

**UNIVERSITY OF NAIROBI**  
**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**THE ILLEGAL TRADE IN WILDLIFE RESOURCES AND THE IMPLICATION  
FOR INTERNATIONAL SECURITY:  
A CASE OF POACHING OF IVORY IN KENYA.**

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## Declaration

I, RAHAB WANJIRU CHEGE, hereby declare that this research project is my original work and has not been presented for a degree in any other university.

Signed ..... date .....

Rahab Wanjiru Chege

This project has been submitted for examination with my approval as university supervisor.

Signed ..... date .....

Dr. Kizito Sabala

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### **Dedication**

This work is dedicated to the service men and women who put their lives at risk every single day to protect our nation and its resources. Some have made the ultimate sacrifice for this course, and as a Kenyan, I am grateful. Thank you for remaining true to the Nation and strong to serve.

### **Abstract**

This study focused on the impact of illegal wildlife trade on international security using Kenya as a case study with a bias on ivory poaching in Kenya. It therefore examined the poaching trends as well as the rationale for poaching in Kenya linking these two to armed-non state actors and transnational organized crime networks (TNOCs). The study set out two hypotheses namely: that the increased involvement of armed non-state actors and TNOCs in illegal trade in wildlife resources undermines states stability and that increased poaching and trafficking of wildlife resources is fueled by corruption and undermines governance and rule of law. The study relied on the liberalism theory, which appreciates the plurality of actors in the international system.

The study established that illegal trade in ivory has necessitated and increased militarization of poaching and wildlife protection. Poverty; weak legislation penalizing illegal trade; corruption among law enforcement agencies; and thriving ivory consumer markets particularly in East Asia, were identified as the key drivers of this illicit trade making it “low-risk and high-profit”. The study has recommended strengthening of national legislation; strengthening of capacities of regulatory institutions; increasing international cooperation and multiagency collaborations; and tackling demand through awareness campaigns on the role of illegal trade in wildlife, as responses towards reduction of illegal trade in wildlife species and products.

## **Abbreviations and Acronyms**

AMISOM	African Union Mission in Somalia
AU	African Union (formerly Organization of African Unity)
CBD	Convention on Biological Diversity (1992)
CITES	United Nations Convention on International Trade in Endangered Species of Flora and Fauna (1973)
CMS	Convention on Migratory Animals (1979)
COP	Conference of the Parties
DPP	Director of Public Prosecutions
ETIS	Elephant Trade Information System
IATA	International Air Transport Association
ICCWC	International Consortium on Combating Wildlife Crime
IUCN	International Union for Conservation of Nature
KWS	Kenya Wildlife Service
LRA	Lord's Resistance Army
Lusaka Agreement	Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (1994)
Maputo Convention	African Convention on the Conservation of Nature and natural Resources (2003)
MEAs	Multilateral Environmental Agreements
MIKE	Monitoring Illegal Killing of Elephants
NDFs	Non-detriment Findings
NEMA	National Environment Management Authority
NGO	Non-governmental Organization

NIAPs	National Ivory Action Plans
TNOCs	Transnational organized Crime Networks
TRAFFIC	Trade Records Analysis of fauna and Flora in Commerce
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime
WEMS	Wildlife Enforcement Monitoring System
WWF	World Wide Fund for Nature

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## Chapter One

### Introduction & Background to the Study

#### 1.1 Introduction

In their nature, wildlife resources form an important economic component of natural resources of states. They support revenues, livelihoods and environmental sustainability. Tourism for instance is one of the key drivers of the economy for most developing countries and a key contributor to gross domestic product<sup>1</sup> both as a direct income earning sector and as a support sector for other economic sectors. Most sub-Saharan Africa states are popular tourist destinations primarily anchored on game drives in game parks, reserves and conservancies. Illegal trade in wildlife resources therefore has an effect of depriving states revenues and to a larger extent posing a threat to state stability as perpetrators seek to protect their trade; taking into account that this trade is estimated to be worth between US\$70 and US\$213 billion annually<sup>2</sup>. Illegal trade in wildlife resources encompasses the illicit procurement, transportation and distribution of wildlife products; whether live animals, animal products, fisheries or timber, in contravention of international law and national laws<sup>3</sup>.

Illegal trade in wildlife resources, including timber and fisheries, has grown to crisis levels in recent years and more particularly poaching of elephants and trafficking of their ivory<sup>4</sup>. Illegal wildlife trade has been characterized as “low risk and high profit”<sup>5</sup> making it lucrative and attractive to organized crime networks. Poachers have become bolder and are equipped with state of the art equipment and technology to help meet their ends. This has necessitated the

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<sup>1</sup>World Travel and Tourism Council Economic Impact Report 2014: <http://www.wttc.org/accessed/16/April/2015>.

<sup>2</sup> Nellerman, C. et al. eds. *The Environmental Crime Crisis-Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*, (UNEP: Nairobi, 2014) p. 7.

<sup>3</sup> Reeve, R., *Policing International Trade in Endangered Species: The CITES Treaty and Compliance*, (London: Earthscan Publican Limited, 2002).

<sup>4</sup> Op. Cit., Nellerman.

<sup>5</sup> Hanken, J., “Transnational Crime in Developing World”, *Global Financial Integrity*, February 2011, <http://transcrime.integrity.org/>; Elliot, L. “Fighting Transnational Environmental Crime”, *Journal of International Affairs*, Vol 66:1 (2012) pp. 87-104.

militarization of wildlife protection efforts led by governments and international cooperation efforts through Interpol<sup>6</sup>. This increase has been despite actions under conventions, such as the 1973 United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1994 Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (Lusaka Agreement), resolutions by the United Nations Security Council and corresponding national legislative efforts to curb and/or criminalize or control trade in wildlife resources.

The major source states of poached ivory are in sub-Saharan Africa, with main sources being Central, East and Southern Africa states. The increase in killing of elephants for ivory especially in Africa range states has been linked to armed non-state actors, insurgents and militia groups<sup>7</sup>. Armed non-state actors have been linked to poaching and use of this illegal trade to fund their activities. Civil strife and lack of stable governments in some of these states which neighbour Kenya have been linked to the increase in poaching of elephants within Kenyan borders. Kenya's porous borders especially with its northeastern neighbour Somalia have been reported to be a cause of the increase in cross-border poaching activities in Kenya<sup>8</sup>. It has been indicated in reports that the terror group Al Shabab, with its base in Somalia, funds its activities from revenues sourced from, among others, ivory poached in Kenya<sup>9</sup>.

Besides Kenya being a source state, its ports including both sea and air, have been used as transit points for illicit exports from Kenya and other regions and thousands of tonnes of ivory are seized annually at these and other ports in South East Asia (Bangkok and Singapore) for

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<sup>6</sup> Douglas, L. R., Alie, K., "High Value Natural Resources: Linking Wildlife Conservation to International Conflict, Insecurity and Development Concerns". *Biological Conservation*, Vol 171, (2014) pp. 270-277.

<sup>7</sup> Lujala, P., Rustad S., eds. "High Value natural Resources: A Blessing or A Curse for Peace"? *Sustainable Development Law Policy*, Vol 12 (2011) pp. 19-57

<sup>8</sup> Op. Cit., Elliot.

<sup>9</sup> Elephant Action League, *Africa's White Gold of Jihad: Al-Shabaab and Conflict Ivory*, 2013 <http://www.elephantleague.org/> accessed 20/April/2015

example. Coupled with the fact that poaching activities are increasingly taking place in protected areas being conservancies, national parks and game reserves, these two factors bring into focus the aspect of corruption among the law enforcement officials, including police and customs officers, who facilitate these illicit activities which, in turn, would weaken state institutions and rule of law.

Illegal trade in wildlife resources has largely been viewed and conceptualized as an environmental conservation concern particularly in protection of endangered species of flora and fauna. However, the growing dynamics of this trade as well as its actors pose a threat to the stability and security of states involved at every chain link of this illicit business; be it the range state, transit state or destination state. This research is therefore intended to take the illegal trade in wildlife resources debate beyond environmental and conservation concerns and examine the security threats posed by this illicit trade to international security and states stability by examining the growing dynamics of ivory poaching in Kenya.

## **1.2 The Problem Statement**

Kenya is a party to the 1973 Washington, DC Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS) and the 1994 Lusaka Agreement which seek to control trade in wildlife resources Kenya is also a party to several other conservation conventions: the 1992 Convention on Biological Diversity and the 2003 Maputo Conservation of Nature and Natural Resources. In the last decade, Kenya has legislated several laws notably the Wildlife Conservation and Management Act 2013 that imposes heavy penalties on smugglers and poachers of ivory as well as other wildlife products. Kenya has been at the forefront in collaborative efforts with both CITES and Interpol in monitoring and effecting policy measures to combat poaching and trafficking of ivory. Despite these efforts perpetrators

of illegal trade in wildlife resources have become bolder and more aggressive by use of sophisticated technology and machinery to reach their ends. For example in January 2013, twelve elephants were gunned down in Tsavo National Park, in what was reported to be an attack by use of a helicopter.

While, poaching in Central African region has been linked to the protracted political instability and conflict in the region, there are grey areas in the examination of poaching of ivory in Kenya. The political instability in Kenyan neighbours and countries in the region where militia and insurgent groups are reported to finance their activities from ivory poaching and crossing borders or using proxies and associates for these activities, has been associated with increased poaching in Kenya. The fight against insurgent groups as well as terrorist outfits mostly targets financing of these group's activities with an aim of weakening the groups. Kenya in 2009 commissioned its defence forces to enter into Somalia with the aim of weakening a terror outfit, Al Shabab, which was linked to several terror attacks and kidnappings in the country. The Kenya Defence Forces' (with its latter integration into African Union Mission in Somalia (AMISOM)) strategy in carrying out their mandate, targeted on cutting out Al Shabab's income sources particularly at the Kismayu Port. Trade in charcoal was said to be the key source of income for this group. Is it possible that a cash-starved group is focusing on new sources of funding and poaching of ivory in Kenya is one way to raise money to fund its operations? Besides this terror outfit, are there other criminal networks or outfits involved in poaching in Kenya? The high poverty levels among the communities neighbouring national parks, game reserves and conservancies may facilitate poaching, as communities become vulnerable to crime and are easy target for criminal networks to use them as proxies in sourcing ivory. It should not be lost that these communities more often than not know the terrain better than any other outsider.

There exists a gap in the analysis and identification of the actors involved in the illegal wildlife trade in Kenya as well as political and security impact of their activities in the long-term. This study will seek to answer the question whether the roles and activities of the actors in this illicit trade, undermine state security and stability. The research will therefore focus on these gaps and attempt to identify appropriate policy responses.

### **1.3 Objectives of the Study**

The overall objective of this study is to examine the illegal trade in wildlife resources and the implication for international security using Kenya as a case study. Specifically the study aims:

- 1.3.1 To analyse the norms and institutions on the protection of wildlife resources;
- 1.3.2 To examine and analyse poaching of ivory in Kenya and its implications on international security;
- 1.3.3 To identify the opportunities and challenges in illegal trade in wildlife resources; and
- 1.3.4 To recommend appropriate policy responses.

### **1.4 Research Questions**

In order to achieve the above objectives the study will be guided by the following questions:

- 1.4.1 What are the norms and institutions on the protection of wildlife resources?
- 1.4.2 What are the implications for international security of poaching of ivory in Kenya?
- 1.4.3 What are the opportunities and challenges in illegal trade in wildlife resources?
- 1.4.4 From the study findings, what are the appropriate policy responses?

### **1.5 Study Hypotheses**

The study will be guided by the following two hypotheses:



1.5.1 Increased involvement of armed non-state actors and international criminal networks in illegal trade in wildlife resources undermines states stability.

1.5.2 Poaching and trafficking of wildlife resources, undermines governance and rule of law and encourages or is fuelled by corruption.

## **1.6 Study Justification and Significance**

### **1.6.1 Academic Justification**

This study is intended to shed light on the changing dynamics of illegal trade in wildlife resources by critically examining its actors, their motivators and driving factors and consequential implications on international security. Academic research in this area has centered on conservation concerns and only recently did the study take dimensions towards integrating international security specifically in conflict studies. This has primarily been motivated by the protracted conflict in the African source or range states of the Central African Republic and the Democratic Republic of Congo; where research has analyzed ivory as a conflict resource alongside diamond and timber<sup>10</sup>. Lawson and Vines have linked poaching in Southern Africa range states to legal loopholes that allow hunting of ivory and live export<sup>11</sup>.

A critical analysis of poaching in Kenya and its link to international security is lacking. Research has been largely centered on addressing human activities such as encroachment and resource sharing<sup>12</sup>. By critically analyzing the actors in this illicit trade and effect of their activities on governance institutions will contribute to academic discourse in addressing emerging issues in international security.

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<sup>10</sup> White, N. "The Political Economy of Ivory as a "Conflict Resource". *Peace and Conflict Studies*, Vol 21, (2014) pp. 172 - 186; Le Billion, P. "Fatal Transactions: Conflict Diamonds and the (Anti)terror Consumer", *Antipode* Vol 38, (2006) pp. 778-801; Op. Cit., Elliot; Op. Cit., Hanken.

<sup>11</sup> Lawson, K., Vines, A., *Global Impact of Illegal Wildlife Trade: The Cost of Crime, Insecurity and Institutional Erosion*, (London: Chatham House, 2014).

<sup>12</sup> Karanja, D. "The Role of Kenya Wildlife Service in Protecting Kenya's Wildlife", *The Kenya Wildlife Service in the 21st Century: Protecting Globally Significant Areas and Resources*, Vol 29 (2012) pp. 74-80; Kamweti, D. et al. "Nature and Extent of Environmental Crime in Kenya", *Monograph*, Vol 116 (2009) pp. 22

## 1.6.2 Policy Justification

Research in this field of study which informs recommendations to policy makers has been centered on environmental conservation and addressing demand for ivory products. Policy responses to research in this area of study especially on link between natural resources and conflict in the Great Lakes Region has been through trade controls (outright bans or controlled quotas) and where there is contravention, sanctions. These measures are turning out to be inadequate to address the problem due to weaknesses in the implementation process of the conservation conventions. The high value and political sensitivity of trade in ivory creates sharp divisions affecting international cooperation in regulating the trade. This study is therefore timely for policy makers in an attempt to seek to address a holistic approach to illegal trade in wildlife resources and ensure a comprehensive policy framework.

## 1.7 Literature Review

Scholarly debate on trade in wildlife resources especially ivory, has been centered on concerns of sustainable use versus protection primarily geared towards protection of a source of revenue from tourism income<sup>13</sup>. This debate has informed the formulation and shaping of multilateral environmental agreements such as CITES whose primary role has been trade controls. In the last decade ivory poaching and trade has reportedly escalated rapidly with alarming statistics reported<sup>14</sup>; this driven by a flourishing demand market especially in the Asian states and facilitated by global trafficking networks<sup>15</sup>. Protracted conflict in African states as well as emergence of terrorism as a threat to international security has drawn attention to sources of financing of activities of the non-state actors involved in conflict and/or terrorism. Lawson and

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<sup>13</sup> Op. Cit., Reeve, p 5; Op. Cit., Douglas and Alie; Op. Cit., White.

<sup>14</sup> Gabriel G. et al. "Making A Killing: A 2011 Survey of the Ivory Market in China", *International Fund for Animal Welfare*, 2012 Report; Gettleman, J. "Elephants Dying in Epic frenzy as Ivory Fuels Wars and Profits", *New York Times*, April 09, 2012, <http://www.nytimes.com/2012.09/04/>, accessed 16/April/2015; Op. Cit., Nellerman,.

<sup>15</sup> Atlantic Council, "Guns for Ivory: Africa's Latest Conflict Trend", Atlantic Council, February 11, 2014:<http://www.atlanticcouncil.org/intelbrief-guns-for-ivory-africa-s-latest-conflict-trend/> accessed 16/April/2015.

Vines argue that presence of armed non-state actors in “source countries has provided the ideal context for large scale poaching to take place” and further argue that a “distinction must be drawn between poaching for subsistence or self-sufficiency and organized criminal activity”<sup>16</sup>.

It is noteworthy that beneficiaries of subsistence or self-sufficiency poaching would be the organized criminal networks with access to black markets for the ivory and other wildlife products<sup>17</sup>. Poachers often associate directly or indirectly with international criminal networks which are in turn linked to insurgency groups that promote violence<sup>18</sup>. Background literature on illegal trade in wildlife resources has linked this trade to state instability especially in fueling conflict in the Central Africa Region. Large scale poaching in the Democratic Republic of Congo has been linked to state and non-state actors; Congolese soldiers; traditional poachers; armed groups of South Sudan; and members of the Lord Resistance Army (LRA)<sup>19</sup>. In instances forces under United Nations control in Central Africa have been linked to poaching as well. Wyler and Sheikh discuss the link between wildlife traded by Somali warlords and extremists groups loyal to Al Qaeda, where the operatives and supporters of Al Qaeda are said to profit from poaching of ivory and rhino horns<sup>20</sup>. Sudan’s militias including Janjaweed operating in Darfur are linked to poaching in Kenya, Cameroon and Chad<sup>21</sup>.

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<sup>16</sup> Op. Cit., Lawson and Vines, p7.

<sup>17</sup> Kazmar, J. “The International Illegal Plant and Wildlife Trade: Biological Suicide”, *University of California Davis Journal of International Law and Policy*, Vol 16, (2009) pp. 70-90, which links organized crime syndicates to illegal wildlife trade.

