency agreements that establishes the specific mechanisms, the chain of command, the channels of communication and the like' for the role of prosecution of crimes relating to poaching and wildlife trafficking to be fully expressed. In summary, while an investigation. From the foregoing, the study achieved the second objective of the study.

Thirdly, this study sought to determine whether the institutional framework involved in prosecution of poaching and wildlife trafficking crimes in Kenya is appropriately structured.

The inadequacies of prosecution of crimes relating to poaching and wildlife trafficking have escalated to the point that the ODPP has taken up prosecutions relating to elephants and rhinos from KWS and the National Police Service. From this action, it is evident that the delegates on their own have not succeeded in tackling the problem, and the ODPP has therefore become more actively involved in these cases which in the past would be delegated. While this may be an appropriate solution in the short-term, it is argued that in order to tackle widespread problems such as poaching and wildlife trafficking, state agencies must focus on cooperation and coordination in investigating and prosecuting the illicit trade. Objective three of this study was therefore achieved.

Fourthly, this study set out to establish if improved inter-agency coordination is a solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. It suggests that prosecutorial agencies in Kenya should consider greater efforts toward inter-agency cooperation to accomplish successful prosecutions of crimes related to poaching and wildlife.

Statements have been made that prosecution of crimes related to poaching and wildlife trafficking is exacerbated by a lack of 'cooperation, coordination and information sharing at national and international levels, as well as (the lack) of a common strategic impetus' for the institutions involved in combating the particular activities. Inter-agency coordination of prosecution agencies has been suggested as a crucial determinant in dealing with poaching and wildlife trafficking because prosecution of such a widespread problem cannot be carried out effectively by a single agency.

This study suggested that the ODPP, KWS, KRA, National Police Service and Immigration should exploit inter-agency coordination efforts to conduct successful prosecutions of crimes related to poaching and wildlife trafficking; and that with low levels of inter-agency coordination among prosecutorial agencies, fragmented efforts of conducting prosecution of crimes related to poaching and wildlife trafficking may not be fruitful. The findings from the field work corroborate this view that improved inter-agency coordination is a possible solution to the inadequacies of prosecution of crimes related to poaching and wildlife trafficking in Kenya. The fourth objective was therefore met.

5.3 Recommendations

Informed by the foregoing findings and discussions leading to the above conclusions, the study hereby makes the following legislative, politico-legal and pragmatic recommendations. The most prominent legislative recommendation was that section 92 of the Wildlife (Conservation and Management) Act, 2013 should be repealed. The respondents viewed this provision as 'ambiguous' and therefore problematic because it refers to any offence of any endangered or threatened species or any trophy of such a species. They urged that the provision instead should address individual types of wildlife crimes.

The London Declaration proposes inter-agency coordination as a means of ensuring effective prosecution and to ensure that the potential offenders do not consider perpetrating the crimes due to the deterrent effect of the prosecutions. The respondents involved in the field work suggested inter-agency coordination as a reform to the operation of prosecution of crimes relating to poaching and wildlife crimes in the country, but did not identify how this inter-agency coordination would be put into effect. This may be done through policy, rather than legislation. The conclusion on this point is therefore that while the legislative framework provides for delegation of prosecutorial powers, the conduct of this issue may be done through either provision for its operation in the statute, or through preparation of policy guidelines to influence the activities of the prosecution agencies.

Recommendations to improve training of key personnel to effectively address prosecution of crimes relating to poaching and wildlife trafficking are outlined below. Firstly, trainings should involve not only all the prosecutors, but also key stakeholders especially investigators. Secondly, the number of trainings should be increased. Thirdly, the structure of the trainings should be addressed, to ensure that the quality of the trainings adequately addresses prosecution of poaching and wildlife trafficking. These trainings should cover changing trends in committing the offences of poaching and wildlife trafficking; field visits to areas which are prone to the conduct of these crimes; and ways in which the prosecution authorities may coordinate their efforts. Training should also cover basic prosecution skills including trial advocacy, including how to build a case for effective prosecution.

The DPP guarantees that all wildlife offence prosecutors are to be given suitable support and criminal legal process training to confirm that the state is in the capacity to perform stringent cases that do not take the risk of being suppressed on petition due to procedural flaws in the

case proceedings this is what the study recommends. The Kenyan judiciary should also introduce compulsory measures to guarantee that all court recordings are kept firmly and posted within 24 hours to a central digital database of each proceed.

The ODPP should adopt some Standard Operating Procedures to allow sufficient time for investigation and application of appropriate laws associated with the danger of extinct species like elephants and rhino. The DPP who is responsible for all prosecutions in Kenya must issue a circular to all gazetted prosecutors and and those within the ODPP around the country, that every time a case arrives to a prosecutor for first appearance, a request must be made for further time before the charge is laid, and the file to be returned by the court prosecutor to the police for further investigations, and with immediate notification by that court prosecutor to the ODPP.

The study also recommends increasing the number of KWS prosecutors to enable the service to cope with the rising number of wildlife offences. Here the role is restricted to prosecutions under the Wildlife Act and cannot join offences associated with the same incident. For example they cannot prosecute under the Firearms Act, the Proceeds of Crime and Anti-Money Laundering Act of 2009 (POCAMLA), or Money Laundering Act. Accordingly, the full criminality of a particular incident is not always fully represented to the court. Therefore, the ODPP must be seized with the charging decision on offences related to crimes involving elephants and rhino following any investigation.