<sup>18</sup> Glew, L., Hudson, M. D. “Gorillas in the Midst: The Impact of Armed Conflict on the Protected Conservation of Protected Areas in Sub-Saharan Africa”, *Oryx*, Vol 41, (2000) pp. 140-150; UN 2013 *Report of Secretary General on Activities of the United Nations Regional Office for Central Africa and the Lord’s Resistance Army Affiliated Areas presented to the United Nations Security Council* (New York: UN) pp. 1-16; Op. Cit., Nellerman et al.

<sup>19</sup> Titeca, K. “The (LRA) Conflict: Beyond The LRA Lobby and the Hunt for Kony, Towards Civilian Protection”, <http://www.africanarguments.org/2013/05/17> accessed 15/April/2015; Agger, K., Hutson, J. “Kony’s Ivory: How Elephant Poaching in Congo Helps Support the Lord’s Resistance Army”, *Enough Project*, <http://www.enoughproject.org/reports/2013/>; Lancaster, P. Cakaj, L., “Loosening Kony’s Grip: Effective Defection Strategies for Today’s LRA”, *The Resolve*, <http://www.invisiblechildren.com/2013/07/31>.

<sup>20</sup> Wyler, L., Sheikh, P., “International Illegal Trade in Wildlife: Threats and US Policy”, *Congressional Research Service: Report for Congress* (2008) p 20.

<sup>21</sup> Douglas-Hamilton, I., “Time Running Out to Save Elephants from Ivory Trade”, *Swara*, January to March 2013, p. 28; IFAW, *Criminal nature: The Global Security Implications of Illegal Wildlife Trade* (2013); Op. Cit., Hanken.

Various researchers and scholars<sup>22</sup> have argued that participation of such armed non-state actors in wildlife trafficking can threaten the stability of countries, foster corruption and encourage use of violence to protect the trade. The 2013 UN report states that the African militias routinely appear to trade elephant ivory for weapons and food, and that the links between wildlife trade and both criminal and terrorist activities “constitute a grave menace to sustainable peace and security in central Africa”<sup>23</sup>. Conflict analysts have analyzed ivory as a “conflict resource” with high value. Presence of such high-value resources can “contribute to or result in commission of serious violations of human rights or violations amounting to crimes under international law”<sup>24</sup>. They further assert that such high-value resources may directly finance belligerent groups using crime and violence to advance their interests and causes.

High-value resources are described by Lujala and Rustad as commodities that in their nature states have the potential to yield substantial revenues which if well managed can be the cornerstone of economic prosperity, substantially raising living standards, facilitating socio-economic equality and reducing state dependency on foreign aid<sup>25</sup>. Thus capture of resources is a means of securing wealth and power<sup>26</sup>. Today’s poachers are equipped with state of the art telescopes, night-vision goggles, GPS satellite receivers, automatic and semi-automatic weapons, helicopters and military grade vehicles<sup>27</sup>. This has therefore necessitated the militarization of wildlife protection efforts led by governments, with gun battles between poachers and wildlife

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<sup>22</sup> Warchol, G., “The Transnational Illegal Wildlife Trade”, *Criminal Justice Studies*, Vol 17 (2004), pp. 57-73: 58; Zimmerman, M., “The Black Market for Wildlife: Combating Transnational Organized Crime in the Illegal Wildlife Trade”, *Vanderbilt Journal of Transnational Law*, Vol 36 (2003), pp. 162-1673; Op. Cit., Hanken.

<sup>23</sup> UN 2013, *Report of Secretary General*, p 2

<sup>24</sup> Mathew, R. A., et al., *From Conflict to Peace Building: The Role of Natural resources and the Environment*; Nairobi: UNEP (2009).

<sup>25</sup> Op. Cit., Lujala and Rustad, p 30.

<sup>26</sup> Op. Cit., Douglas and Akie.

<sup>27</sup>Op. Cit., Gettleman.

protection officers claiming hundreds of lives annually in Africa alone<sup>28</sup>. West, Igoe and Brockington remark that “the policing and funding” of wildlife habitat now requires “continued state violence” with some states implementing policies that allow shot-on-sight to combat poaching<sup>29</sup>. This has therefore raised questions on whether these wildlife wars themselves drive state-sponsored violations of human rights and international humanitarian law<sup>30</sup>.

Besides its link to instability and criminal networks, illegal trade in wildlife resources has an inverse effect on governance institutions as it encourages corruption. Douglas and Alie assert that poverty, economic under-performance and poor governance make the resources of many developing countries vulnerable to patronage and corruption<sup>31</sup>. Lemieux and Clarke correlate illegal poaching and trafficking of elephant ivory and state corruption<sup>32</sup>. Where corruption is highest, trafficking is pervasive, including networks that stretch into the military, police, border guards, judiciary, customs officials, embassy staff and diplomats, all of whom actively facilitate trafficking<sup>33</sup>. For this reason, progressive international policies on illegal trade in wildlife resources may be blocked directly or indirectly through, for example, intimidation and buying of votes<sup>34</sup>. This has been argued to be the cause of Southern African states to push for legalization of ivory trade by CITES member states<sup>35</sup>.

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<sup>28</sup> Ibid; Humphrey, J., Smith, M., “War and Wildlife”, *The Clausewitz Connection International Affairs*, Vol 87 (2011) pp. 121-142.

<sup>29</sup> West, P., Igoe, J., Brockington, D., “Parks and People: The Social Impact of Protected Areas”, *Annual Review of Anthropology*, Vol 35 (2006), pp. 251-277:260.

<sup>30</sup> Ibid; Benjaminsen, F., et al., “Wildlife Management In Tanzania: State Control, Rent Seeking and Community Resistance”, *Development and Change*, Vol 44 (2013), pp. 1087-1109; Brockington, D., Igoe, J., Schmidt-Soltau, K., “Conservation, Human Rights and Poverty Reduction”, *Conservation Biology*, Vol 20 (2006), pp. 250-252.

<sup>31</sup> Op. Cit., Douglas and Alie, p. 275.

<sup>32</sup> Lemieux, A., Clarke, R., “The International Ban on Ivory Sales and It’s Effects on Elephant Poaching in Africa”, *British Journal of Criminology*, Vol 49 (2009), pp. 451-471.

<sup>33</sup> Ibid; Naylor, R. T., “The Underworld of Ivory”, *Crime, Law and Social Change*, Vol 42 (2005), pp. 261-295; Gettleman, *Elephants Dying in Epic Frenzy*; Warchol, *The Transnational Illegal Wildlife Trade*.

<sup>34</sup> Kakabadse, Y., “The Fight Against Wildlife Crime: Enforcement-Corruption”, *Environmental Policy Law*, Vol. 41 (2011), pp. 123-126; Op. Cit., Douglas and Alie.

<sup>35</sup> Gabriel G.G., Hua N, Wang, J. “Making A Killing: A 2011 Survey of the Ivory market in China”, *IFAW* (2012).

Overall, illegal trade in wildlife resources is lucrative and was valued in the year 2012 at between US\$7.8 and US\$10 billion<sup>36</sup> and in the year 2014 at between US\$70 and US\$213 billion<sup>37</sup>. Its character of “low risk and high profit” makes it attractive to smugglers and organized crime networks that use the similar routes as those used to smuggle drugs, arms and other contraband<sup>38</sup>. Research on international security implications of illegal trade in wildlife resources, has predominately been on international conflict analysis thus centered on conflict zones. This study will therefore attempt to establish a link between illegal trade in wildlife resources and international security; by analyzing the dynamics of this illicit trade within Kenya as a range and transit state and link the dynamics so established to international security within contexts of links to insurgency and belligerent groups, terrorism and effect on governance institutions.

## **1.8 Theoretical Framework**

This research will be guided by the liberalism theory of international relations. Liberalism expands the state-centric nature of world politics as propositioned by realism and acknowledges non-state actors as equally central in shaping world politics. While actors in realism are defined on basis of three main criteria: sovereignty, recognition of statehood; and control of territory and population<sup>39</sup>, liberalism proposes an alternative “pluralistic” paradigm to assess the complexities and transformations of contemporary world politics<sup>40</sup>. This study will analyze the research problem by analyzing the pluralistic nature of actors in international

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<sup>36</sup> Cardamone, T. “Ivory and Insecurity: The Global Implications of Poaching in Africa”, *A Statement at the United States Senate Committee on Foreign Relations*, 24 May 2012, p. 2.

<sup>37</sup> Op. Cit., Nellerman et al., p. 7.

<sup>38</sup> Op. Cit., Wyler and Sheikh, p. 19.

<sup>39</sup> Hocking, B., Smith, M., *World Politics: An Introduction to International Relations*, (London:Harvester Wheatsheaf 1990), p. 80.

<sup>40</sup> Sullivan, M. P., “The Transnationalism, Power Politics and the Realities of the Present System”, in *International Relations in the Twentieth Century*, ed. M. Williams, (London: Macmillan, 1989); Banks, M., “The Inter-Paradigm Debate”, in *International Relations: A handbook of Current Theory*, ed. M. Light and J. Groom, (London: Pinter, 1985) pp 25-274; McGraw, A.G., “Conceptualizing Global Politics” in *Global Politics*, ed. A. G. McGraw, (Oxford: Polity, 1992) pp 1-30.

relations. The units of analysis will be states; international organizations; individuals; transnational organized groups; terrorist networks; insurgent groups and resources. Interdependence among these actors coupled with the anarchic nature of the international system dictate that states, though sovereign, have to negotiate with the other states and actors and in the international system.

Liberal approach thus views international relations as a study of various interactions between many layers of governing arrangements among a variety of state and non-state actors in a rule based system comprising international conventions and treaties, international regimes and institutional rules. The interactions are achieved through cooperation and institutionalization<sup>41</sup>. For any substantive policy formulation, implementation and monitoring to be achieved to curb this illicit trade, international cooperation is necessary and this can largely be achieved only through institutionalization. The policing of international trade in wildlife resources under the CITES regimes is thus one achievement.

In securitizing illegal trade in wildlife resources, the research will integrate both traditional and expanded modern concepts of international security. The traditional concept of international security views international security purely as use of force between or among nations<sup>42</sup>. The integrated concept envisages inclusion of those challenges that could threaten the international system either through direct violence between states or by means of state stability, particularly state implosion<sup>43</sup>. This recognizes that international security can affect both non-military threats as well as state and non-state groups. St. Jean proposes that international security

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<sup>41</sup> Oye, K., "Explaining Cooperation Under Anarchy: Hypothesis and Strategies", in *Cooperation Under Anarchy*, ed. K. Oye, (Princeton: Princeton University Press, 1989) pp 1-24; Axelrod, R., Keohane, R.O., "Achieving Cooperation Under Anarchy: Strategies and Institutions", *World Politics*, Vol 38 (1985), pp 226-254; Hasenclever, A., Mayer, P., Rittberger, V., *Theories of International Regimes*, (London: Cambridge University Press, 1997).

<sup>42</sup> Baldwin, D., "The Concept of Security", *Review of International Studies*, Vol 23 (1997), pp 5-26.

<sup>43</sup> St. Jean, E., "The Changing Nature of "International Security": The Need for an Integrated Definition", *Patterson Review*, Vol 8 (2007), pp 22-33.

should focus on the impact rather than attempt to classify which threats and referent objects should be included<sup>44</sup>. The key aspect of an integrated definition asserts that it is the impact of a threat that defines whether it is an international security issue. Thus threats facing international security include direct violence between states but also involve threats that bring about state stability and/or instability.

## **1.9 Research Methodology**

### **1.9.1 Research Design**

Data will be examined through mixed-method case study. The choice for case study is to give an in-depth multifaceted study to the research problem as opposed to a generalized survey of the research problem. Case study in social science research “permits the grounding of observations and concepts about social action and social structures in natural settings studied at close hand”<sup>45</sup>. Case study also provides “information from numbers of sources and over a period of time, thus permitting a holistic study of complex social networks and of complexes of social actors and social meanings”.<sup>46</sup> Adopting case study research design for this research will therefore give a holistic examination to illegal trade in wildlife resources and its link to international security by analyzing social complexes of the actors, actions and motives informing this problem.

### **1.9.2 Data Collection**

This study will incorporate both qualitative and quantitative techniques in data collection. Primary data will be collected through structured questionnaires and interviews with government institutions and officials; policy makers; intergovernmental organizations such as the UNEP officials, non-governmental organization officials and local population. Secondary data will be

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<sup>44</sup> Ibid

<sup>45</sup> Orum, A. M. et al., *A case for the Case Study*, (Chapel Hill: University of North Carolina Press, 1991) p 8.

<sup>46</sup> Ibid



collected from existing official statistics from government reports, CITES reports, reports by UNEP and other relevant multilateral environmental agreements (MEAs), Interpol and other official sources that will be available to the researcher. The researcher will also source secondary data from scholarly work conducted by other researchers and reports by researchers presented to policy makers.

### **1.9.3 Data Analysis**

Qualitative data analysis will form basis of analyzing data in this study. Responses and perceptions of respondents and data from official statistics will be analysed thematically and interpreted. Procedure for data analysis will be as prescribed by Bogdan and Biklen and it will involve “working with data, organizing it into manageable units, synthesizing it, searching for patterns, discovering what is important and what is to be learned and deciding what you will tell others”<sup>47</sup>.

### **1.9.4 Data Presentation**

Data will be presented through charts and tables to demonstrate the relationship between the two variables of the research problem.

## **1.10 Chapter Outline**

The study will comprise of five chapters as outlined below:

### **Chapter One: Introduction and Background**

This chapter will give an introduction to the study and cover a background to poaching of wildlife resources and their illegal trade in the black market. It will give a brief background to the drivers of illegal trade in wildlife resources. The section will also give the statement of the research problem; objectives of the study; research questions and hypotheses; and justification

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<sup>47</sup> Bogdan, R.C. and Biklen, S., “Qualitative Research for Education” in *Educational Research: Contemporary Issues and Practical Research*, ed., J. Wellington, (London: Continuum, 1982) p 145.

and significance of the study with a focus on both academic and policy justifications. The section will also give the theoretical framework on which the research is premised on.

### **Chapter Two: Norms and Institution on Protection of Wildlife Resources**

This chapter will discuss the illegal trade in wildlife resources regimes. This will encompass norms and institutions established through resolutions and conventions by the international community through the auspices of the United Nations, African Union, European Union and other regional organizations.

The chapter will be guided by the founding convention on trade in wildlife resources namely, the 1973 Convention on International Trade in Endangered Species of Fauna and Flora (CITES); which primarily seeks to regulate and restrain trade in endangered wildlife species. This chapter will therefore evaluate this convention and other subsequent conventions; resolutions and/or institutional frameworks governing trade in wildlife resources.

### **Chapter Three: Poaching of Ivory in Kenya and its Implications on International Security**

This chapter will seek to critically assess poaching of ivory in Kenya and its implications on international security. The chapter will therefore seek to identify the key actors perpetrating poaching, identify their key motivators and driving factors and seek to establish if these motivators and drivers affect the stability of states. The section will seek to establish if there is a link between the perpetrators, their access to technology and arms and organized crime networks and terror groups and consequently the long-term implications of these for international security.

This chapter will incorporate literature review on the dynamics of illegal trade in wildlife resources with an examination of actors, sources of their funding and their utilization of proceeds from this illicit trade to fund their activities. The chapter will also comprise an analysis of data

based on feedback from questionnaires and interview responses with the aim of testing the hypotheses.

#### **Chapter Four: Opportunities and Challenges**

This chapter will be informed by the changing dynamics in illegal wildlife trade as will be identified under Chapter 3. This chapter will critically assess the opportunities for illegal wildlife trade within the existing norms and institutional frameworks and challenges posed by the changing dynamics in the existing international legal framework as will be identified by the research findings.

#### **Chapter Five: Summary, Conclusion and Recommendations**

This section will culminate the study and identify appropriate policy responses based on the research findings. The section will demonstrate whether the hypotheses have been proven or otherwise.

## Chapter Two

### Norms and Institutions on the Protection of Wildlife Resources

#### 2.0 Introduction

This chapter reviews selected norms and institutions on the protection of wildlife resources. Regimes developed for protection of wildlife resources have been informed by the problem of unsustainable exploitation of wildlife. One of the most and long-standing controversies relating to wildlife conservation is the extent to which wildlife should be exploited for human consumption rather than preserve it. International negotiations especially in multilateral environmental agreements (MEAs) have been pitted on the sustainable use versus protection debate. On one hand are arguments for outright bans while on the other hand are efforts for sustainable use. The dynamics between these two groups as will be discussed progressively in this chapter, has caused sharp divisions most notably over the ivory trade. State sovereignty over natural resources has been a key factor, with developing countries which are still rich in resources urging for sustainable use as opposed to outright ban of international trade in wildlife and wildlife products<sup>1</sup>.

The Convention on International Trade in Endangered Species of Fauna and Flora (CITES) is the primary convention that seeks to regulate trade of wildlife species. Adopted in 1973 in Washington, DC, it came at the backdrop of growing concerns on over exploitation of species both plants and animals and the need for their protection from extinction. It was, however, not the first international attempt by states to seek management of wildlife by trade controls. Initial attempts were made through the 1900 London Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa which are Useful to Man or

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<sup>1</sup> Reeve, R., *Policing International Trade in Endangered Species: The CITES Treaty and Compliance*, (London: Earthscan Publican Limited, 2002).

Inoffensive and the 1933 London Convention relative to the Preservation of Fauna and Flora in their Natural State<sup>2</sup>.

Article VIII of the 1900 Convention required ratification by all signatories for purposes of the convention's entry into force. However, all signatories never ratified it thus it never entered into force. On the other hand, the 1933 Convention main shortcoming was that it failed to provide for decision-making institutions and secretariat thus proposals for implementation were unsuccessful<sup>3</sup>. At the regional level, the Organization of American States (OAS) and the Organization of African Unity (OAU) (now African Union) through the 1940 Washington Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere and the 1968 Algiers African Convention on the Conservation of Nature and Natural Resources, respectively, made attempts for wildlife and wildlife products trade controls. However these were never given "practical effect" by the two regional organizations<sup>4</sup>. The OAU/African Union however revised the Algiers Convention with the 2003 African Convention on the Conservation of Nature and Natural Resources (Maputo Convention), which will be discussed, albeit briefly, in this chapter.

Aware of the growing problem, the 1972, UN Conference of Human Environment called for an "international convention on regulation of export and transit of rare or threatened wildlife species or their skins and trophies"<sup>5</sup>. Concerted efforts culminated in two propositions one by the USA and a counter-proposal by Kenya. The USA approach called for "controls of wildlife trade through global lists of threatened species to be drawn up and updated on the advice of an

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<sup>2</sup> Sand. P., "Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment", *European Journal of International Law*, Vol 1 (1997) pp. 29-58.

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> International Union for Conservation of Nature (IUCN), *Proceedings of the 8<sup>th</sup> Session of the General Assembly*, (1963) p. 130.

international expert committee”<sup>6</sup>. Kenya’s counter proposal led the developing countries opposition to the USA approach and insisted on the “right of each range state to determine its own list of tradeable species”<sup>7</sup>. These two propositions formed the basis of the 1973 Washington Conference which resulted in the adoption of CITES.

The first section of this chapter discusses the norms under CITES followed by the institutions therein, this will be followed by a review of selected conventions norms established thereunder and their institutions and the chapter will thereafter discuss the efficacy of the current wildlife protection regime in the protection of wildlife species and their derivatives.

## **2.1. Normative and Institutional Frameworks on the Protection of Wildlife Resources**

CITES is the primary global regulatory mechanism for trade of wildlife species and products thereof. The 1994 Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (Lusaka Agreement) and the 2003 Conservation of Nature and Natural Resources (Maputo Convention) are premised on norms under CITES. The 1992 Convention on Biological Diversity (CBD) and the 1979 Convention on Migratory Species of Wild Animals (CMS) are complementary conventions seeking protection of wildlife habitats and migratory wildlife respectively.

### **2.1.1 The 1973 Convention on International Trade in Endangered Species of Fauna and Flora (CITES)**

The CITES regime centers on trade controls of endangered species of fauna and flora. It is hailed as the “Magna Carta for wildlife”<sup>8</sup> as both a conservation and trade instrument which creates a nexus between international trade and species conservation. Negotiated at the back drop of failed international attempts to regulate trade in wildlife resources, the founders were

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<sup>6</sup> Sand, Op. Cit., p. 34

<sup>7</sup> Ibid

<sup>8</sup> Layne, E. N., “Eighty Nations Write Magna Carta for Wildlife”, 75 *Augubon Magazine*, (1973) p. 99; King, F. W.; “International trade and Endangered Species”, *International 200 Yearbook* Vol 14 (1974) pp 2-13.

conscious of the shortcomings and weakness of the failed regimes and thus made attempts to establish a self policing system under CITES. The founders of the convention were also conscious of the institutional weaknesses of the previous conventions. Hence this instrument envisaged a structure for purposes of implementation of the convention. Currently 181 states are parties to CITES, who collectively referred to as the Conference of the Parties (COP). The COP meets every two to three years to review the implementation of Convention. Besides the COP, CITES establishes a secretariat; a standing committee; plants committee and animals committee, functions which are discussed in this section.

#### **2.1.1.1 Fundamental Principles on Protection of Species**

The norms created under CITES are the fundamental principles on which trade in wildlife resources is regulated at the global level. CITES' objective can be derived from its preamble which recognizes that "wild fauna and flora are irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come"<sup>9</sup>. The convention conscious of the growing value of wild fauna and flora recognizes that "international cooperation is essential for the protection of certain species of wild fauna and flora against over exploitation through international trade"<sup>10</sup>.

CITES works by subjecting the export, import, re-export and introduction from the sea of species listed in three appendices (Appendix I, II and III) to certain controls. The three appendices list approximately 5,600 species of animals and 30,000 species of plants, which are protected against over-exploitation through international trade<sup>11</sup>. The trade in these species is subjected to mandatory licensing with permits and certificates to be issued by trading countries. Each member state is required to designate a management authority which is in charge of the

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<sup>9</sup> CITES, Preamble, p.1

<sup>10</sup> Ibid

<sup>11</sup> CITES, <http://www.cites.org/> accessed 16 June 2015

licensing and a scientific authority, which advises on effects of trade on the survival of the traded species. The review of the list of species in these appendices is the function of the COP which is mandated to “consider and adopt amendments to Appendices I and II” and “review progress made towards restoration and conservation of species included in Appendices I, II and III”<sup>12</sup>.

#### **2.1.1.1.1 Protection of Appendices I and II Species**

The nature of protection of species under Appendix I is provided for under Article II (1) which provides, inter alia, “Appendix I shall include all species threatened with extinction which are or may be affected by trade”. Consequently, “trade in these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances”. Trade in these species is regulated under Article III which requires any export, import, re-export or introduction from the sea of any of these species to be accompanied by a permit.

Controls of Appendix I species are to the effect that a Scientific Authority of the requisite state must certify that any export, import, re-export or introduction from the sea of the species will “not be detrimental to the survival of the species”. Further, a Management Authority of the requisite state must satisfy the safety of the specimen; that the specimen was not obtained in contravention of the law of the state; and the specimen is not to be used for primarily commercial purposes<sup>13</sup>, a key note being trade of these species must only be authorized in exceptional circumstances. In effect this is a “black list”<sup>14</sup> of species, in which trade for commercial purposes is prohibited and trade for other purposes, “exceptional circumstances”, is subjected to licensing.

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<sup>12</sup> CITES, Article XI (3) (a) and (b).

<sup>13</sup> CITES, Article III.

<sup>14</sup> Reeve, Op. Cit., p. 29.



The Convention does not define the term “primarily commercial purposes” for purposes of Article III. The COP by a resolution aimed at defining “primarily commercial purpose” deemed an activity to be commercial “if its purpose is to obtain economic benefit, including profit (whether in cash or in kind), and is directed towards resale, exchange, provision of a service or any other form of economic use or benefit”<sup>15</sup>.

Appendix II includes “all species which although not necessarily now threatened with extinction may become so unless trade in specimen for such species is subject to strict regulation in order to avoid utilization incompatible with their survival”<sup>16</sup>. Look-alike species of Appendix I species are included in this Appendix<sup>17</sup>. Trade being export, re-export or introduction from the sea of any Appendix II species, requires prior grant and presentation of permit. Import of Appendix II species do not require an import permit, however, it requires prior presentation of either an export permit or a re-export certificate<sup>18</sup>. In effect therefore Appendix II is a “grey list”<sup>19</sup> of controlled species for which commercial trade is allowed subject to strict regulations. Appendix II species just as Appendix I species, require a permit by a scientific authority for purposes of export, re-export and introduction from the sea, certifying that such trade “is not detrimental to the survival of that species”.

Concepts related to the issuance of permits for Appendix I and II species being “detrimental to the survival of that species” as used under Article III 2 (a), 3 (a) and 5 (a) and Article V 2 (a) and 6 (a) together with “maintain that species throughout its range at a level consistent with its role in the ecosystem in which it occurs” have collectively become to be

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<sup>15</sup> CITES Resolution Conf. 5.10, “Definition of “Primarily Commercial Purposes”, (1985). This resolution was later revised in 2010 at the 15<sup>th</sup> Conference of the Parties in Resolution Conf. 12.10, to include Appendix I species bred in captivity for commercial purposes.

<sup>16</sup> CITES Article II (2).

<sup>17</sup> CITES Resolution 9.24 “Criteria for Amendment of Appendices I and II”, (1994).

<sup>18</sup> CITES Article IV.

<sup>19</sup> Reeve, Op. Cit., p. 30.

known as “non-detriment findings” (NDFs)<sup>20</sup>. The definition or what constitutes either of these two NDFs is not defined in the convention or any resolution of the COP. The Scientific Authority primarily mandated under the convention to issue permits upon being satisfied of these findings, is required to make use of the Principles and Guidelines for the Sustainable Use of Biodiversity<sup>21</sup> taking into account scientific, trade and enforcement considerations determined by national circumstances. Subsequent resolutions have expanded the concept of NDFs to include export quotas<sup>22</sup>.

COP16 adopted Resolution Conf. 16.7 on Non-detriment Findings, which, inter alia, provided concepts and non-binding guiding principles for Scientific Authorities to take into account while considering whether trade may be detrimental to the survival of species. This is essentially a checklist on ecological considerations. The resolution encourages member states to maintain written records for the science-based rationale for NDFs assessments, to explore methods for making NDFs, to share their experiences and to provide assistance to developing countries to improve their capacities to make NDFs. The resolution further directs the Secretariat “to assist in identifying possible funding sources to help parties implementing capacity building activities related to the making of NDFs”.

Appendix I species are the most contentious as no commercial trade is allowed. This has been the case with the African elephant (*Loxodonta Africana*) hunted for its ivory, with Southern African states rooting for its listing as an Appendix II species while Eastern Africa and Central African countries root for its listing as an Appendix I species resulting in a split-listing. There are therefore situations where there is a delisting of a species from Appendix I to either of the other two appendices or a slip-listing, where a species is listed in more than one Appendix. Any of

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<sup>20</sup> Rosser, A. R., Haywood, M.J. (Compilers), *Guidance For CITES Scientific Authorities: Checklist to Assist in Making Non-detriment Findings for Appendix II Exports*. Cambridge: IUCN, 2002.

<sup>21</sup> CITES Resolution Conf. 13.2, “Sustainable Use of Biodiversity: Addis Ababa Principles and Guidelines”, (2004).

<sup>22</sup> CITES Resolution Conf. 14.7, Management of Nationally Established Export Quotas, (2010).

these two situations together with addition of species in the appendices require an amendment of the appendices. Amendments to Appendix I and II are made by the COP either at its regular meetings or by postal procedures<sup>23</sup>. Split listing is discouraged in general in view of “the enforcement problems it creates”<sup>24</sup>. This, however, has not deterred or discouraged member states from split-listing species and this goes to the core of politics revolving around international trade in wildlife resources; where CITES aims to regulate international trade in wildlife species and wildlife products through international cooperation whilst recognizing national sovereignty over wildlife resources.

Proposed amendments are communicated to the Secretariat 150 days before the meeting. A proposed amendment seeking transfer of Appendix I species to Appendix II for purposes of permitting trade in ranched specimens, must be submitted 330 days prior to the COP meeting<sup>25</sup>. Proposed amendments involving wide spread species require consultation of other range states<sup>26</sup>. Amendments are adopted by a two-thirds majority vote of members present and voting. “Parties present and voting” has been defined in the convention to mean “parties present and casting an affirmative or negative vote”<sup>27</sup>. Amendments adopted enter into force 90 days after the meeting for all parties except those which make reservations during the 90 day period.

#### **2.1.1.1.2 Protection of Appendices III Species**

Appendix III includes species “which any party identifies as being subject to the regulation within its jurisdiction for the purposes of preventing or restricting exploitation and as

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<sup>23</sup> CITES, Article XV.

<sup>24</sup> CITES Resolution Conf. 9.24, “Criteria for Amendment of Appendices I and II”, (1994).

<sup>25</sup> CITES Resolution Conf. 11.16, “Ranching and Trade in Ranched Specimens of Species Transferred from Appendix I to Appendix II”, (2010).

<sup>26</sup> CITES Resolution Conf. 8.21, “Consultation with range States on proposals to amend Appendices I and II”, (2013).

<sup>27</sup> CITES, Article XV (1) (b).

needing cooperation of other parties in the control of trade”<sup>28</sup>. In effect this Appendix contains species that are protected in the jurisdiction of one party, for which international cooperation is needed for control in its trade. A party is required to submit a copy of all domestic laws and regulations applicable to the protection of such species together with any interpretations<sup>29</sup>.

The export of any Appendix III species from any state which has unilaterally listed the species requires the grant and presentation of an export permit granted by a Management Authority satisfied that the specimen was not obtained in contravention of that state’s national laws and satisfied of the specimens’ safety on transit. Non-detrimental Findings as required for Appendix I and II species are not required for Appendix III species. Article XVI enables a party to unilaterally amend Appendix III. Consequently no meeting of COP is necessary nor is a majority vote required to effect amendments under this Appendix.

It is important to note that trade between a party and non-party is regulated by Article X, which requires documents comparable to permits and certificates under CITES and issued by a competent authority in the non-party state, to be accepted in lieu. Resolution Conf. 9.5 recommends further requirements and information to be contained in the comparable permits including compliance *with IATA Live Animals Regulations, if animals*, or, if it covers plants, with the *IATA Perishable Cargo Regulation*.

#### **2.1.1.2 Institutions for Policy Formulation and Implementation**

CITES establishes the COP as the decision making organ for the Convention. The Secretariat is established for purposes of monitoring implementation of the convention by the member states. The animals and plants committees are technical committees established for purposes of offering technical support to decision-making process.

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<sup>28</sup> CITES, Article II (3).

<sup>29</sup> Ibid, Article XVI (4).

**Figure 1: The Structure of CITES**



Source: CITES (<http://www.cites.org/> accessed 16 June 2015)

#### **2.1.1.2.1 Conference of the Parties (COP)**

The COP is established by Article XI as the top decision making organ of CITES. The functions of COP include, inter alia, make such provision as may be necessary to enable the Secretariat to carry out its duties and adopt financial provisions; consider and adopt amendments to Appendices I and II in accordance with Article XV; review the progress made towards the restoration and conservation of species included in Appendices I, II and III; receive and consider any reports presented by the Secretariat or by any party; and make recommendations for improving the effectiveness of the convention<sup>30</sup>. The parties do determine and adopt rules of procedure for meetings<sup>31</sup>.

The COP meets every two to three years and so far 16 meetings have been held, with the most recent, COP16, held in Thailand, Bangkok in March 2013, and COP17 expected to be held in 2016 in South Africa. Nonparties to the Convention, the United Nations, its specialized

<sup>30</sup> CITES, Article XI (3).

<sup>31</sup> Ibid, (5).

agencies and the International Atomic Energy Agency; any international governmental and non-governmental body or agency “technically qualified in protection, conservation or management of wild fauna and flora” participate in meetings as observers.

In view of the COP function to “make recommendations for improving effectiveness of the present convention”, effective implementation of the Convention is thus enhanced through COP resolutions and decisions otherwise referred to as “soft laws”<sup>32</sup>. Although binding on the Secretariat, COP resolutions and decisions, unless embodied into national enabling legislation, provide guidance only to parties on a uniform implementation of the convention. Thus CITES relies on the mutual recognitions of national laws for implementation<sup>33</sup>. Conference resolutions and decisions promote mechanisms for facilitating implementation of the convention by establishing an agreed interpretation of the articles of the convention. COP resolutions are revised at every subsequent COP.

State sovereignty over natural resources has been a significant fact in the formulation of compliance mechanisms. CITES relies on parties to implement the convention by formulating national laws in compliance with the convention requirements. Thus wildlife is traded legally within CITES trade rules and national laws and illegally in contravention of those rules and laws.

#### **2.1.1.2.2 Secretariat**

The Secretariat is the administrative arm of CITES established under Article XII. It is administered by UNEP and located in Geneva. The Secretariat is mandated under Article XII and Article III to, among others, play a coordinating, advisory and servicing role in the working of the Convention; assisting with communication and monitoring the implementation of the Convention to ensure that its provisions are adhered to; arranging meetings of the Conference of

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<sup>32</sup> Hunter, D., Salzman, J., Zaelke, *International Environmental Law and Policy*, (New York: Thomson Reuters/Foundation Press, 2011) p 347; Bell, S., McGillivray, D., *Environmental Law*, New York: Oxford University Press, 2006) p 153.

<sup>33</sup> Reeve, Op. Cit., p. 41.

the Parties and of the permanent Committees at regular intervals and servicing those meetings; providing assistance in the fields of legislation, enforcement, science and training (this is done through capacity building); undertaking, under agreed programmes, occasional scientific and technical studies into issues affecting the implementation of the Convention; making recommendations regarding the implementation of the Convention; acting as the repository for the reports, sample permits and other information submitted by the Parties; distributing information relevant to several or all Parties, for example, proposals to amend the Appendices, sample permits, information about enforcement problems, national legislation, reference material or news of a new Party; issuing new editions of Appendices I, II and III, whenever there is a change, as well as of the Resolutions and Decisions adopted by the COP at its meetings, and information to assist identification of species listed in the Appendices; and preparing annual reports to the Parties on its own work and on the implementation of the Convention<sup>34</sup>. CITES in collaboration with other agencies such as Interpol and Trade records Analysis of Fauna and Flora in Commerce (TRAFFIC) monitor compliance of the state parties to the convention observing the convention requirements to trade including monitoring of the non-detriment finding (NDFs).

#### **2.1.1.2.3 Standing Committee**

The Standing Committee provides policy guidance to the Secretariat concerning the implementation of the Convention and oversees the management of the Secretariat's budget. Beyond these key roles, it coordinates and oversees, where required, the work of other committees and working groups; carries out tasks given to it by the COP; and drafts resolutions for consideration by the COP<sup>35</sup>.