Given the escalation of poaching of elephants and rhinos and the subsequent threat to local and international security, economy and custom, it is recommended that wildlife crimes be given special concern. Creation of specialized wildlife courts will allow the effective training and monitoring of wildlife trials. There is also a recommendation that the Attorney General, Chief Justice and DPP together should seek agreement to take judicial notice that poaching offences are ‘organised criminal activities’, and support ODPP with adequate capacity to prosecute these under the full range of laws.

KWS is recommended strongly that it should involve the local communities as part of an all-inclusive countrywide programme to endorse the benefit of wildlife management in collaboration with the legislative agenda of the New Act by the end of the study. In an effort to raise knowledge and discourage the local communities from committing wildlife crimes.

This study also recommends the use of technology to promote interagency coordination. With advanced gadgets such as drones to monitor vast areas which would be difficult to cover on the ground, KWS officers may advance their information capture. The use of the forensic laboratory, adequate training of personnel to use the technology, may boost collection and preservation of evidence. Regular teleconferences between the different agencies involved in combating poaching and wildlife trafficking, would boost communication within the institutional framework. Further, adopting technology in the court system would assist to record evidence, scientifically analyse issues such as temperament of accused persons in courts, and further boost prosecution as a tool to address poaching and wildlife trafficking.

BIBLIOGRAPHY

Constitutions and Statutes

1. Constitution of Kenya (2010).
2. Constitution of Namibia.
3. Customs and Excise Act (Cap 472).
4. Environment Management and Conservation Act (EMCA) (1999).
5. Kenya Revenue Authority Act (1995).
6. National Police Service Act (2011) s 26.
7. Office of the Director of Public Prosecutions (ODPP) Act (2013).
8. Wildlife (Conservation and Management) Act (2013).
9. Wildlife Conservation and Management Act, Cap 376 (Repealed).

Books, Reports and Scholarly Works

1. 'Interpol Details Ivory Seizures, Offers Guidance' (Swara News Round up, Swara, April – June 2014).
2. 'Speech by the Deputy Executive Director of UNODC Mr. Aldo Lale-Demoz 2015' (High-level Debate on Illegal Wildlife Trade, UN General Assembly , 4 March 2015)
3. Adil Najam, David Runnalls and Mark Halle, 'Environment and Globalization: Five Propositions' (International Institute for Sustainable Development 2007).
4. African Wildlife Foundation, 'Tackling Poaching & Illegal Wildlife Trafficking in Africa' (AWF 2014)
5. Akers, Criminological theories (2000)

6. Alfred Blumstein, Jacqueline Cohen and Daniel Nagin (eds), 'Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates' (Report of the Panel on Research on Deterrent and In capacitative Effects, National Academy of Sciences 1978).

7. Allison Thigpen Myers, 'The Blind Man's Elephant: Broadening Perspectives to Save the African Elephant' (MA in Liberal Studies, Georgetown University, Washington, D.C., 2014).

8. Amar Inamdar, David Brown and Stephen Cobb, 'What's Special about Wildlife Management in Forests? Concepts and Models of Rights-Based Management, with Recent Evidence from West-Central Africa' Natural Resource Perspectives 44 (Overseas Development Institute 1999).

9. Andrew von Hirsch and others, Criminal Deterrence and Sentence Severity: An Analysis of Recent Research (University of Cambridge 1999).

10. Anita Sundari Akella and Crawford Allan, 'Dismantling Wildlife Crime' (Fuller Science for Nature Symposium on Conservation Crime, Washington DC, 14 November 2012).

11. Anthony A Braga and David L Weisberg, 'Pulling Levers Focused DeterrenceStrategies to Prevent Crime' Crime Prevention Research Review 6 (US Departmentof Justice, Office of Community Oriented Policing Services 2012)

12. Antonio Vercher, 'The Use of Criminal Law for the Protection of the Environment in Europe: Council of Europe Resolution (77) 28' 10 Northwestern Journal of International Law & Business 3 (1989 – 1990).

13. Arthur Rosett, 'Discretion, Severity and Legality in Criminal Justice' 46 Southern California Law Review (1972).

14. Asongwe N Thomas, Basic Concepts in Criminology (Trafford Publishing, 2014).

15. AV Dicey, Introduction to the Study of the Law of the Constitution (1959).

16. Beccaria On Crimes and Punishments (1963).

17. Bernard Irigia Kaaria and Ndica Lawrence Muchiri, 'Enforcement Challenges Across Borders: Detecting and Prosecuting Illegal Wildlife Trafficking' (Ninth International Conference on Environmental Compliance and Enforcement 2011).

18. Blanche and Durrheim, Applied Methods for the Social Sciences (2002)

19. Bradley Anderson and Johan Jooste, 'Wildlife Poaching: Africa's Surging Trafficking Threat' Africa Security Brief 28 (Africa Center for Strategic Studies 2014).