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<sup>34</sup> CITES, Article XII and Article XIII, additional information Conf. Resolution 1.8, "Resolution Concerning the Secretariat of the Convention", (1976); <http://www.cites.org/> accessed 16 June 2015

<sup>35</sup> Conf. Resolution 11.1, "Resolution Concerning the Secretariat of the Convention", (1976)

The members of the Standing Committee are Parties representing each of the six major geographical regions (Africa, Asia, Europe, North America, Central and South America and the Caribbean, and Oceania), with the number of representatives is weighted according to the number of Parties within the region<sup>36</sup>. The membership of the Standing Committee is reviewed at every regular meeting of the COP. The Standing Committee does also include a representative from Switzerland as the depositary government; the party that hosted the previous COP meeting (at present Thailand); and the party that will host the next COP meeting (South Africa will host the COP in 2016). The depositary government may only vote to break a tie and the previous and next host parties have no voting rights<sup>37</sup>. Non-governmental organizations may be represented as observers at meetings of the Committee in accordance with Rule 6 of the Standing Committee's Rules of Procedure.

#### **2.1.1.2.4 Animals and Plants Committees**

These committees of experts were established at COP6 to fill gaps in biological and other specialized knowledge regarding species of animals and plants that are (or might become) subject to CITES trade controls. Their role is to provide technical support to decision-making about these species. The terms of reference for these Committees are similar as detailed in Resolution Conf. 11.1; which include inter alia, providing scientific advice and guidance to the COP, the other committees, working groups and the Secretariat; and drafting resolutions on animal and plant matters for consideration by the COP.

#### **2.1.2 Overview of Other Relevant Conventions**

Besides CITES there are other regional and global instruments that seek to conserve wildlife though CITES is the primary convention on trade in wildlife species and wildlife

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<sup>36</sup> Ibid

<sup>37</sup> Ibid



products. The 1994 Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (“Lusaka Agreement” or “Agreement”) is an initiative by the African states under the auspices of UNEP on implementation of CITES to reduce and ultimately eliminate illegal trade in wildlife resources. The 2003 Convention on the Conservation of Nature and Natural Resources (Maputo Convention) is an African Union initiative towards conservation at regional level; while both the 1992 Convention on Biological Diversity (CBD) and the 1979 Convention on Migratory Species (CMS) seek to protect species in their natural state.

#### **2.1.2.1 The 1994 Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (Lusaka Agreement)**

The Lusaka Agreement is open to all African states and is an attempt by African states that have ratified or acceded to it (presently Eastern and Southern) to implement and enforce CITES at regional level while adopting stricter measures to reduce and ultimately eliminate illegal trade in wild fauna and flora and to establish a permanent task force for this purpose. The geographical scope of the agreement comprises land, marine and coastal areas within the limits of national jurisdiction of the parties, including their airspace and internal waters. The agreement places an obligation on the parties to take appropriate measures in accordance with the provisions of the agreement to investigate and prosecute cases of illegal trade including adoption and enforcement of such legislative and administrative measures necessary for purposes of effecting and implementing the agreement<sup>38</sup>.

The Agreement establishes a task force, known as the Task Force for Co-operation Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, with international legal personality and legal capacity required for performance of its functions under the

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<sup>38</sup> Lusaka Agreement, Article 4.

Agreement. These functions include, inter alia, facilitating co-operative activities among the national bureaus in carrying out investigations pertaining to illegal trade; investigating violations of national laws pertaining to illegal trade at the request of the national bureaus or with the consent of parties concerned; and collecting, processing and disseminating information pertaining to illegal trade<sup>39</sup>. Officials of the task force enjoy, in connection with their official duties and within the limits of their official capacities immunity from arrests and prosecution. Official papers, documents and equipment of the task force are also inviolable<sup>40</sup>.

The Conference culminating in the Lusaka Agreement, pointed out lack of cooperation as one of the problems faced by national law enforcement agencies in combating international wildlife smuggling syndicates. Due to practical and legal challenges that were facing the national institutions mandated to fight wildlife crime, the Conference proposed more effective measures to combat cross border illegal trade. One of the key recommendations made was the establishment of a Task Force, as the secretariat of the Agreement located in Nairobi, to complement national enforcement efforts aimed at curtailing illegal trade in wild fauna and flora. Consequently, the Lusaka Agreement was adopted in 1994 with UNEP providing the interim secretariat of the Task Force<sup>41</sup>. The negotiating parties, primarily Eastern Africa and Southern Africa states, have not fully embraced the agreement to date. So far only seven (7) countries are parties to the Agreement namely Congo (Brazzaville), Kenya, Uganda, Zambia, Lesotho, Tanzania and Liberia. Ethiopia, South Africa and Swaziland are only signatories to the Agreement. Mozambique and Malawi participated in the process of the Lusaka Agreement negotiations but did not sign, ratify or accede to the conclusion. Other African states have not become parties either. A controversy with states is that the Agreement infringes into state

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<sup>39</sup> Ibid, Article 5

<sup>40</sup> Ibid, Article 5 (11).

<sup>41</sup> <http://www.lusakaagreement.org/> accessed 24 June 2015

sovereignty especially on the role of its task force and while they are entitled to their concerns, they may be mere excuses for none of the parties has pleased any such adversity in the last ten years.

### **2.1.2.2 The 2003 African Convention on the Conservation of Nature and Natural Resources (Maputo Convention)**

The African states conscious that natural resources are an irreplaceable part of the African heritage with an ever-growing importance from economic, social, cultural and environmental points of view, reaffirmed states' sovereign right to exploit their own resources "pursuant to their environmental and developmental policies" with a responsibility to ensure that "activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction"<sup>42</sup>. To this end the objects of the Convention are to be a tool to enhance environmental protection; foster the conservation and sustainable use of natural resources; and harmonize and coordinate policies in these fields and provide a firm basis of enhancing biodiversity of Africa.

As far as trade of specimens and their products is concerned, the convention requires the party states to "regulate domestic trade in, as well as the transport and possession of specimens and products to ensure that such specimens and products have been taken or obtained in conformity with" national laws and international obligations relating to trade in specimens and/or specimen products. National legislative and regulatory measures are thus an important aspect of implementation of this convention as well as CITES provisions. The convention further requires states to provide for "such penal sanctions including confiscation measures" for any breach of provisions<sup>43</sup>. The convention recognizes the importance of bilateral and sub-regional cooperation

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<sup>42</sup> Maputo Convention, Preamble.

<sup>43</sup> Ibid, Article XI.

for purposes of ultimately eliminating illegal trade in wild fauna and flora or their specimen or products. These obligations extend even during periods of armed conflict<sup>44</sup>.

The convention establishes the Conference of the Parties as the decision making body of the convention<sup>45</sup> and mandates it to develop and adopt rules, procedures and institutional mechanisms to promote and enhance compliance with the provisions of the convention. The Secretariat is established as the administrative body of the convention with functions to, among others, arrange COP and its subsidiary bodies meetings' execute COP decisions and monitor compliance with the convention<sup>46</sup>. No reservations may be made on any provisions of or amendments to the convention<sup>47</sup>. The predecessor of the Maputo Convention is the 1968 Algiers Convention which lacked the mechanisms herein mentioned and consequently failed to function effectively.

### **2.1.2.3 The 1992 Convention on Biological Diversity (CBD)**

The CBD negotiated under the auspices of UNEP is one of the Rio de Janeiro Conventions of 1992. It defines biological diversity (shortened "biodiversity") as "the variability among living organisms from all sources including, inter alia, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems"<sup>48</sup>. The convention's preamble reaffirms states' sovereignty rights over their own biological resources, which are to be used in a sustainable manner and states are responsible for conserving their biological diversity.

The CBD is the first global agreement to cover all aspects of biological diversity: the conservation of biological diversity; the sustainable use of its components and the fair and

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<sup>44</sup> Ibid, Article XV.

<sup>45</sup> Ibid, Article XXVI.

<sup>46</sup> Ibid, Article XXVII.

<sup>47</sup> Ibid, Article XXXIX

<sup>48</sup> CBD, Article 2

equitable sharing of benefits arising from the use of genetic resources and unlike the regional conventions is broadly embraced by the African states. The Secretariat is established<sup>49</sup> primarily to organize meetings, prepare reports, assist member governments in the implementation of various programmes of work, coordinate with other international organizations and collect and disseminate information. The COP is established as the decision making organ for the convention<sup>50</sup>. Principles and Guidelines for the Sustainable Use of Biodiversity developed under the convention are used as bench marks and checklists for conservation both under this convention and under CITES by the Scientific Authorities for NDFs permits and certificates.

#### **2.1.2.4 The 1979 Convention on Migratory Species of Wild Animals (CMS)**

The convention, conscious of the “ever-growing value of wild animals” recognize that the “states are and must be the protectors of the migratory species of wild animals that live within or pass through their national jurisdictional boundaries”. It defines migratory species to mean “the entire population or any geographically separate part of the population of any species or lower taxon of wild animals a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries”.

The CMS lists the migratory species in two appendices I and II. Appendix I lists migratory species which are endangered<sup>51</sup>, where reliable evidence, including scientific evidence available indicates that the species is endangered. Delisting or removal from Appendix I of a species requires a COP determination that reliable evidence, including scientific evidence available, indicates that species is no longer endangered; and the species is not likely to become endangered again because of loss of protection due to removal from Appendix I. The convention requires range states of Appendix I species to take such measures to conserve and restore

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<sup>49</sup> Ibid, Article 24

<sup>50</sup> Ibid, Article 23.

<sup>51</sup> CMS, Article III (1).

habitats of the species; safeguard against adverse effects of activities or obstacles that impede or prevent migration of the species; and reduce or control factors that are endangering or likely to further endanger the species.

Appendix II lists migratory species which have an unfavourable conservation status and which require international cooperation for their conservation and management. Article IV (2) allows for split-listing of a species both in Appendix I and II “where circumstances so warrant”. Parties that are range states of Appendix II migratory species are required to take such measures in form of agreements for the benefit of species and give priority to species in an unfavourable conservation status<sup>52</sup>.

The COP is the decision making organ for the convention. It meets at intervals of not more than three years. Decisions are made by a two thirds majority of parties present and voting. Amendments to both appendices are made at COP and are adopted by a two thirds majority vote of parties present and voting. Amendments so adopted enter into force 90 days after the COP meeting except for parties which make reservations. A scientific council is also established by COP pursuant to Article VIII, to provide advice on scientific matters. The functions of the scientific council include, inter alia, providing scientific advice to COP and secretariat; recommending research and coordination of research on migratory species and making recommendations to COP. The secretariat is established under Article IX which acts as the administrative arm of CMS and is administered by UNEP. Its functions include, among others, arranging COP and scientific council meetings; and monitors compliance and implementation of the convention.

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<sup>52</sup> Ibid, Article IV (4).

## 2.2 Efficacy of the Wildlife Resources Protection Regime

The wildlife protection regime discussed herein aims at sustainable trade in wildlife species and products by relying on trade controls and trade bans. Trade regulation by listing of species under CITES improves monitoring of trade data and compliance by member states. The species specific control measures have to a large extent been successful and resulted in recovery of populations of species particularly Appendix I and Appendix II species. This has been evident in recovery of, for example, the African elephant population in African range states as well as the white rhino in South Africa<sup>53</sup>. Improvements in the conservation status of such endangered species followed the removal of trade bans and the advent of regulated trade, including ranching in the case of crocodylians which bestowed as economic value on wild populations and crucially, the involvement of, and incentive to, local communities<sup>54</sup>. The wildlife protection regime has also been successful in strengthening scientific and management authorities in range and consumer nations; better collection and sharing of trade information; improving communication and technical capacity among CITES authorities, regulatory and enforcement agencies, academic and extension communities and improved international cooperation and multiagency collaboration under the International Consortium on Combating Wildlife Crime (ICWC).

A major challenge for the system is that it is not self executing and relies on member states to implement through national legislation. Nevertheless the ineffectiveness of CITES as a global mechanism to regulate wildlife trade is handicapped by fundamental facilities among the international community in terms of governance, rule of law, culture and enforcement capacity<sup>55</sup>. For example ineffective enforcement, insufficient border controls, poor domestic trade controls

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<sup>53</sup> Challender, D., Stuart, R., MacMillan, D., “Towards Informed and Multifaceted Wildlife Trade Interventions”, *Global Ecology and Conservation*, Vol. 3 (2015), pp 129-148.

<sup>54</sup> Challender, D., Harrop, S., MacMillan, D., “Towards Informed and Multifaceted Wildlife Trade Interventions”, *Global Ecology and Conservation*, Vol 3 (2015), pp 129-148.

<sup>55</sup> Ibid, Martin, R., “When CITES Works and When It Does Not”, in Hutton, J., Dickson, B., (Eds), *Endangered Species: Threatened Convention*, (London: Earthscan Publications Limited, 2000).

and corruption and collusion, especially in developing countries and trade and consumer hotspots, impede effective implementation<sup>56</sup>. Likewise under resourcing of wildlife agencies, the low priority given to wildlife trade by enforcement agencies generally and the failure to treat illegal wildlife trade as a serious crime all work in synergy to create a weak deterrent effect nationally and internationally<sup>57</sup>. Scholars<sup>58</sup> argue that over reliance of CITES on regulation to control trade, without giving consideration to other causal factors creates a policy lacuna. This is reflected in trade driven population declines of many listed species and is particularly apparent where high value species are concerned<sup>59</sup>. Relying on regulation places the cost of conservation on developing countries, which are home to most CITES listed species and this is unsustainable in the long-term due to political and economic reasons<sup>60</sup>. In the absence of incentives to the communities neighbouring game reserves or parks, the communities lack incentive to conserve.

### **2.3 Conclusion**

International trade in wildlife remains a threat to biodiversity and opinion on the success and effectiveness of CITES in managing and controlling this trade is divided. The convention provides a highly practical mechanism with institutions and structures to deal with complex issues is an indicator of the progress made in the efforts to control trade. The convention relies on state parties' political goodwill to implement the convention through national legislation. Regional mechanisms are encouraging and it is through such an effort the Lusaka Agreement was formulated. However, the reluctance of states, especially African states to legislate and accede to the regional mechanisms has been a concern on how effective the current regime is.

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<sup>56</sup> Op. Cit., Reeve.

<sup>57</sup> Wellsmith, M., "Wildlife Crime: The Problem of Enforcement", *European Journal on Criminal Policy and Research*, Vol 17 (2011), pp 125-148; Sand, P., "Enforcing CITES: The Rise and Fall of Trade Sanctions", *RECIELL* Vol 22 (3) (2013), pp 251-263; Op. Cit., Challender et al.

<sup>58</sup> Op. Cit., Challender et al.

<sup>59</sup> Challender, D., MacMillan, D., "Poaching is More Than An Enforcement Problem", *Conservation Letters*, Vol 7 (2015), pp 484-494.

<sup>60</sup> CITES, Resolution Conf. 9.14; Conf. 10.10; Bulte, E., Damania, R., "An Economic Assessment of Wildlife Farming and Conservations", *Conservation Biology*, Vol 19 (2005) pp 1222-1233.



The split listing of the African elephant under both Appendices I and II of CITES is a dramatic policy conflict that is a potential enforcement problem in regulating ivory trade. State sovereignty over natural resources: their protection and utilization is a reality that clouds the implementation of conventions requirements and resolutions, taking into account some of the discussed conventions do allow member states to enter reservations to resolutions. Each state has its challenges and every state has different enforcement capabilities, thus international cooperation is necessary to improve compliance and implement interventions with a view to conserve wildlife and wildlife resources.

## Chapter Three

### Poaching of Ivory in Kenya and its Implications on International Security

#### 3.0 Introduction

Tourism contributes to over 10% of Kenya's gross domestic product acting as a source of its foreign exchange. Some key tourists' attractions are national parks, reserves and sanctuaries and are home to the African elephant, *Loxodonta Africana*, which is listed as an endangered species under Appendix I of CITES. However, rampant poaching of elephants and illegal commercial trade of ivory not only threatens revenue but security of species in their habitats and stability of governments as well<sup>1</sup>. Hanken notes that the global illicit trade in wildlife products inflicts significant harm on developing countries where "economic and structural damage imposed on already weak developing states" is even more destructive than losses in biodiversity<sup>2</sup>. This as will be discussed in this chapter is driven and funded by well fueled organized environmental crime networks seeking to satisfy a growing demand for ivory products largely in Asia. Indeed wildlife trafficking has been reported to now rank among the top five most lucrative illicit trades in the world alongside drug smuggling, weapons proliferation, counterfeit goods and human trafficking<sup>3</sup>.

Consequently, the ecosystems which provide immense economic and revenue opportunities for developing economies especially in Africa, are threatened by serious and increasingly sophisticated transnational organized environmental crime, undermining

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<sup>1</sup> Nellerman, C. et al. eds. *The Environmental Crime Crisis-Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*, (UNEP: Nairobi, 2014) p. 7.

<sup>2</sup> Hanken, J., "Transnational Crime in the Developing World", *Global Financial Integrity*, (2011), <http://www.transcrime.gfintegrity.org/>. accessed 20/ August/ 2015.

<sup>3</sup> Council of Foreign Relations, *Tracking the Traffickers*, July 2013, <http://www.blogs.cfr.org/>, accessed 21 April/2015.

development goals and good governance through weakened institutions<sup>4</sup>. The illegal trade in wildlife operates per definition outside government official regulation and management and thus represents a significant economic, environment and security threat that has received relatively little attention in the past. International trade in wildlife and wildlife resources is regulated by CITES through trade bans and trade controls. Its Implementation relies on embodiment and incorporation of COP resolutions and decisions by member states into their national laws and in retrospect mutual recognition of these national laws<sup>5</sup>.