20. C Nellemann and others (eds)The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A UNEP Rapid Response Assessment (United Nations Environment Programme and GRID-Arendal 2014)

21. C Odote, B Ochieng and O Makoloo, 'The Implications of Property Rights for Sustainable Management of Wetlands in Kenya' (IASC Conference. Chelteham, UK 2007).

22. Christine Mathenge, 'Implementation of International Wildlife Conservation Treaties with Emphasis on Effectiveness of National Legislation, Policies and Practices for Implementation of CITES: Case Study of Kenya' (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

23. CITES, 'Demanding Too Much the Shahtoosh Trade in London' CITES World - Official Newsletter of the Parties 6 (CITES, December 2000)

24. CITES, 'Wildlife Crime' (CITES) <https://cites.org/eng/prog/iccwc.php/Wildlife-Crime> accessed on 6 August 2015.

25. Colin Church, ‘Mara Elephant Project: Not Just the Animals’ (SWARA, January – March 2015)

26. Collins Odote, ‘Retracing our Ecological Footsteps: Customary Foundations for Sustainable Development and Implications for Higher Education in Kenya’ (7th Annual Strathmore Conference under the theme “The Ethics of Sustainable Development in Higher Education”, 28 – 29 October 2010).

27. Daniel Nagin, ‘Deterrence and Incapacitation’ in Michael Tonry (ed), The Handbook of Crime and Punishment (OUP 1998)

28. Daniel Naginand Greg Pogarsky, ‘Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence’39 Criminology4 (2001)

29. Department for Environment, Food and Rural Affairs, ‘Wildlife Crime: A Guide To The Use Of Forensic And Specialist Techniques In The Investigation Of Wildlife Crime’ (Crown 2005)

30. Dilys Roe (ed) Conservation, Crime And Communities: Case Studies Of Efforts To Engage Local Communities In Tackling Illegal Wildlife Trade (IIED 2015).

31. Directorate of Immigration and Registration of Persons website <http://www.immigration.go.ke/> accessed on 3 September 2015.

32. DJ Galligan (ed), A Reader on Administrative Law (1996).

33. DLA Piper, ‘A Ten-Country Review of Legislative and Judicial Approaches’ (DLA Piper 2014)

34. Doris Layton MacKenzie, ‘Criminal Justice and Crime Prevention’ in Lawrence W Sherman and others, ‘Preventing Crime: What Works, What Doesn’t, What’s Promising’ (Report to the United States Congress, Prepared for the National Institute of Justice, 1998) ch9.

35. Dylan Horne, ‘policy responses to transnational wildlife crime in the Asia-Pacific’ (Working Paper 2/2013, Transnational Environmental Crime Project 2013).

36. Enough Project, ‘President Obama in Africa: Countering Violent Kleptocracies is a Prerequisite for Peace’ (Enough Project, 22 July 2015).

37. Environmental Investigation Agency, ‘High Profit/Low Risk: Reversing The Wildlife Crime Equation: A Briefing For The Kasane Conference On Illegal Wildlife Trade’ (EIA 2015).

38. Euro just, ‘Strategic Project on Environmental Crime’ (Report, Eurojust, 2014).

39. European Commission, ‘The EU Approach to Combat Wildlife Trafficking’ (EC 2015) <http://ec.europa.eu/environment/cites/trafficking_en.htm> accessed on 6 August 2015

40. European Union Network for the Implementation and Enforcement of Environmental Law, ‘Criminal Enforcement of Environmental Law in the European Union’ (Report, IMPEL Network 2000).

41. Felix Patton, ‘London Conference Marks Turning Point in Wildlife Protection’ (SWARA, April – June 2014

42. Fiesta Warinwa, ‘Fighting Wildlife Trade in Kenya’ 51 UN Chronicle 2 (UN 2014)

43. Franklin E Zimringand Gordon Hawkins,Deterrence: The Legal Threats in Crime Control (University of Chicago Press 1973).

44. Frederick M Kaiser, ‘Interagency Collaborative Arrangements and Activities: Types, Rationales, Considerations’ (Congressional Research Service, 31 May 2011)

45. G E Devenish, A Commentary on the South African Constitution (Butterworths 1998).

46. Greg Yarrow, ‘Wildlife and Wildlife Management’ (Fact Sheet 36, Forestry and Natural Resources, May 2009).

47. Hanibal Goitom, ‘Wildlife Trafficking and Poaching: Kenya’ (Library of Congress 2014) <http://www.loc.gov/law/help/wildlife-poaching/kenya.php> accessed on 5 August 2015

48. Harvey Osborne and Michael Winstanley, ‘Rural and Urban Poaching in Victorian England’ 17 Rural History 2 (Cambridge University Press 2006) 187 – 212

49. Harvey Osborne, ‘The Seasonality of Nineteenth-Century Poaching’ The Agricultural History Review (2000) 27 – 41

50. House of Commons Environmental Audit Committee, ‘Wildlife Crime’ (Third Report of Session 2012–13)

51. IFAW and 96Elephants, ‘Elephant v Mouse’ (IFAW Craiglist Ivory Report 2015).

52. IUCN, ‘Wildlife Trafficking’ (IUCN 2015) <http://www.iucn.org/about/union/secretariat/offices/europe/european_union/key_issues/wildlife_trafficking/> accessed on 6 August 2015.

53. James G Njogu, ‘Wildlife Management and Conservation in View of International Conventions’ 29 The George Wright Forum 1 (The George Wright Society 2012).

54. Jane Holden, ‘By Hook or by Crook’ (The Royal Society for the Protection of Birds, The World Wide Fund for Nature, and TRAFFIC International 1998)

55. Jason Lowther, Dee Cook and Martin Roberts, ‘Crime and Punishment in the Wildlife Trade’ (WWF and TRAFFIC 2002)

56. Jeffrey Jowell and Dawn Oliver, The Changing Constitution (2004).

57. John S Akama, Shem Maingi and Blanca A Camargo, ‘Wildlife Conservation, Safari Tourism and the Role of Tourism Certification in Kenya: A Postcolonial Critique’ 36 Tourism Recreation Research 3 (2011) 281 – 291.

58. Jon Jonker and Bartjan Pennink, The Essence of Research Methodology (Springer 2010).

59. Jonathan John Mwalili, ‘Issues Concerning Prosecution in Relation to Conviction, Speedy Trial and Sentencing’ (10th International Training Course, 1997).

60. Jonathan R Mawdsley, Robin O’Malley and Dennis S Ojima, ‘A Review of Climate-Change Adaptation Strategies for Wildlife Management and Biodiversity Conservation’ 23 Conservation Biology 5 (October 2009).

61. Julian Rademeyer, Killing for Profit: Exposing the Illegal Rhino Trade (1 edn, Zebra Press 2012)

62. Juliane O'Hora Diamond, ‘Thinking outside the protected area box: Exploring conceptions of nature conservation in Cambodia’ (Master of International Nature Conservation Thesis, Lincoln University, UK 2013)

63. Justin Worland, ‘These Countries Are at the Center of The Illegal Wildlife Trade’ (TIME, 16 June 2015) <http://time.com/3984504/turmeric-supplements-curcumin/> accessed on 5 August 2015.

64. Kamweti and others, Nature and Extent of Environmental Crime in Kenya (2009).

65. Kariuki Muigua, Didi Wamukoya and Francis Kariuki, Natural Resources and Environmental Justice in Kenya (Glenwood Publishers Limited 2015) 218 – 236

66. Katherine Lawson and Alex Vines, ‘Global Impacts of the Illegal Wildlife Trade: The Costs of Crime, Insecurity and Institutional Erosion’ (Chatham House 2014)

67. Kathleen Daly, ‘Aims of the Criminal Justice System’ in Andrew Goldsmith, Mark Israel and Kathleen Daly (eds) Crime and Justice: A Guide to Criminology (3rdedn, Law book 2006)

68. Kerri-Ann Jones, ‘International Wildlife Trafficking Threats to Conservation and National Security’ (US Department of State, 26 February 2014).

69. Kevin Bales and Steven Lize, ‘Investigating Human Trafficking: Challenges, Lessons Learned and Best Practices’ FBI Law Enforcement Bulletin 4 (United States Department of Justice, Federal Bureau of Investigation, April 2007).

70. Keynote Address by Mr. Godber Tumushabe, Executive Secretary (ACODE) (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000)

71. Kirk R Williams, Jack P Gibbs and Maynard L Erickson, ‘Public Knowledge of Statutory Penalties: The Extent and Basis of Accurate Perception’23 Pacific Sociological Review 1(1980).

72. Leland E Beck, ‘The Administrative Law of Criminal Prosecution: The Development of Prosecutorial Policy’ (1978) 27 American University Law Review 310, 317.

73. Liana Sun Wyler, ‘International Illegal Trade in Wildlife: Threats and U.S. Policy’ (CRS Report for Congress, Congressional Research Service 23 July 2013)

74. London Declaration, clause 16.

75. M Hoyle and M James, ‘Global Warming, Human Population Pressure, and Viability of the World's Smallest Butterfly’, Conservation Biology (2005)

76. Maira Martin, ‘Wildlife crime and corruption: U4 Expert Answer’ (U4 Anti-Corruption Resource Centre, 2013).

77. Margaret H Marshall, ‘Separation of Powers: A Comparative View’ in Jonathan Klaaren (ed) A Delicate Balance: The Place of the Judiciary in a Constitutional Democracy (2006) 16

78. Mariel Harrison and others, Wildlife Crime: A Review Of The Evidence On Drivers And Impacts In Uganda (IIED Research Report 2015).

79. Marina Ratchford, Beth Allgood and Paul Todd, Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade (IFAW 2013)

80. Mark E Smith, ‘Wildlife Conservation and Management Funding in the US’ (Nevadans for Responsible Wildlife Management 2014).

81. Mark Koyama, ‘Prosecution Associations in Industrial Revolution England: Private Providers of Public Goods?’ (CHERRY Discussion Paper Series, CHERRY DP 01/11, 2011).

82. Martin Schonteichand and others (eds), Private Muscle: Outsourcing the Provision of Criminal Justice Services (2004) 93, 95-96.