The Wildlife Conservation and Management Act, 2013 (the “Act”) Laws of Kenya lays down the policy framework upon which regulations under CITES are implemented. The Act which was assented to on 24<sup>th</sup> December 2014 is an Act of Parliament to “provide for the protection, conservation, sustainable use and management of wildlife in Kenya”, establishing Kenya Wildlife Service (KWS) as the primary institution mandated for the management and protection of wildlife. The Act repealed the 1976 Wildlife (Conservation and Management) Act Cap 376 Laws of Kenya, which was the initial legal framework for management and protection of wildlife. The repealed Act, however, had shortcomings among them, lax laws on prosecution of environmental crimes<sup>6</sup>. Prosecution of offences under the old Act was only undertaken by gazetted prosecutors limiting scope of charges against an offender. Penalties under the old Act were also very lenient, making wildlife crime low risk and high profit trade.

The new Act is thus an attempt to mitigate the loopholes exploited by poachers and traffickers. Despite major policy and institutional reforms under the Act, elephant poaching and

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<sup>4</sup> Op. Cit., Nellerman et al, p. 8; Lawson, K., Vines, A., *Global Impact of Illegal Wildlife Trade: The Cost of Crime, Insecurity and Institutional Erosion*, (London: Chatham House, 2014).

<sup>5</sup> Reeve, R., *Policing International Trade in Endangered Species: The CITES Treaty and Compliance*, (London: Earthscan Publican Limited, 2002) p 41.

<sup>6</sup> Kahumbu, K. et al Scoping Study on the Prosecution of Wildlife Related Crimes in Kenyan Courts: January 2008 to June 2013. 2014. Ecomedia: Nairobi.

illegal trade in ivory is still persistent. Use of firearms and helicopters has seen a major shift from the initial traditional poaching methods, which include use of hunting spears and poisoned arrows. The magnitude of kills has also shifted from what was initially just killing one elephant in a herd to killing an entire herd thus indicating poaching has shifted from initial subsistence poaching or killing arising from human-wildlife conflict to commissioned poaching with a commercial outlook<sup>7</sup>.

This study analyses the security threats posed by these new dynamics in poaching of elephants in Kenya, by identifying the rationale for poaching in Kenya and implications on international security by identifying the actors involved at every chain link of the trade in Kenya as a range and transit state as it identifies their motivators and how all these activities could threaten the international system by means of state stability.

### **3.1 Poaching of Ivory in Kenya**

Prior to 1970, Eastern Africa was home to the largest elephant populations on the continent<sup>8</sup>. Reports by CITES monitoring agency, Monitoring Illegal Killing of Elephants (MIKE) indicate that ivory poaching in East Africa range ecosystem is at crisis levels with Kenya and Tanzania registering highest levels<sup>9</sup>. Kenya is important in this study both as a range state and as a transit state. Illegal ivory poached in Kenya and elsewhere passes through Kenyan sea ports and air ports to various destinations indicating that corruption may be rampant or there is no sufficient monitoring at these exit ports. This section will seek to evaluate the trends related to poaching and explore rationale for poaching of ivory.

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<sup>7</sup> Op. Cit., Nellerman et al, p. 32; UNODC 2014 Report, *Trafficking of Ivory from Eastern Africa to Asia*, <https://www.unodc.org/> accessed on 20/July/2015.

<sup>8</sup> Op. Cit., UNOCD.

<sup>9</sup> CITES, Report to the 16<sup>th</sup> Conference of Parties, COP16 Doc. 53.1, /http/www.cites.org/ accessed 20/August/2015.

### 3.1.1 Poaching Trends in Kenya

Wildlife protection in Kenya is placed within the mandate of Kenya Wildlife Service (KWS) by the Wildlife Conservation and Management Act, 2013, Laws of Kenya. This is primarily done through management of national parks, reserves and sanctuaries and licensing of privately run wildlife conservancies. The key elephant range national reserves in Kenya are Samburu, Shaba, Aberdare, Tsavo East, Tsavo West and Amboseli. The Samburu, Amboseli and Tsavo ecosystems receive much attention due to poaching activities in these ecosystems.

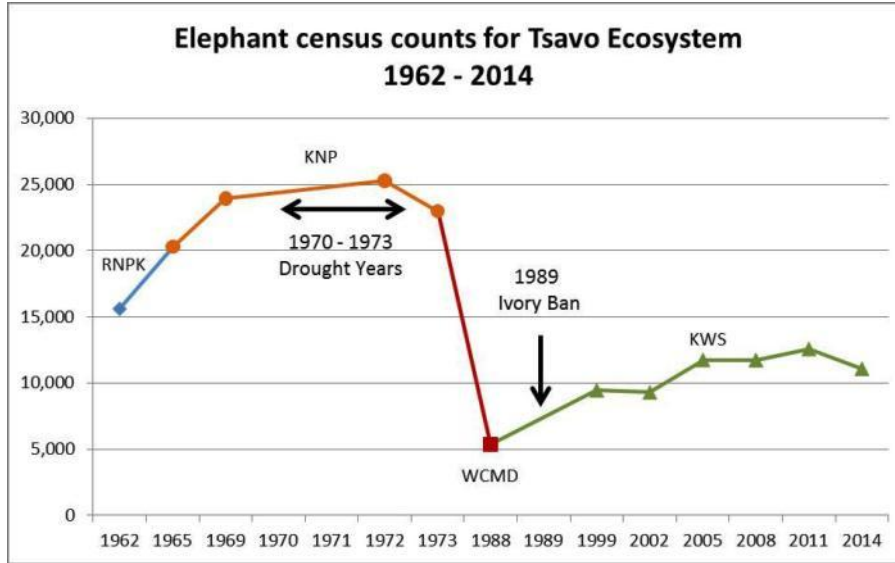
**Figure 2: Location of Elephant Range Ecosystems**



Source: Kenya Wildlife Service, 2014.

**Figure 3: Elephant Census for Tsavo Ecosystem 1962-2014**

**Figure 3: Elephant Census for Tsavo Ecosystem 1962-2014**



Source: The David Sheldrick Wildlife Trust, 2014 (<https://www.sheldrickwildlifetrust.org>)

As indicated in Figure 2, there was a steady growth in the elephant population in the Tsavo ecosystem in the period preceding 1970. The 1970s drought affected the population growth. The drought coupled with massive poaching led to a massive decline of the elephant population between 1970 and 1989, when the international ban on ivory trade was adopted by the international community and only strict conservation efforts have allowed the population to partially recover<sup>10</sup>. However, since 2008 wildlife authorities say that the elephant has experienced its most serious conservation crisis since 1989<sup>11</sup>, owing to rampant poaching. CITES estimates for example in 2011 alone, between 4% and 11% of the elephant population was killed in Kenya<sup>12</sup>.

<sup>10</sup> UNEP, CITES, IUCN and TRAFFIC, *Elephants in the Dust – The African Elephant Crisis: A Rapid Response Assessment*, UNEP, 2013.

<sup>11</sup> Ibid; Op. Cit., Nellerman et al; Kenya Wildlife Service, *Lifting the Siege: Securing Kenya's Wildlife*, (Nairobi:KWS, 2014)

<sup>12</sup> CITES, 65<sup>th</sup> Meeting of the Standing Committee, SC DOC 42.1, p.19, <http://www.cites.org/pdf/>

### 3.1.2 Rationale for Poaching of Ivory in Kenya

The global illegal trade in wildlife and wildlife resources is estimated to be worth US\$70 to US\$213 billion annually<sup>13</sup>. Poaching therefore has capacity to provide income to the various actors in the chain link of this illicit trade. The complexity of the networks involved in wildlife trade, links local-level poachers, professional hunters, traders, wholesalers and retailers with the final consumers in locations distant from the source of the product<sup>14</sup>. The illegal wildlife trade thus provides varying levels of economic support to different communities, a source of regular income, a safety net or as profitable business. The low risk associated with the trade makes the trade lucrative and attractive to poachers.

Prior to enactment of the Wildlife Conservation and Management Act, 2013 Laws of Kenya, the maximum sentence for offenders under the repealed Act was ten years or a maximum fine of Kshs. 40,000.00. Enhancement of penalties under the new Act under Section 92 to the effect that “any person who commits an offence in respect of an endangered or threatened species or in respect of any trophy of that endangered 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”, has effect that the previous level of low risk-high profit element in the trade is no longer available to the poachers.

There are two principal types of poaching: opportunistic and commissioned<sup>15</sup>. Opportunistic poaching, also referred to as small scale poaching, occurs where an elephant is deemed to be a threat to local agriculture, or is poached for bush meat and ivory<sup>16</sup>. This type of poaching is primarily driven by human-wildlife conflict and tends to be over a significant period

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<sup>13</sup> Op. Cit., Nellerman et al, p. 7.

<sup>14</sup> Milliken, T., *Domestic Ivory Markets: Where They Are and How They Work*. TRAFFIC, 2004.

<sup>15</sup> Op. Cit., UNODC, p. 33.

<sup>16</sup> Ibid.

of time. Commissioned poaching also referred to as large scale poaching<sup>17</sup> is “the targeting and illegal killing of a concentrated population of elephants in a short period of time”<sup>18</sup> and is primarily driven by the demand for ivory in the consumer countries largely in Asia.

Human population growth and development in Kenya have led and are leading to serious appropriation of important wildlife areas for settlement, agriculture, resource extraction and the infrastructure to support these activities, resulting in significant wildlife habitat loss and fragmentation<sup>19</sup>. Human-wildlife conflict is a key cause of opportunistic poaching primarily as human population encroach game parks and reserves for settlement, tourism activities, agricultural activities, pastures for their livestock and engage in poaching for subsistence. These activities are taking place inside game reserves and locations close to game reserves, closing wildlife dispersal areas and migratory corridors. Poverty and corruption are the main drivers of opportunistic poaching; although according to Dutty and St John poverty per se is not the driver or facilitator as individuals from poor communities would not engage in poaching of commercially viable species unless there was demand from wealthier communities<sup>20</sup>. Communities neighbouring the game reserves and parks are poor and most rely on agriculture and livestock for survival. Changing climatic conditions and unreliable weather conditions, puts pressure on pastures and herders encroach the reserves for pastures thus giving them proximity to wildlife<sup>21</sup>. Elephants are also reported to wander away from protected areas in search of pastures and have invaded farms. In retaliation the farmers, attack and kill the elephants. Taking into account the high value of the tusks, it is highly unlikely that the tusks of such killed elephants

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<sup>17</sup> UNODC 2014 Report, *Trafficking of Ivory from Eastern Africa to Asia*, <https://www.unodc.org/> accessed on 20<sup>th</sup> July 2015

<sup>18</sup> Carlson, K., Wright, J, Donges, H., *Small Arms Survey 2015*, 2015, pp7-35.

<sup>19</sup> Op. Cit., KWS, p. 36.

<sup>20</sup> Dutty, R., St John, F., “Poverty Poaching and Trafficking: What are the Links”, <http://www.evidenceofdemand/docs/pdf> accessed 20/August/2015

<sup>21</sup> Op. Cit., KWS.



will not find their way into hands of traders. Corruption of law enforcement officials contribute to the current human-wildlife conflict as well as well as facilitate ivory poaching and trafficking. While for example an environmental impact assessment report is required before any major developments commence at any parks and licensing of such a project by the National Environment Management Authority (NEMA) and the authorization of such development in line with land use and planning policies, investors have used corrupt officials to circumvent such legal and environmental policies in making their investments. Such developments have thus put pressure on habitats and migration corridors.

In the past poaching has largely been viewed as opportunistic but recent evidence suggests a shift in the poaching patterns and trends. For example the size of large shipments of ivory seized suggest well resourced and organized groups on the receiving end, who may be proactive in sourcing the ivory when demand is high<sup>22</sup>. The United Nations Office on Drugs and Crime (UNODC) argues that if poaching was opportunistic the rate of killing would be consistent, on the other hand, if high prices produce more killing, then proactive poaching expeditions, commissioned poaching, are likely to cause. The demand driven perspective has been given additional support by DNA analysis findings studies have found a high degree of relatedness when tusks from large seizures have been compared, suggesting that the animals were killed enmasse and to order<sup>23</sup>. The presence of small tusks in large loads suggests whole families were killed at once. There are also instances where the local poachers and brokers may consolidate loads from a single area over time before transporting them to distant markets<sup>24</sup>. The

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<sup>22</sup> Op. Cit., UNODC.

<sup>23</sup> Wasser, S., Clark, B., Laurie, C., "The Ivory Trail", *Scientific American*, Vol 1 (2009) pp 68-76.

<sup>24</sup> Op. Cit., UNODC, p. 31.

UNODC reports that “while opportunistic poaching may not be sufficient in scale to pose a long-term threat, commissioned poaching almost certainly does”<sup>25</sup>.

Traffickers are drawn from Kenyan nationals and from other nationalities, with a high percentage of the foreign nationals being of Asian origin. Seizure records on road transport indicate that most culprits and accused persons are Kenyan, while airport seizures indicate foreign nationals<sup>26</sup>. The presence of Asian nationals pose them as the single most important group of middlemen involved in the procurement, processing and transport of ivory and the “involvement of Chinese nationals in Africa with the procurement and shipment of ivory to Asia remains a serious and seemingly expanding issue of concern”<sup>27</sup>. This is indicated by the growth of mixed seizures, in which both whole ivory and products carved for the Asian market are detected<sup>28</sup>.

Most people apprehended are the actual poachers who do the killing and the removal of the trophy from the elephants. The poachers have perfected their skill, guarding against devaluation of the trophy<sup>29</sup>. Prosecution of the apprehended poachers requires witnesses and the prosecution department reported it does not have a problem accessing witnesses as most witnesses are the law enforcement officers who apprehended the suspects<sup>30</sup>. There are circumstances where the traffickers hire vehicles to transport ivory or use motor cycles to transport ivory. In such circumstances, the motor vehicle or motor cycle owners are state witnesses. It is evident from the prosecution records that those higher up in the chain process, being the kingpins and financial beneficiaries of the poaching, are rarely apprehended. This has been attributed to the fact that wildlife legislation and wildlife agencies very rarely reach into the

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<sup>25</sup> Ibid

<sup>26</sup> Op. Cit., KWS.

<sup>27</sup> CITES, COP14 DOC 53.2, <http://www/cites.org/> accessed 20/August/2015.

<sup>28</sup> Op. Cit., KWS.

<sup>29</sup> Interview with KWS Official on 29<sup>th</sup> July 2015.

<sup>30</sup> Interview with Ms. Didi Wamukoya, KWS Prosecution Officer on 29<sup>th</sup> July 2015.

domain of the middlemen. Kenya has legislated economic and organized crime legislation and this does not encompass wildlife crime. It is therefore vital to incorporate wildlife crime under this legislation if there is to be any success in dealing with those who drive the illicit trade.

Growing affluence in China where possession of ivory remains a status symbol appears to have rendered China the world's leading destination for illicit ivory<sup>31</sup>. Elephant Trade Information System (ETIS) report to the 16<sup>th</sup> COP recognized China as the main importer of illegal ivory accounting for some 70% of the global consumption, followed by Thailand and Vietnam. The sharp demand for ivory is attributed by the 2008 window by CITES allowing China and Japan to buy legal ivory from Southern African countries. There have been two major authorized sales of ivory under CITES, in 1999, Japan bought 59 tons and in 2008 Japan and China bought 108 tons. In 2012 Tanzania petitioned CITES to allow the international sale of 10 tons of its official stockpiles; it, however, subsequently withdrew the application. Experts are of the view that this window under CITES was created without recognizing that the illegal trade in China would make it virtually impossible for them to regulate their ivory market<sup>32</sup>. This is coupled with the growing Chinese economy and actually a rise in the Asian economies leading to a growth in the middle class with ability to purchase ivory products. Given that 2008 was a one off sale, this demand can only be met by the illegal trade.

Dealing with supply of ivory is only one side of the equation and there is need to address the demand side. The decline in poaching in the period 1990 to 2007 is demonstrative that reducing demand and the value of ivory greatly reduces the illegal trade in ivory. Supply responds to demand, if demand is low, pushing up the price of ivory, this in retrospect encourages poaching as poachers and middlemen or beneficiaries of this illicit trade seek to cash

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<sup>31</sup> CITES, COP16, Doc. 53.2.2, Rev. 1, [www.cites.org](http://www.cites.org)

<sup>32</sup> Singh, S., "Contesting Moralities: The Politics of Wildlife Trade in Laos", *Journal of Political Ecology*, Vol 15 (2008) pp 1-19.

in. Ivory is a highly exploitable, low risk and lucrative product: a single raw kilogram can fetch \$3,000 on the Chinese black market. These high profit margins appear to have attracted the attention of large scale criminal syndicates that have exploited pre-existing infrastructure for human, drug and arms trafficking to kill African elephants and smuggle massive quantities of ivory off the continent and unload it onto international black markets. Scholar and researchers however view that the reported high prices of ivory in the black market could be exaggerated stimulating poaching<sup>33</sup>.

Ivory is primarily trafficked to Asia in two main ways: by sea and air. Large consolidated shipments leave the East African seaport destined to Asia, while small consignments are transported by air. Shipping containers loaded with multi-ton ivory consignments are the products of hundreds of elephants' ivory and point to involvement of organized criminal networks in the storage and preparation of these shipments. Nevertheless containerized ivory consignments are not necessarily linked to large scale incidents, as they could also result from leakage from government stockpiles or traffickers consolidation of ivory over a period of time or broad geographic areas. Government stockpiles come from seizures from poachers and traffickers as well as collection from elephants that die in the wild of natural causes. As a high value commodity and taking into account corruption problems, some of the stockpile ivory finds its way into the illicit market.

Existing weaknesses in monitoring trafficking of ivory facilitate the illicit trade. Inadequate controls and inspection of vehicles on the roads, ports and parks do contribute to this problem. Roadblocks are rarely, if at all equipped to detect wildlife trophies. The KWS Taskforce Report 2014, reports of poor practice of inspecting vehicles entering and exiting parks.