83. Matthew Bogdanos, ‘Transforming Joint Interagency Coordination: The Missing Link Between National Strategy & Operational Success’ (9, Case Studies in National Security Transformation, Center for Technology and National Security Policy 2013).

84. Merriam-Webster Dictionary (Merriam-Webster 2015)

85. Michael D Maltz, Recidivism (Academic Press Inc, Orlando, Florida 1984).

86. Michael R Gottfredson and Don M Gottfredson, Decision Making in Criminal Justice: Toward the Rational Exercise of Discretion (Springer Science & Business Media 2013)

87. Michael Tonry, ‘Learning from the Limitations of Deterrence Research’ 37 Crime and Justice: A Review of Research 1 (2008).

88. Mohammed Hemraj, Credit Rating Agencies: Self-regulation, Statutory Regulation and Case Law Regulation in the United States and European Union (Springer 2015)

89. Nathalie J. Chalifour, Patricia Kameri-Mbote, Lin Heng Lye, John R. Nolon, Land use Law for Sustainable Development(2007) 120-136

90. National Council on Administration of Justice (NCAJ), Enforcement Manual to Combat Illicit Trade in Kenya (NCAJ 2014).

91. Nyokabi Gitahi and Kathleen H Fitzgerald, 'Conserving Wildlife on Private Land: The Legal Framework for Landownership and New Tools for Land Conservation in Kenya' Smithsonian Contributions to Zoology (2010) 96 – 103.

92. Ontario Ministry of Children and Youth Services, 'Review of the Roots of Youth Violence: Literature Reviews' (Queen's Printer for Ontario 2010)

93. Oriette Estrada, 'The Devastating Effects of Wildlife Poaching' (One Green Planet 2014) <http://www.one green planet.org/animals and nature/the-devastating-effects-of-wildlife-poaching/> accessed on 3 September 2015.

94. Oxford Dictionary (OUP 2015).

95. Patricia Kameri Mbote and Migai Akech, Kenya: Justice Sector and the Rule of Law (Open Society Initiative for Eastern Africa 2011).

96. Patricia Kameri-Mbote, 'Land Tenure, Land Use and Sustainability in Kenya : toward Innovative Use of Property Rights in Wildlife Management' in Nathalie JChalifour and others (eds) Land Use Law for Sustainable Development (Cambridge University Press 2007) 132 – 160.

97. Patricia Kameri-Mbote, 'Land Use Rights and Wildlife Management: Implications for CITES' (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

98. Patricia Kameri-Mbote, 'The Use of Criminal Law in Enforcing Environmental Law' in C O Okidi and others (eds) Environmental Governance in Kenya: Implementing the Framework Law (2008).

99. Patricia Kameri-Mbote, Property Rights and Biodiversity Management in Kenya (African Centre for Technology Studies2002).

100. Patrick Kiage, 'The Role of The Prosecutor' in Essentials of Criminal Procedure in Kenya (2014) 56-57

101. Patrick Mwiti, ‘Strengths And Weaknesses of CITES Institutional Framework in Kenya’ (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

102. Paula Kahumbu and others, ‘Scoping Study on the Prosecution of Wildlife Related Crimes in Kenyan Courts’ (Wildlife Direct 2014)

103. Pearson Schools and FE Colleges, ‘Crime and punishment (1B) and Protest, law and order in the 20th Century (3B)’ Secondary History for Ed Excel (Pearson Education Ltd 2013).

104. Peter Gastrow, ‘Termites at Work: A Report on Transnational Organized Crime and State Erosion in Kenya – Comprehensive Research Findings (International Peace Institute 2011).

105. Philip J Cook, ‘Criminal Incapacitation Effects Considered in an Adaptive Choice Framework’ (Working Paper 1985).

106. R Nasi and others, Conservation and use of wildlife-based resources: the bush meat crisis’ (Technical Series No. 33, Secretariat of the Convention on Biological Diversity and Center for International Forestry Research (CIFOR) 2008).

107. R Watson, Kathleen H Fitzgerald and Nyokabi Gitahi, ‘Expanding Options for Habitat Conservation Outside Protected Areas in Kenya: The Use of Environmental Easements’ (Technical Paper No. 2, African Wildlife Foundation, 2010).

108. Ragnhild Sollund and Jennifer Maher, ‘The Illegal wildlife trade: A case study report on the illegal wildlife trade in the United Kingdom, Norway, Colombia and Brazil’ (Work Package 4 “Case Studies”, European Union Action to Fight Environmental Crime, 2015)

109. Ranjit Kumar, Research Methodology (3rd edn, Sage 2011).

110. Rebecca Catherine Drury, ‘Identifying and Understanding Consumers of Wild Animal Products in Hanoi, Vietnam: Implications for Conservation Management’ (Masters Thesis, University College of London 2009)

111. Report of the CITES Secretariat on the Interpretation and Implementation of the Convention, Species Trade and Conservation of Rhinoceroses (CoP16 Doc 54.2 Rev1, Sixteenth Meeting of the Conference of the Parties, Bangkok, Thailand, paras 1-2)

112. Republic of Ireland Office of the Director of Public Prosecutions, ‘Guidelines for Prosecutors’ (2001).

113. Republic of Kenya, State Law Office, Department of Public Prosecutions, ‘National Prosecution Policy’ (2007).

114. Robert H Jackson, ‘The Federal Prosecutor’ 24 Journal of the American Judicature Society 18 (1940).

115. Robert I Mc Murry and Stephen D Ramsey, ‘Environmental Crime: The Use of Criminal Sanctions in Enforcing Environmental Laws’ Loyola of Los Angeles Law Review (1986).

116. Robert Wabunoha, ‘Harmonization of the CITES Legal Framework in East Africa’ (Proceedings of the Regional Workshop on CITES Implementation and Enforcement, Windsor Lake Victoria Hotel, Entebbe, Uganda, 24 – 25 August 2000).

117. Roger A Fairfax, ‘Grand Jury Discretion and Constitutional Design’93 Cornell Law Review (2008) 703, 707-08

118. Ronald L Akers and Christine S Sellers, Student Study Guide for Criminological Theories: Introduction, Evaluation, Application (6 edn, OUP 2013)

119. Ronald Ornstein, Ivory, Horn and Blood: Behind the Elephant and Rhinoceros Poaching Crisis (Firefly Books 2013).

120. Rosaleen Duffy and Freya A V St John, ‘Poverty, Poaching and Trafficking: What are the Links?’ (Evidence on Demand 2013)

121. Scottish Government Environment and Forestry Directorate ‘Wildlife Crime in Scotland: 2012 Annual Report’ (SG/2013/172, Scottish Ministers, 2013).

122. Sharon M Tso, ‘Report of the Chief Legislative Analyst’ (Resolution (Krekorian-Koretz-LaBonge-O'Farrell) to SUPPORT AB 96 (Atkins), California Legislature, 2015)

123. Simasiku and others, ‘Impact of Wildlife Management Policies on Communities And Conservation in Game Management Areas in Zambia’ (Natural Resources Consultative Forum, June 2008).

124. Simon Chesterman and Angelina Fisher (eds),Private Security, Public Order: The Outsourcing of Public Services and Its Limits (2009).

125. Small Arms Survey, ‘In the Line of Fire: Elephant and Rhino Poaching in Africa’ (Small Arms Survey 2015)

126. Stan Stojkovic, David Kalinich and John Klofas, Criminal Justice Organizations: Administration and Management (4thedn, Thomson Wadsworth 2008)

127. Stephen Christopher James, ‘Winston Churchill Fellowship Report: To Study Emerging Methodologies, Intelligence Tools and Forensic Science to Investigate Wildlife Crime’ (The Winston Churchill Memorial Trust 2011).

128. Stephen E Brown, Finn-AageEsbensen and Gilbert Geis, Criminology: Explaining Crime and its Context (7edn, Matthew Bender & Company 2010).

129. Stephen Ellis, ‘Of Elephants and Men: Politics and Nature Conservation in South Africa’ 20 Journal of Southern African Studies 1 (1994) 53-69

130. Swarndeep S Hundal, ‘Wildlife Conservation Strategies and Management in India: An Overview’ (2010).

131. Sylvia M Mendes and Michael D McDonald, 'Putting Severity of Punishment Back in theDeterrence Package'29 Policy Studies Journal 4 (2001) 588 – 610.

132. Task Force on Wildlife Security, 'Lifting the Siege: Securing Kenya's Wildlife' (Ministry of Environment, Water and Natural Resources, June 2014)

133. TE Lovejoy, 'Conservation with a Changing Climate' in TE Lovejoy and L Hannah (eds) Climate Change and Biodiversity (Yale University Press 2005).

134. The Environmental Justice Project, 'A Report by the Environmental Justice project' (EJP 2004).

135. The Law Library of Congress, Global Legal Research Center, 'Wildlife Trafficking and Poaching' (2013)

136. Thomas E Perez, 'Title VI Interagency Coordination' (Memorandum to Federal Funding Agency Civil Rights Directors, US Department of Justice Civil Rights Division, 20 May 2013).

137. Tim Lannan, 'Inter agency Coordination within the National Security Community: Improving the Response to Terrorism' Canadian Military Journal (Autumn 2004).

138. UNEP, 'UNEP Year Book 2014 emerging issues update: Illegal Trade in Wildlife' (UNEP 2014).

139. United Nations Office on Drugs and Crime (UNODC), 'Environmental Crime –The Trafficking of Wildlife and Timber' (UNODC 2012).

140. United Nations Office on Drugs and Crime (UNODC), 'Transnational organized crime in Eastern Africa: A Threat Assessment' (UNODC 2013).

141. United Nations Office on Drugs and Crime (UNODC), 'Why Fighting Crime can Assist Development in Africa: Rule of Law and Protection of the Most Vulnerable' (UNODC, May 2005)

142. United Nations World Commission on Environment and Development (WCED),'Report of the World Commission on Environment and Development: Our Common Future' (WCED 1987).

143. United States Institute of Peace (USIP), 'Natural Resources,Conflict, and Conflict Resolution: A Study Guide Series on Peace and Conflict For Independent Learners and Classroom Instructors' (USIP 2007)

144. US Government Accountability Office (GAO), 'Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration Among Federal Agencies' (GAO-06-15).