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<sup>33</sup> Stiles, D., Martin, E., Vigne, L., "Exaggerated Ivory Prices Can be Harmful to Elephants", *Swara Magazine*, October –December 2011, pp 16-20.

It reports that there is need to balance customer services in park entry with the need to seal security loopholes that can encourage illegal movement of wildlife products and weapons in and out of protected areas<sup>34</sup>. This therefore raises the risk of poaching as weapons, usually guns, would be smuggled into the park and in the same breath poached ivory would be transported from the parks. Besides inspection of motor vehicles entering and exiting parks, some tourists use chartered aircrafts to get to the parks. KWS reports that there are several unmanned airstrips within and near parks. This makes it difficult to monitor and inspect aircrafts thus creating a loophole that can easily be exploited by traffickers and poachers. Indeed a growing concern in ivory poaching is that this is taking place in protected areas, being parks, reserves and sanctuaries. It has been alleged that KWS rangers are involved in poaching as they know the locations of the elephant herds. KWS maintains a GPS tracking system for endangered species and in this case elephants which, therefore, imply that there are cases where some poaching may be carried out or facilitated by KWS rangers.

KWS reports that the customs and port agents do not strictly adhere to export procedures and processes; thereby leaving loopholes that can be taken advantage of by corrupt officials<sup>35</sup>. Corruption and tendency to give more attention to import cargo than export cargo creates a loophole for wildlife products exiting for overseas market destinations. Evidence shows large number of facilitators including freight forwarding companies, shipping agents and well connected individuals, makeup for the complex networks<sup>36</sup>. Traffickers use complex transportation routes that frequently change to take advantage of the most porous borders and lax enforcement<sup>37</sup>. This involves moving contraband through several ports en route to the final

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<sup>34</sup> Op Cit, KWS.

<sup>35</sup> Ibid.

<sup>36</sup> Op Cit, Viva and Miller.

<sup>37</sup> "Detect Transit Routes: Wildlife Trafficking Transit Routes are Elusive"[www.wildlifecrimetech.org/transit\\_routes](http://www.wildlifecrimetech.org/transit_routes) accessed 3rd August 2015.

destination. These together with other strategies like falsification of transit documents, transportation of contraband together with legitimate and legal cargo, makes it difficult for law enforcement to monitor, detect and predict the transit routes through which wildlife will be trafficked. This notwithstanding there has been considerable increase in seizures at ports of exit and entry. While increase in seized ivory might reflect a more effective enforcement of CITES, it probably also indicates growth in the black ivory trade and involvement of international organized crime.

### **3.2 Implications for International Security**

Ivory once symbolic of adventure and wild Africa has become a component of the “strategic narratives” of national security bodies both in Africa and abroad<sup>38</sup> as illegal global trade in ivory reach significant global proportions. Armed groups have reportedly been involved in cross border poaching, while arms trade has been associated with ivory. The use of firearms in poaching has militarized wildlife protection and across Africa, the struggle against poaching costs the lives of around 100 wildlife rangers per year<sup>39</sup>. This section will therefore critically analyze the link of armed non-state actors; transnational organized crime networks (TNOCs); and arms trade at every chain link of this illicit trade.

#### **3.2.1 Link to Armed Non-state Actors**

Kenya, compared to its neighbours, has experienced relative political stability in its post independence years, with exception of internal intercommunity conflict on small scale and the 1998 US Embassy bombing. In recent years, particularly from 2010, Kenya has been experiencing security concerns with major hits being terror attacks. Political and economic marginalization, weak institutions, the ubiquity of small arms, uncontrolled borders and political

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<sup>38</sup> White, N. “The Political Economy of Ivory as a “Conflict Resource”. *Peace and Conflict Studies*, Vol 21, (2014) pp. 172 - 186

<sup>39</sup> Clark, W., “Testimony of William Clark to the US House of Representatives Committee on Natural Resources”, *Committee on Natural Resources*, 5 March, 2008, <http://naturalresources.house.gov/> accessed 20/August/2015.

instability of its neighbouring countries, especially Somalia, are factors attributed to the growing state of insecurity<sup>40</sup>. In the wake of the 2013 terror attack at the Westgate Shopping mall, which a Somali militia group, Al-shabaab, claimed responsibility, focus was shifted to sources of finance for this terror outfit. Charcoal is a well documented source of revenue for the group and Al-shabaab is reported to earn between USD 38-56 Million per year from the illegal trade in charcoal<sup>41</sup>. With the African Mission in Somalia (AMISOM) incursion in Somalia and its control of sea ports, there is speculation that the terror outfit could be resulting to poaching of ivory to finance its activities; taking a dimension exploited by other insurgent groups in the region like Janjaweed and the Lord's Resistance Army<sup>42</sup>. A report by a Non-Governmental Organization, Elephant Action League<sup>43</sup>, linked ivory poaching to Al-shabaab, reporting that the group earns USD 200,000 to USD 600,000 per month from illegal trade in ivory. This report has, however, been widely criticized and dismissed by security analysts and CITES monitoring agencies on basis of geographical location of Al-shabaab, which is territorially away from any elephant range ecosystems and secondly the magnitude of the reported trade cannot be sustained by the elephant populations in Central and East Africa. Further the reported magnitude of trade would mean all ivory poached in the East and Central African region goes through the Kismayu seaport<sup>44</sup>, which is far from being established.

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<sup>40</sup> Op. Cit., Carlson, Wright and Donges, p. 14.

<sup>41</sup> Op. Cit., Nellerman et al, p. 70.

<sup>42</sup> Titeca, K. "The (LRA) Conflict: Beyond The LRA Lobby and the Hunt for Kony, Towards Civilian Protection", <http://www.africanarguments.org/2013/05/17> accessed 15/April/2015; Agger, K., Hutson, J. "Kony's Ivory: How Elephant Poaching in Congo Helps Support the Lord's Resistance Army", *Enough Project*, <http://www.enoughproject.org/reports/2013>; Lancaster, P. Cakaj, L., "Loosening Kony's Grip: Effective Defection Strategies for Today's LRA", *The Resolve*, <http://www.invisiblechildren.com/2013/07/31>.

<sup>43</sup> Elephant Action League, *Africa's White Gold of Jihad: Al-Shabaab and Conflict Ivory*, 2013 <http://www.elephantleague.org/> accessed 20/August/2015.

<sup>44</sup> Nellerman, C., in Tristan McConnel, "Illegal Ivory May not be Funding African Terror Group", *USA Today*, November 14, 2014, <http://www.usatoday.co/> accessed 20/August/2015; Anderson, J., "The Danger of False Narratives: Al-Shabaab Faux Ivory Trade", *Council of Foreign Relations*, June 5, 2015, <http://cfr.org/> accessed 20/August/2015.

The Somalia militia group Al-shabaab has for a long time only been territorialized in Somalia well beyond large elephant populations. However in the period before 2010, several kidnappings were reported in the Kenyan coastal towns particularly towns bordering Somalia, one being Lamu. A close look at the recent territoriality of Al-shabaab activities shows correlation with elephant range ecosystems and most strikingly, CITES reported carcasses in Tsavo East National Park. The vast national park has for decades provided a safe haven for Somalia poachers who KWS report invade the park to graze their livestock<sup>45</sup>. This may also be facilitating the terror group, its access to elephant populations and the ease with which to convert the ivory into cash or exchange it for weapons via illicit networks. The dangers associated with hunting elephants –“risk of injury, the possibility of confrontation with other armed groups or poachers and the likelihood to encounter enforcement action by the authorities”<sup>46</sup> are likely to be child’s play for terror combatants. While Kenyas implementation of the shoot to kill policies and recent drive on increasing rangers capacity means they incur an increasingly large risk, the militia are relatively desensitized to the potential of such violence where they undergo rituals specifically for this purpose<sup>47</sup>. The scale of poaching of ivory particularly at the Tsavo ecosystem is not what would necessarily be described as intensive, albeit sporadic, particularly noting that populations of elephants have been on an increase since 2011. The recorded incidences have involved use of helicopters and superior poaching equipment; in effect probably ruling out Somalia militia who presumably would be on foot and such poaching can be linked to organized gangs<sup>48</sup>. Although activities of Al-shabaab particularly at the Tsavo ecosystem are hard to

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<sup>45</sup> Op. Cit., KWS, p. 10.

<sup>46</sup> Op. Cit., White, p. 178.

<sup>47</sup> UNSC, “Report of the Monitoring Group of Somalia and Eritrea Pursuant to Security Council Resolution 2111(2013), S2014/726, <http://www.securitycouncil/report/>, accessed 20/August/2015.

<sup>48</sup> Op. Cit., KWS, p. 20.



pinpoint, probability of their involvement cannot be ruled out and further research is therefore necessary.

### 3.2.2 Link to Transnational Organized Crime Networks (TNOCs)

Interpol has reported that there are more and more organized crime networks moving into wildlife trade. Groups which traditionally have been involved in drug trafficking, fire arms and human trafficking are now moving onto wildlife<sup>49</sup>. Reeve (2002) explains that illegal wildlife and drugs trade link in three ways: by parallel trafficking along shared smuggling routes<sup>50</sup>; by the use of “legal” wildlife shipments to conceal drugs; and, by the use of wildlife products to barter for drugs and the exchange of drugs for wildlife to launder the proceeds of drug trafficking<sup>50</sup>. The transportation and movement of ivory and ivory products from the hands of the poachers to the consumers involves a web of operators using road, sea and air transport. Seizures at ports are indicative of the magnitude of poaching. For example in 2012 over 3,000 kilogrammes of ivory were seized at Kenyan airports and in 2013, 24,000 kilogrammes were seized at Kenyan ports<sup>51</sup>. As described by Milliken *et al*<sup>52</sup>, such seizures are also indicative of the presence of organized crime in the illicit ivory trade. Firstly, because they comprise anywhere from one-half tonne to over seven tonnes of ivory in a single consignment, they involve a far greater and sustained level of finance to undertake and the development of procurement networks from elephant poaching in protected areas to orchestrated thefts of government-held ivory stocks.

Secondly, they entail a more sophisticated degree of planning, organization and intelligence to instigate, including investment in the development of local poaching and transport networks for sourcing sustained volumes of contraband ivory; the procurement of specialized

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<sup>49</sup> Interpol, 2014.

<sup>50</sup> Op. Cit., Reeve, p. 12.

<sup>51</sup> KWS, *Lifting the Siege: Securing Kenya's Wildlife*, (Nairobi: KWS, 2014) p 96.

<sup>52</sup> Milliken, T., Burn, R.W., Underwood, F.M. and Sangalakula, L.. *The Elephant Trade Information System (ETIS) and the Illicit Trade in Ivory: A Report to the 16<sup>th</sup> meeting of the Conference of the Parties*. (Geneva, Switzerland. 2012) p 30.

equipment (such as shipping containers with hidden compartments), transport, storage and staging facilities; the creation of “dummy” companies and other forms of business fraud to mask the true identity of those involved; facilitation of networking and, as opportunistically required, corruption with political, regulatory or law enforcement authorities to prevent legal interventions; and utilization of money laundering, tax evasion and other forms of economic subterfuge to hide profits and other evidence of financial dealings.

Thirdly, these criminal operations exhibit special knowledge and connections linking African source countries with Asian end-use markets so that illicit ivory readily moves into black markets or, whenever feasible, legally-sanctioned trade channels. It is believed that currently most of these transnational syndicates function as Asian-run, Africa-based operations. Thus, large-scale ivory seizures are the most important ivory trade crime to address.

Poachers on the ground find and kill the animals, brokers move the product around in the country and exporters get it across borders, sellers then make sure it gets to the right consumers. TNOCs and “shadow networks, a combination of political economic and socio-cultural forces linked to the international sphere and transactional value”<sup>53</sup> in nature have come to support armed militia, smugglers and poachers by easing the conversion of ivory into cash and weapons. Therefore TNOCs link in this trade is to provide transit routes for the ivory, convert ivory into cash and weapons and avenues for money laundering. Opportunistic poachers are local people who happen to live in or near elephant ranges. Since most of the poachers are locally based, the groups are kept small to ensure secrecy<sup>54</sup>. These communities are often commissioned by ivory traffickers to find, kill and de-task elephants<sup>55</sup>. Most of these communities live in poverty and therefore poaching and hunting for ivory is for subsistence making them susceptible to wildlife

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<sup>53</sup> Nordstrom, C., *Shadows of War: Violence, Power, and International Profiteering in the Twenty-first Century*, (Berkeley: University of California Press, 2004).

<sup>54</sup> Op. Cit., UNODC, p. 33.

<sup>55</sup> Researcher interview with a KWS official, 29<sup>th</sup> July 2015

crime to make a livelihood. Most of these local poachers own their own firearms, so there is little need for financiers except perhaps for ammunition. Successful poachers can move up to become middlemen, as they get to know the trade and accumulate sufficient funds to buy stocks of other hunters. Many of the middlemen are former poachers, specializing in buying small consignments and transporting them to bulk buyers near ports of export.

Like other illicit trades, wildlife trafficking too involves kingpins who sit at the top of elaborate supply chains. Ivory kingpins are the actual traders, smugglers and the largest financial beneficiaries of poached ivory. These are the persons who act as middlemen linking the products between the local poachers and the market, the primary market being in Asia. These kingpins have thus perfected transit routes from pick-ups points to packaging of the contraband, ready for export either by air or sea. As already discussed, Kenya is used as a transit state for ivory poached in Kenya and also poached in other neighbouring countries. The chain link involves trafficking of ivory by moving it from the hands of the poachers to the destination market. This chain is driven by individuals, cartels and more recently organized crime syndicates. Illicit ivory and ivory products are often deceptively declared as agricultural products or other locally packaged goods under cover of legitimate business in order to conceal the illegal trade<sup>56</sup>.

KWS reports that the actors in transit of ivory operate in a unique manner including comprising law enforcement agencies personnel for official protection. This is evident from ivory seizure data both seized at Kenyan ports and at other transit or destination countries with source indicated as Kenya. This therefore brings into focus the issue of corruption among law enforcement agencies: be it the police, immigration officials or customs officials. Corruption weakens institutions, thus aggravating the illicit trade as well as poaching and trafficking of ivory.

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<sup>56</sup> Op. Cit., KWS.

The poachers make use of firearms and non-firearms method to kill animals. The weapons used by poachers, both large scale and small scale, vary considerably ranging from hunting rifles to firearms. In addition, pastoralists and subsistence poachers also use traditional weapons and methods to kill wildlife, such as spears, poisoned arrows and poison. Poachers often use hunting rifles, but given their greater range and accuracy, assault rifles better equip them to confront armed rangers or other armed poachers or other armed anti poaching units.

Armed poachers reportedly from Somalia possess considerable firepower. Therefore they can pose unique challenges to rangers and others charged with protecting wildlife. KWS reports that there is infiltration of game reserves and neighbouring ranches particularly the Tsavo East and Tsavo West, by immigrant herders from Somalia, which is a conduit for undertaking poaching in these reserves and neighbouring areas. It is reported that the herders facilitate the entry of illegal immigrants and firearms. The weaponry and discipline shown by some groups suggest connections to Somali warlords including groups driven out of Somalia<sup>57</sup>. There have been Somali trading points along the borders with Kenya since the 1990s and there are also some in Tsavo area. Somali traders in Kenya purchase both ivory and rhino horns and typically operate shops disguised as legitimate business. For example it is reported of a trader who runs a motor vehicle spare part shop in Tsavo area<sup>58</sup> while of another who runs a similar outfit at Oloitoktok, thus targeting poached products from the Amboseli<sup>59</sup>. Somalia's lack of government makes it the perfect ground for smuggling of all kinds of products and Somalia poachers are engaged in significant poaching operations in Kenya<sup>60</sup>.

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<sup>57</sup> Op. Cit., Clark.

<sup>58</sup> Op. Cit., UNODC.

<sup>59</sup> Op. Cit., Kahumbu et al.

<sup>60</sup> Begley, S., "Extinction Trade: Endangered Animals are the New Blood Diamonds as Militia and Warlords use Poaching to Fund Death", Newsweek, March 1, 2008 <http://www.newsweek/> accessed 20/August/2015.

In some areas, small groups of local people with knowledge of the terrain may target elephants to supply a known dealer. This type of poaching has been documented in Samburu area of Kenya and typically involves use of firearms. An analysis of KWS and CITES reports demonstrates that 85% of the elephants killed in the area died of gunshot wounds<sup>61</sup>. Historically, the Samburu have experienced conflict with the Somali ethnic groups to the East and the Pokot and Turkana groups to the West necessitating the said communities in conflict to arm themselves with lethal weapons. The Samburu began arming themselves in the 1990s, following the emergence of conflict with Somali ethnic groups and firearms have thus been a common means of poaching elephants in the area for the past 15 years<sup>62</sup>. Criminal ivory trafficking networks are reportedly well established in the Samburu range area, enabling quick movement of tusks from the area to ports. Independent observers say poaching kingpins facilitate smuggling of ivory from local poacher's homes in the town of Archer's Post, a trading centre at the edge of Samburu National Reserve and Shaba National Reserve<sup>63</sup>.

As accounted by an interviewee<sup>64</sup> poached ivory is used in purchase of small firearms. The interviewee accounted of events where poachers poach ivory in Kenya and cross Kenya's border to Ethiopia and Somalia where they sell the poached ivory and in turn buy small arms. For example in Ethiopia, which is identified by CITES as the largest unregulated market in East Africa, ivory is sold for around USD 15-20 per kilogram and AK47 rifle can be purchased for USD 80-100 and ammunition for USD 0.30-0.35 per cartridge<sup>65</sup>. So for every 4-7 kilograms, less than the weight of an average tusk, one weapon can be purchased and/or a substantial amount of

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<sup>61</sup> Op. Cit., KWS; CITES, Monitoring the Illegal Killing of Elephants: Update on Elephant Poaching Trends in Africa to 31 December 2014, <http://www.cites.org/> accessed 29/July/2015

<sup>62</sup> Interview with KWS Official and conservationists.

<sup>63</sup> Koross, K., "Untouchable Lords of Poaching in Samburu", *Star Newspaper*, January 29, 2013, <http://www.the-star.co.ke>, accessed 25/ July/ 2015.

<sup>64</sup> Researcher interview at Samburu, 31<sup>st</sup> July 2015.

<sup>65</sup> Op. Cit, Milliken, 2004.

ammunition. It was accounted that some of the arms are used by communities living in Northern Kenya, which has been marred with intercommunity conflict. Besides use of weapons in intercommunity conflict, the proliferation of the illegal firearms at the household level has contributed to the increase in poaching and other armed crimes as the arms proliferate undetected into the urban centers. Therefore the use of firearms in poaching militarizes poaching necessitating equally militarized counter poaching mechanisms in wildlife protection.

TNOCs provide mechanisms for outlet of profits and proceeds from illegal trade. The use of anonymous shell companies, often layered via multiple jurisdictions, is an effective tool available to money launders and organized criminals, obscuring the money trail and impeding law enforcement investigations. Anonymous shell companies are utilized by the arms dealers to supply the wildlife traffickers, militants and terrorists with weaponry. They are used by corrupt public officials who accept kickbacks and bribes into their offshore account in order to look the other way as poachers illegally pillage their country's natural resources. They are used by terrorists looking to clandestinely move money around the world to finance their activities<sup>66</sup>. They are also used by tax evaders and corrupt officials who cost the developing states an estimated \$ 1 trillion per year in illicit outflows<sup>67</sup>. Lax regulation and disparate state statutes make Kenya and other states around the world a breeding ground for anonymous shell corporations and this can be and has been exploited by organized crime networks.

Increasingly poaching funds the activities of terrorists organizations, rebel movements and other armed groups throughout Africa. The illicit ivory trade will continue to fuel instability until states in cooperation with other actors slow the rate of poaching, disrupt trafficking networks and reduce international demand because, while every link in the supply chain needs

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<sup>66</sup> Cardamone, Ivory and Security: The Global Implications of Poaching in Africa, 24 May 2012.

<sup>67</sup> Karl, D., Freitas S., "Illicit Financial Flows from Developing Countries Over the Decade Ending 2009", *Global Financial Integrity*, 2011, <http://www/iffdec2011.gfintegrity.org/> accessed 20/ August/2015.

work, the largest payoff is likely to be received by focusing on the demand side of the market to reduce the number of commissioned hunts<sup>68</sup>. The United Nations Security Council (UNSC) has recognized that poaching has strengthened global trafficking networks and destabilized African states and has potential to fuel violence and bolster terrorist and insurgent groups. The problem is not restricted to Africa's conflict zones, in most states with large populations of free ranging elephants, poaching has become more frequent and sophisticated, transforming parks and reserves into combat zones. Park rangers are often outgunned, outnumbered, undertrained and underequipped and in consequence have suffered unacceptably high casualties.

### **3.3 Conclusion**

Poaching of ivory is primarily driven by profits arising from demand for the product largely from Asian states. The increase in demand has been attributed to Asia's growing middle class who view ivory as a status symbol rendering Asian states particularly China, the world's leading destination for illicit ivory. CITES authorized two major sales of ivory with the latest being in 2008, which has been blamed for the demand for ivory and this demand can only be satisfied by illicit trade of ivory. This avenue has been exploited by armed-non state actors and TNOCs. Poverty, corruption and weaknesses in the monitoring of illegal trade are facilitators for the trade with TNOCs being utilized to transport and deliver illicit ivory, supply arms to armed non-state actors and poachers, provide avenues for outlet of sale proceeds by creation of shell companies. This has therefore lead to increase in poaching and shift in poaching techniques with use of firearms and ammunitions now being adopted widely by local-level poachers, cross-border poachers and armed non-state actors; necessitating the militarization of wildlife protection posing a danger to the neighbouring communities as well as the rangers protecting the wildlife as poachers seek to protect their trade. Further, the proliferation of firearms at household level fuel

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<sup>68</sup> Op. Cit., UNODC, p. 31.

conflict at community level, especially for community conflict prone Northern Kenya where conflict is resource driven, as well as other armed crimes. Access of firearms by armed non-state actors and actors combined undermine state security and stability and therefore weaken governance institutions.



## **Chapter Four**

### **Opportunities and Challenges for Protection of Wildlife Resources**

#### **4.0 Introduction**

This chapter reviews the opportunities and challenges for states and the international community in the protection of wildlife resources. Multilateral Environmental Agreements (MEAs) like CITES, offers opportunities for trade control measures by monitoring of trade as well as monitoring compliance by member states. Others like the Convention on Biological Diversity, Convention on Migratory Species, and regional mechanisms under the Lusaka Agreement and the Maputo Convention, complement CITES. With the advent and increased involvement of armed non state actors and TNOCs in the illegal trade in wildlife resources, other conventions such as the UNODC present avenues for monitoring activities of these groups while the United Nations Convention Against Corruption, offer states policy mechanisms to combat corruption-aided illegal trade. These opportunities notwithstanding, states particularly African range states, have been unable to protect their wildlife populations owing to a number of challenges as will be discussed herein. Trade regulation often ignores the demand market, this while states on the supply side take considerable efforts these are not at the same time, met with complementing efforts against demand. This chapter will therefore discuss the opportunities and challenges in the protection of wildlife.

#### **4.1. Opportunities**

CITES as the global primary convention regulating trade in wildlife and wildlife resources, offers a comprehensive mechanism for trade monitoring through its compliance system. Generally, parties' compliance with the Convention is twofold. First, compliance through legislation at national level of pertinent legislative requirements; and second, compliance through submission to the Secretariat, of annual and biennial reports. There are further

compliance mechanisms that are species specific as is the case with the African elephant through the National Ivory Action Plans (NIAPs), which require those countries or territories that are most heavily implicated in the illegal trade in ivory to take specific steps to curb illegal trade. CITES though “self-policing” is not “self-executing” and therefore however good resolutions may be, they can only be actualized through compliance and enforcement of such resolutions at national level.

#### **4.1.1 National Legislative and Administrative Measures**

CITES minimum legislation requirements can be deduced from Articles II to VIII and Article IX. Articles III to VII provide conditions, under which trade should take place, while Article VIII requires parties to prohibit trade in specimens in violation of the convention, penalize such trade and allow for confiscation of specimens illegally traded or possessed. In order to evaluate the adequacy of implementation by the parties, Resolution Conf. 8.4 defines the necessary minimum domestic measures as comprising “the authority to i) designate at least one management authority and one scientific authority; ii) prohibit trade in specimens in violation of the convention; iii) penalize such trade; and iv) confiscate specimens illegally traded or possessed”<sup>1</sup>. The Resolution empowers government officials to “act, place limits on human actions and articulate policies in relation to the regulation of international trade”<sup>2</sup>. For purposes of monitoring legislative status of party states, the Resolution through the National Legislation Project, empowers the Secretariat to analyze national legislation in relation to the four above mentioned minimum requirements and place party state status in one of three categories below. Category 1 analyses legislation that is believed generally to meet all the requirements for implementation of CITES; Category 2, analyses legislation that is believed generally not to meet

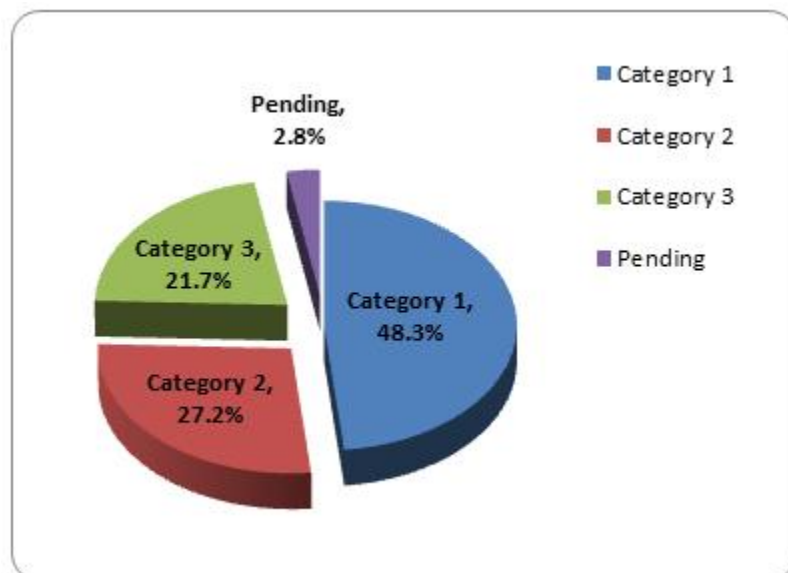
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<sup>1</sup> CITES, Conference resolution 8.4 on National Laws for Implementation of the Convention (1992).

<sup>2</sup> CITES, <http://www.cites.org/> accessed 14 September 2015.

all of the requirements for the implementation of CITES; and Category 3, analyses legislation that is believed generally not to meet the requirements for the implementation of CITES. As it turned out even this minimum was and has been a tall order for most countries. A survey of 81 CITES parties, carried out by the IUCN Environmental Law Centre in 1993-1994, indicated that only 12 of the countries surveyed had completed the full range of legislative and administrative measures needed to give effect to all aspects of the convention and related resolutions and decisions of the COP. Legislation in at least 26 countries was found not to meet the 4 minimum requirements. Moreover, legislation in 43 other countries was considered incomplete or deficient in some specific aspects<sup>3</sup>. Over twenty years later CITES is still struggling with this problem. The latest legislative status chart provided by the Secretariat to the 65<sup>th</sup> meeting of the Standing Committee in 2004 reported 48.3% of CITES parties had legislation status under Category 1; 27.2% under Category 2; 21.7 % under Category 3; and 2.8% were analyzed as pending.

**Figure 4: Legislative Status Chart**



Source: CITES, July 2014 (<http://www.cites.org/> accessed 14 September 2015)

<sup>3</sup> Op. Cit., Sands, P. 47.

As such only 87 parties of the 180 party states (with membership as at July 2014) have legislation that had fully implemented CITES resolutions making more than half of the party states noncompliant. Of these 87 states 12 are African states among them: Cameroon, Democratic Republic of Congo, Egypt, Ethiopia, Nigeria, South Africa and Zimbabwe, which have been identified in this study as problem countries particularly due to the existence of unregulated domestic ivory markets and others like South Africa, rampant poaching aided by loopholes in the legislation. Conflict in the Great Lakes region particularly in the Democratic Republic of Congo (DRC) has made it impossible for government to undertake anti-poaching efforts or enforce CITES resolutions. It is therefore clear that in as much as states pass legislation, national level enforcement is wanting and more needs to be done. Five states: Angola, Bahrain, Iraq, Lebanon and Maldives make the 2.8% of states analyzed with pending legislation and have been parties to the Convention for 5 years or less. Kenya and its neighbour Tanzania are both analyzed under Category 2 and further identified as parties requiring attention as a priority for legislative implementation. Kenya has enacted a CITES implementing legislation, the Wildlife Management and Conservation Act, 2013 and revised legislative analysis is recommended by the Secretariat and agreed between Kenya and the Secretariat, for achieving Category 1 status<sup>4</sup>.

An emerging area of concern for illegal trade in wildlife resources, and particularly ivory is trade in the cyber space. Resolution Conf. 11.3 requires countries to “evaluate or develop their domestic measures to ensure that they are sufficient to address the challenges of controlling legal wildlife trade, investigating illegal wildlife trade and punishing perpetrators”<sup>5</sup>. It further requires states to “establish, at the national level, a unit dedicated to investigating wildlife crime linked to

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<sup>4</sup> CITES, “National Laws for Implementation of the Convention”, <http://www.cites.org/> accessed 14 September 2015.

<sup>5</sup> CITES, “Compliance and Enforcement”, <http://www.cites.org/> accessed 14 September 2015.

the Internet or incorporate wildlife trade issues into existing units that investigate or monitor computer or cyber-crime; and establish at the national level a mechanism to coordinate the monitoring of Internet-related wildlife trade and to provide for the timely sharing between designated contact points in CITES Management and Enforcement Authorities of information that results from these activities.” Illegal online trafficking in imperiled wildlife is rampant and attempted controls are few and largely ineffective, because it is very difficult to control internet and what goes live.

While the resurgence of illegal wildlife trade has become more evident, there is also better understanding of the impact of globalization, with illegal trade connecting producers and consumers around the world. The expansion of economies, international commerce, transportation and the use of information and communication technology help fuel demands for the illegal wildlife products. The supply chain is highly complex, crossing many borders. There are links connecting poachers in source countries, transnational crime syndicates, traders and consumers in East Asia, Europe, North America and elsewhere. Cross continental joint operations bringing police, customs and wildlife enforcement agencies of range, transit and destination states. To control such environmental crime strong international and coordinated governance is essential.

#### **4.1.2 Policing through Reporting Mechanisms**

A key feature of the CITES regime is that it is a “self-policing” regime providing mechanisms for party states’ accountability to other parties as well as requiring non party states to have documents comparable to those provided for under CITES. To make monitoring and implementation possible, parties are required to transmit annual reports to the Secretariat listing the number and type of permits granted, exporters and importers and the state with whom they

are trading and the number of quantities and types of specimen<sup>6</sup>. Parties are also required to furnish biennial reports on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention<sup>7</sup>.

In a number of countries, annual reports are among various outputs from national information management system that records and tracks daily trade-related and other activities undertaken by CITES authorities. Such record keeping and reports assist national policy-makers in defining, implementing and assessing their wildlife management and trade policies. Biennial reports provide an opportunity for parties to share information regarding their overall implementation of the Convention, including their progress in the development and application of laws and regulations, administrative procedures, economic and social incentives and wildlife trade policies. At the national level biennial reports serve as a tool for self-assessment through which parties can identify achievements, significant developments or trends, gaps or problems and possible solutions. At the international level, the comparison and synthesis of information in biennial reports can support substantive and procedural decision making by the COP and various subsidiary bodies<sup>8</sup>.

Parties alive to the non-compliance with CITES occasioned by “inadequate or insufficient implementation of management authorities in both exporting and importing countries regarding surveillance, issuance of documentation and control of compliance with the provisions regulating trade in live and dead animals and plants and their parts and derivatives”, passed Resolution Conf. 11.3 on Compliance and Enforcement. The resolution empowers the Standing Committee to initiate collective action against non-compliance from member states as well as third states. It recommends parties to adopt stricter domestic measures than those provided by the

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<sup>6</sup> CITES, Article VIII (6) and (7).

<sup>7</sup> Ibid, Article VIII (7).

<sup>8</sup> CITES, <http://www.cites.org/> accessed 14 September 2015.

treaty, including suspension of trade as envisaged under Article XIV (1). In the case of non-members, these measures are used when the state concerned persistently refuses to provide comparable documents pursuant to Article X. At the time of writing this report, 31 countries were subject to a recommendation to suspend trade. For states like Afghanistan, Lesotho and Somalia a suspension of all trade has been recommended on basis of failure to submit annual reports. Somalia's suspension on this basis dates back to 19<sup>th</sup> December 2002, while Afghanistan's and Lesotho's is valid from 17<sup>th</sup> May 2013. Somalia is additionally subject to a recommended suspension of all commercial trade due to lack of national legislation. Similarly, Djibouti and Mauritania are subject to such a suspension due to lack of national legislation.

Nigeria and Lao People's Democratic Republic are subject to recommended suspension of all commercial trade on failure to submit National Ivory Action Plans (NIAPs). NIAPs under CITES are practical tools used by the Convention in party states or territories identified as most heavily implicated in the illegal trade in ivory. These were measures adopted at the backdrop of the ETIS Report to COP16 which categorized these countries as countries of "primary concern", "secondary concern" and "importance to watch". NIAPs are practical tools used by such categorized parties to strengthen their control of the trade in ivory and ivory markets and help combat illegal trade in ivory. Each party state is required to develop measures it commits to deliver including legislative, enforcement and public awareness actions along with specified timeframes and milestones for implementation. A plan should identify the actions that are of highest priority for a particular party to help combat the illegal ivory trade, depending upon the party's own circumstances, including its capacity building needs, the extent of availability of resources and the scale and nature of illegal trade and whether the party is a source, transit or destination state for illegal ivory.

### **4.1.3 Species Specific Mechanisms: Ivory Trade Monitoring Mechanisms**

Resolution Conf. 10.10 on Trade in Elephant Species adopted in 1997 (and revised at COP16) was negotiated at the backdrop of Southern Africa states clamour for resumption of trade in ivory and ivory products. It provides a comprehensive framework with regards to trade in ivory with requirements on internal legislative, regulatory and enforcement measures. The Resolution establishes a “comprehensive, international monitoring system: under the supervision and direction of the Standing Committee. The objectives of such a system are set out as: “measuring and recording current levels and trends of illegal hunting and trade in ivory in Africa and Asian range states and in trade entrepots; assessing whether and to what extent observed trends are a result of changes in the listing of elephants in the CITES appendices and/or the resumption of legal international trade; and establishing an information base to support the making of decisions on appropriate remedial action in the event of any problems with compliance or potential detriment”.