145. Valerie Wright, 'Deterrence in Criminal Justice: Evaluating Certainty vs Severity of Punishment' (The Sentencing Project 2010).

146. VarunVira and Thomas Ewing, 'Ivory's Curse: The Militarization & Professionalization of Poaching in Africa' (Born Free USA and C4ADS 2014)

147. Western (2008) Rethinking wildlife: Bridging the conservation divide. In Re-conceptualization of Wildlife Conservation: Toward Resonation between Subsistence and Wildlife

148. William Chambliss, 'The Deterrent Influence of Punishment'Crime and Delinquency (January 1966)70 – 75

149. Woolmington v DPP [1935] AC 462.

150. WWF and Dalberg, Fighting Illicit Wildlife Trafficking: A Consultation With Governments (WWF 2012)

151. Yifan Ding, 'Impacts of Affluence and Overexploitation of Natural Resources' (UNESCO 2003)

152. 'Joint Vision 2020' (US Government Printing Office, June 2000), 26.

153. RSPB 'First shahtoosh prosecution' Legal Eagle 25 (RSPB July 2000).

APPENDIX 1

CONSENT TO PARTICIPATE IN INTERVIEW

September 2015

The above refers.

I am a student at the University of Nairobi, CASELAP conducting research for a thesis on *"**The Assessment of the Role of Prosecution Authorities in Combating Poaching and Wildlife Trafficking in Kenya***", for the Master of Art in Environmental Law and Policy (MA) programme. The study seeks to establish the role of prosecution as a tool for addressing poaching and wildlife trafficking.

Kindly accept this request to interview you as part of the study sample. I would like to ask you some questions detailed in this questionnaire. The entire interview process will take about 20 minutes. The answers you give will remain confidential and will only be used in analysing the findings of this research.

Please let me know if I have your consent to proceed with the interview by signing this letter in the space provided below.

Thank you.

Yours Faithfully,

Felicitus C. Ngetich

I,……..hereby consent to participating in this study. I acknowledge that the information gathered will be used for academic purposes only.

APPENDIX 2

QUESTIONNAIRE

Please fill in this questionnaire.

This questionnaire is part of a study conducted by the Researcher for a Master's Thesis at the University of Nairobi, Centre for Advanced Studies in Environmental Law and Policy.

The results will be used only for academic purposes.

Name of Organisation:……

Name of Interviewee: ……

Age: ☐ 20 – 30 ☐ 31 – 40 ☐ 41 – 50 ☐ 51 – 60 ☐ Above 60

Sex: ☐ Male ☐ Female

Designation:……

Date:……

The Organisation

1. What role does your organisation play in fighting poaching and wildlife trafficking?

……
……
……
……
……
……
……

2. a) Does your organisation have a specialised unit dealing only with poaching and wildlife trafficking?

☐ Yes ☐ No

b) If Yes, when was the specialised unit established?

……
……

3. How many prosecutors are currently employed in the units charged with enforcing wildlife laws in your organization?

……
……

4. Is the number sufficient to handle the case-load of cases involving poaching and wildlife trafficking?

☐Yes ☐ No

5. Is this their sole responsibility or do they also prosecute other types of offences within the organization?

……
……
……
……
……
……

6. Is there provision for drawing upon other agencies to supplement staff needs for operational requirements or during times of shortages?

☐Yes ☐ No

Wildlife Crime

7. How many cases of poaching and wildlife trafficking has your organisation prosecuted to date?

……
……

8. Have cases of poaching and wildlife trafficking increased, declined, or remained the same from the year 2010 to 2015?

☐Increased☐ Declined☐ Remained the same☐ I don't know

……
……
……
……

9. Which category of illegal traders are most involved in poaching and wildlife trafficking?

……
……
……
……

10. a) Are attempts, conspiracy and incitement to poaching and wildlife trafficking criminalised?

☐Yes ☐ No ☐ I don't know

b) If yes, what are the requirements to establish liability for these inchoate offences?

……
……

……
……

11. a) Does liability for wildlife and forest offences extend to persons aiding, abetting, counseling or facilitating the offence, as well as to other accomplices?

☐Yes ☐ No ☐ I don't know

b) If yes, what are the requirements to hold persons criminally liable as participants or accessories?

……
……
……
……

12. Do you consider that the way criminal cases of poachers and wildlife traffickers are handled in Kenya at the moment, is a deterrent to other would-be offenders. Explain?

☐Yes ☐ No ☐ I don't know

……
……
……
……

13. What challenges have you experienced in prosecuting these cases and are there ways of improving them?

……
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……

14. Do you think it was a good idea to have the ODPP prosecute wildlife crimes involving poaching and trafficking of elephants and rhino? Explain

☐Yes ☐ No ☐ I don't know

……
……
……
……

15. Do you think that this has improved the effectiveness of prosecutions in combating poaching and wildlife trafficking?

☐Yes ☐ No ☐ I don't know

……
……
……
……

Training

16. What on-the-job training is given to persons joining the relevant wildlife enforcement unit dealing with poaching and wildlife trafficking in your organisation?

……
……
……
……

17. a) Are there any **planned** training sessions on poaching and wildlife crime interventions for prosecutors in your organisation?

☐Yes ☐ No ☐ I don't know

b) If yes, how often are these training sessions?

……
……
……
……

18. Is the training received adequate?

☐Yes ☐ No ☐ I don't know

19. a) Is there a training programme involving prosecutors from **different agencies** dealing with poaching and wildlife trafficking?

☐Yes ☐ No ☐ I don't know

b) If yes, which prosecution agencies are involved in the training programme?

……
……
……
……

c) Do you involve other stakeholders such as the Courts in your trainings?

……
……
……

20. What may be done to improve training of prosecutors dealing with poaching and wildlife trafficking?

……
……
……
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……
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……
……

Repeat Offenders

21. How often have there been cases of repeat offenders?

……
……
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22. Do investigators in poaching and wildlife trafficking cases in your organization have the means to take fingerprints and DNA from suspects of poaching and wildlife trafficking for the purposes of identification?

☐Yes ☐ No ☐ I don't know

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23. Do investigators in poaching and wildlife trafficking cases in your organisation have ledgers, files or databases containing photographs, fingerprints or other biometrical information of known criminals?

☐Yes ☐ No ☐ I don't know

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Inter-agency Coordination

24. Which other prosecution agencies do you interact with?

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25. How often do these agencies meet to review cases with your organization?

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26. What role does each prosecution agency listed above play in the interaction with your organization?

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27. Are there any inter-agency task forces or other agencies that work on poaching and wildlife trafficking?

☐Yes ☐ No ☐ I don't know

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28. Which organizations, agencies or bodies are involved in **investigating** poaching and wildlife trafficking cases?

☐Yes ☐ No ☐ I don't know

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29. a) Does the prosecutor in your organization have the power to instigate a prosecution?

☐Yes ☐ No ☐ I don't know

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b) If No, who instigates prosecutions?

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30. Is the responsibility for managing an investigation unambiguous so as to ensure a coordinated investigation and avoid the loss of evidence?

☐Yes ☐ No ☐ I don't know

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31. Are the results of investigations, prosecutions and court decisions shared among the relevant enforcement agencies, in particular the agencies that handed over the case in question?

☐Yes ☐ No ☐ I don't know

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32. What partnerships to prevent and suppress poaching and wildlife trafficking currently exist among prosecution agencies?

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33. a) Are there **written** protocols, MOUs, committees and so forth?

☐Yes ☐ No ☐ I don't know

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b) Is yes, which ones are in place, and with which prosecution agencies?

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34. a) Are there established ways of sharing information with the other agencies involved in combating poaching and wildlife trafficking?

☐Yes ☐ No ☐ I don't know

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b) Do you think that some agencies tend to hoard information on poaching and wildlife trafficking?

☐Yes ☐ No ☐ I don't know

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c) If yes, how do you think this affects the successful prosecution of cases in court?

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35. Do you think there is sufficient coordination among prosecution agencies involved in cases of poaching and wildlife trafficking?

☐Yes ☐ No ☐ I don't know

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36. How can coordination between prosecution agencies involved in cases of poaching and wildlife trafficking be improved?

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Legislation

37. Do you think the current legislative framework sufficiently addresses prosecution of poaching and wildlife trafficking?
    ☐Yes ☐ No ☐ I don't know

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38. What are some of the changes you would want made to the law, to improve prosecutions of poaching and wildlife trafficking?

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Courts

39. Do you think the courts are addressing poaching and wildlife trafficking as serious crimes?

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40. How many Judges/Magistrates are based in your station, and how many handle cases of poaching and wildlife trafficking?

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41. How long does the court take to conclude these cases?

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42. How many cases of poaching and wildlife trafficking does your station handle on a daily basis?

☐ 5 - 10 ☐ 10 – 15 ☐ 15 – 20 ☐ above 20

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43. How many prosecutors are assigned to each court, and is the number sufficient?

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44. Do you think it would be appropriate to have the ODPP take over prosecutions of cases involving poaching and wildlife trafficking?

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45. Would the above improve the outcome of cases involving poaching and wildlife trafficking?

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46. Are there any measures that have been put in place by the courts to end poaching and wildlife trafficking in Kenya?

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Advocates

47. Have you ever had a matter in the courts dealing with poaching and wildlife trafficking?

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48. If any, what was the nature of the offence?
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49. Was the matter concluded, and what was the outcome?
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50. Was the prosecutor a police prosecutor, a KWS prosecutor or a prosecution counsel from the ODPP?

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51. In your opinion does the ODPP have sufficient capacity to prosecute these matters in court?

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52. If yes, should the ODPP entirely take over prosecution of all wildlife cases in court?

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53. Are there sufficient Judges/Magistrates to hear these cases?

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54. How would you rate the performance of the court in handling these cases? In terms of: (Very good, good, fair, poor, very poor)

- Speed in handling cases
- Jurisprudence
- Quality of judgements
- Case management

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55. Do you think there is sufficient legislation to address the escalating number of cases of poaching and wildlife trafficking in Kenya?

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56. Do you think these matters are given the seriousness that they require?
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57. What should be done in your opinion to end poaching and wildlife trafficking in Kenya?
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Thank you for taking your time to fill in this Questionnaire