The result has been two monitoring tools: Monitoring the Illegal Killing of Elephants (MIKE) and Elephant Trade Information System (ETIS). As already discussed much is at stake when trade controls for elephants are debated within CITES. The polarity of opinion among the Parties on the subject, together with associated passions, has threatened to skew the working of the Convention in practice and challenged the basis on which it operates. For these reasons, as well as for the benefit of elephant conservation itself, it is crucial that the decisions taken by CITES on elephant issues are based, and seen to be based, on the best possible information<sup>9</sup>. MIKE and ETIS have been adopted by CITES as sources of such information, to support its decisions on elephants.

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<sup>9</sup> CITES, <http://www.cites.org/> accessed 14 September 2015.



MIKE is an instrument for tracking the situation on the ground in elephant range states across Asia and Africa and the global analysis of MIKE carcass data predicts or estimates the number of elephants killed. MIKE is designed to assist range states in monitoring threats to their biodiversity, including poaching of elephants and effectiveness of law enforcement. ETIS on the other hand is designed to monitor illegal trade in ivory and elephant products and is recognized under Resolution Conf. 10.10 “as the appropriate instrument for monitoring the pattern and measuring the scale” of trade in ivory. The monitoring information provided by these two mechanisms is used to improve efficiency in law enforcement activities and to catalyse action and support for law enforcement. These agencies have come to be identified as key information systems for providing reliable information on illegal trade in ivory and have formed basis for policy making by CITES and has also formed part for reference material for background documents in decisions made by UN bodies such as the United Nations Security Council in its 2014 Resolutions 2134 and 2136 and most recently the United Nations General Assembly Resolution A/RES/69/314. It is important to note that the latter is a culmination of three years of diplomatic efforts; this therefore signifies the polarity of opinions in ivory trade.

Monitoring, data collection and sharing initiatives have also been adopted at regional level under the Lusaka Agreement. Monitoring and data collection through the Wildlife Enforcement Monitoring System (WEMS), for example, helps African countries to track illegal wildlife trade, monitor legal enforcement, capture trends and share the information among participants.

#### **4.1.4 International Consortium on Combating Wildlife Crime (ICCWC)**

Illegal trade in wildlife is facilitated by a network of factors as already discussed: one country may lack sufficient capacity to counter poaching and illegal hunting while another may have loopholes in legislation for example legal hunting which could be exploited by poachers.

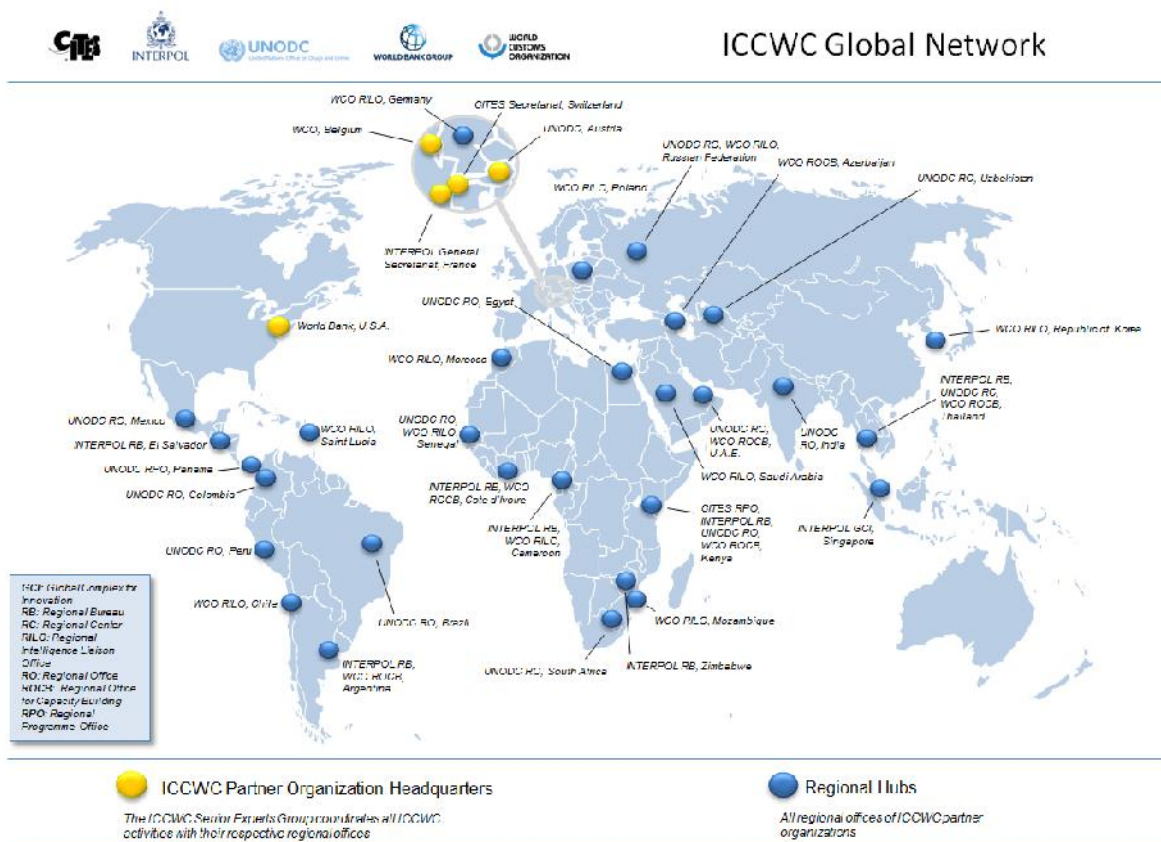
The poachers would need to move the poached products to the traders (usually the kingpins) who off load it to the consumer market. This involves transiting of the products across countries through all transit networks available. Therefore need for concerted efforts on surveillance, with each state playing its part. Besides states bilateral and multilateral efforts through already discussed conventions, the formation of the International Consortium on Combating Wildlife Crime (ICCWC), being a collaboration composed of the CITES Secretariat, INTERPOL, UNODC, the World Bank and World Customs Organization is an effort to bolster multi-agency cooperation to ensure a strong and coordinated response to wildlife crime.

The mission of ICCWC is to usher in a new era where perpetrators of serious wildlife and forest crime will face a formidable and coordinated response, rather than the present situation where the risk of detection and punishment is all too low. In this context, ICCWC works for, and with, the wildlife law enforcement community, since it is frontline officers who eventually bring criminals engaged in wildlife crime to justice. ICCWC seeks to support the development of law enforcement that builds on socially and environmentally sustainable natural resource policies, taking into consideration the need to provide livelihood support to poor and marginalized rural communities<sup>10</sup>.

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<sup>10</sup> CITES, International Consortium on Combating Wildlife Crime (ICCWC)<http://www.cites.org/> accessed 14 September 2015

**Figure 5: ICCWC Partner Organization Network**



Source: CITES (<http://www.cites.org/> accessed 14 September 2015)

Cooperation and interagency collaboration/partnership can be cited as a key component in curbing this illicit trade. In May 2015, a multiagency operation dubbed “Operation Cobra III”, resulted in 139 arrests and more than 247 seizures which included among others elephant ivory. This was the third operation by the ICCWC consortium. Mr. Yury Fedotov, UNODC Executive Director highlighting the success of the operation stated “while I congratulate the participating countries in these seizures, I also hope that equal emphasis is placed on the prosecutions and intelligence led investigations which have to follow. It is key to keep in mind that it takes a network to defeat a network”. Prosecution and the judicial processes are all enforcement mechanisms for the “network to defeat a network”. Prosecutorial roles lay within the national

jurisdiction of CITES member states and are guided by legislative provisions. As seen in the Kenyan case, prosecutorial powers are undertaken by the Office of the Director of Public Prosecutions (DPP) and the KWS gazetted prosecutors. A key concern on prosecution is compromise of law enforcement officers by the offenders that may have “purchased” protection. Lack of awareness among the judiciary is another widespread problem that ought to receive urgent capacity building attention. Even if stringent penalties are provided for in wildlife legislation, as is actually the case, they are not reflected in judgments, which frequently hand-down the minimum penalties provided for thus handing non-detriment fines. Corruption in the governance system also enables poachers and traffickers to conduct their activities under protection, thus weakening the governance institutions.

## **4.2 Challenges**

### **4.2.1 Non Compliance: The Political and Economic Factors**

As discussed, illegal trade in wildlife is facilitated by inadequacy in national level legislation and complacency in surveillance especially on transit at ports of entry and exit. As stated above, international agreements though legally binding are not self-executing and in most countries they cannot be implemented until specific domestic measures have been adopted for this purpose<sup>11</sup>. Adequate national legislation is essential to ensure effective wildlife trade controls and surveillance by state agencies charged with implementing the convention as well as a prerequisite for state party compliance with the convention. As stated above, party states have not been keen on implementing international or regional conventions to comply with trade regulation. CITES, like other international conventions, is not “self-executing” and therefore implementation requires in addition to the formal act of ratification, a series of follow up

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<sup>11</sup> Op. Cit., Sand, p. 47.

measures at the appropriate legislative and administrative level of each country<sup>12</sup>. These appropriate national level legislative and administrative implementing measures require political backing and considerable resources for them to be achieved. These are to a large extent influenced by the debate in wildlife trade which contrasts two interests: preservation and sustainable development. While one side of the debate pushes for outright bans in trade, the other side advocates for sustainable use of wildlife species and wildlife products. CITES has attempted to balance these two interests by prohibiting commercial trade of gravely endangered species under Appendix I and ensuring sustainable use of species which are not now necessarily threatened with extinction under Appendix II and III. The realities around this balancing lays in the sovereignty of states over natural resources and community benefit in form of incentive to conserve. CITES member states that seek to resume trade in species, in particular the African elephant, are of the opinion that the use of species provides both incentives to local people to conserve as well as funds to improve enforcement, conservation and customs services<sup>13</sup>.

The economic value of species is even considered to be the only value that will help conserve wildlife<sup>14</sup>. It is argued that a preservationist approach places disproportionate share of the costs on poorer range states while sustainable use provides a source of revenue for conservation measures<sup>15</sup>. Furthermore, social and economic issues, such as the destruction inflicted on the humans living alongside protected wildlife must also be taken into account<sup>16</sup>. These arguments are rejected by preservationists who argue trade resumption places relatively

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<sup>12</sup> Sand, P., "Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment", *European Journal of International Law*, Vol 1 (1997) pp. 29-58.

<sup>13</sup> Birnie, P., "The Case of the Convention on Trade in Endangered Species in Enforcing Environmental Standards", in Rudiger Wolfrum (ed), *Enforcing Environmental Standards; Economic Mechanisms as Viable Means*, Heidelberg: Springer, 1996) pp 233-264.

<sup>14</sup> Op. Cit., Reeve, p. 13.

<sup>15</sup> Young, S., "Contemporary Issues of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Debate over Sustainable Use", *Colorado Journal of International Environmental Law and Policy*, Vol. 1 (2003) pp 167-173.

<sup>16</sup> Ibid, p. 185.

too little importance on the survival of species compared to the importance placed on the exploiters.

#### **4.2.2 Weak Capacity Across Range States**

As established earlier in the study, law enforcement and regulatory institutions have been weakened in states by corruption, civil conflict and porous borders. A nation engaged in civil war may lack the will or ability to undertake anti-poaching efforts or to enforce CITES recommendations<sup>17</sup>. This means more elephants could be lost to poaching for ivory, as is the case with involvement of armed non-state groups such as Lord's Resistance Army, Janjaweed and Al-Shabaab, or bush meat or to human-elephant conflict as refugees migrate<sup>18</sup>.

Corrupt government officials on the other hand enable poachers to move ivory across international borders under diplomatic cover or by using bribes or fake documentation. Corruption can also result in the improper use of money earmarked for elephant conservation<sup>19</sup>. Corruption and the lack of upto date technology and monitoring equipment in most African range states make it difficult for states to monitor and track luggage or cargo leaving or entering ports.

#### **4.2.3 Consumer Demand**

Any trade in a threatened species is said to encourage poachers because it establishes a market where income is generated from the killing of species, thereby thwarting the convention's objectives<sup>20</sup>. The demand for ivory and ivory products, largely in Asia, provides a market in effect making poaching and illegal trade of ivory to thrive. While CITES controls international trade, this is countered by thriving domestic markets for ivory products. Those markets too

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<sup>17</sup> White, N. "The Political Economy of Ivory as a "Conflict Resource". *Peace and Conflict Studies*, Vol 21, (2014) pp. 172 – 186.

<sup>18</sup> Ibid.

<sup>19</sup> Lemieux, A., Clarke, R., "The International Ban on Ivory Sales and Its Effects on Elephant Poaching in Africa", *British Journal of Criminology*, Vol 49 (2009), pp 451-471.

<sup>20</sup> Op. Cit., Birnie.

provide an avenue for poachers to offload illicit ivory as it leaves loophole open for poachers, traders and carvers that they continue to exploit.

### **4.3 Conclusion**

Poachers and traffickers are using superior technology to aid their activities compared to what counter poaching agencies have. Enforcement efforts are progressively taking advantage of the latest technology for detection analysis and communication and this requires funding. The majority of the ivory consumers reside in Asia, where a wealthier middle class now sees ivory as affordable. Misinformation and lack of understanding about the scale of illegal wildlife trade, how these products are obtained and the trade's impacts, lead to poorly informed policy decisions. Efficient control of transboundary movements of wildlife products requires good information exchange and cooperation involving importing, exporting and transit countries. The collection, analysis and dissemination of information are essential for a compliance system. CITES relies mainly on party reports and reports from its monitoring agencies, NGOs (such as IUCN, WWF and TRAFFIC), organizations (such as Interpol and World Customs Organization). NGOs provide data on the status of species, the threat to them posed by trade and strictness of observance of convention which enables the Secretariat to identify problems and to engage in counter measures. Combating illegal trade in ivory and other wildlife resource will require a multifaceted approach with states first and foremost acknowledging and treating wildlife trafficking involving organized criminal groups as a serious crime, implement anti-money laundering measures, establish national-level interagency wildlife task forces, strengthening judicial processes and law enforcement efforts, prevent and counter corruption, and reduce the demand for threatened wildlife products.

## **Chapter Five**

### **Summary, Conclusion and Recommendations**

#### **5.0 Introduction**

This study sought to examine the illegal trade in wildlife resources and its implication for international security by analyzing the actors involved in this illicit trade. To achieve this overall objective, the study aimed to analyze the norms and institutions on the protection of wildlife resources, examine and analyze poaching of ivory in Kenya and its implications on international security; identify the opportunities and challenges in illegal trade in wildlife resources and in view of these, recommend appropriate policy responses. These study objectives were linked to the study hypotheses, that the increased involvement of armed non-state actors and international criminal networks in illegal trade in wildlife resources undermines state stability and second, that poaching and trafficking of wildlife resources, undermines governance and rule of law as it is fueled by corruption.

These objectives and hypotheses were examined through the liberalism theoretical framework. The liberalism approach in international relations calls for understanding of the pluralistic nature of actors in the international system. It further recognizes the role of institutionalization and international cooperation in an anarchic international system.

#### **5.1 Summary**

This section offers the individual chapter summaries and conclusions. Chapter one provided an introduction to the study covering a background to poaching of wildlife species and their derivatives. It gave a background of the drivers of the illegal trade in wildlife resources and their trade in the black market. The chapter gave a statement of the research problem, which motivated the study. The study used Kenya as a case study owing to its role in the trade not only



as a range state but also as a transit state. To this end the study sought to give a holistic approach to the research problem. The chapter highlighted the objectives of the study, guiding research questions and study hypotheses. The chapter further offered academic and policy justification of the study highlighting its contribution to the academia and policy makers. The chapter also expounded the theoretical framework that guided the study – the liberalism theoretical framework linking its significance to the study. Finally, the chapter expounded the research methodology used to answer the research questions.

Chapter two reviewed the wildlife resources protection regimes with a bias on norms and institutions regulating wildlife trade. The chapter outlines CITES as the primary convention regulating trade in wildlife species and their derivatives<sup>196</sup>. The chapter also analyzed the Lusaka Agreement; the Maputo Convention; the Convention on Biological Diversity (CBD); and the Convention on Migratory Species (CMS). The Chapter outlined the fundamental principles on protection of wildlife species under CITES identifying the species specific approach protection mechanisms under the said Convention's Appendices I, II and III. The chapter discussed various protection mechanisms among them being; the prohibition of commercial trade<sup>197</sup> of Appendix I species and trade of these species which is only authorized in exceptional circumstances. Additionally, trade in Appendix II species is allowed subject to provision of Non-detriment Findings (NDFs)<sup>198</sup>. Further, protection of Appendix III species is jurisdictional for which international cooperation is needed to control trade of such species. The chapter thereafter analyzed the institutional mechanisms under CITES, with the Conference of the Parties being

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<sup>196</sup> Reeve, R., *Policing International Trade in Endangered Species: The CITES Treaty and Compliance*, (London: Earthscan Publican Limited, 2002); Sand. P., "Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment", *European Journal of International Law*, Vol 1 (1997) pp. 29-58.

<sup>197</sup> CITES, Resolution Conf. 5.10, "Definition of "Primary Commercial Purposes", 1985 (Revised at COP15).

<sup>198</sup> Rosser, A. R., Haywood, M.J. (Compilers), *Guidance For CITES Scientific Authorities: Checklist to Assist in Making Non-detriment Findings for Appendix II Exports*. Cambridge: IUCN, 2002.

identified as the key decision making organ; the secretariat as the administrative arm of the Convention; the Standing Committee as the organ that provides policy guidance to the Secretariat; and the Animal and Plant Committees as institutions providing technical support to decision making.

The Chapter also analyzed other international mechanisms for wildlife protection under the CBD and CMS; while regional mechanisms were evaluated under both the Lusaka Agreement and the Maputo Convention. The chapter established that, the efficacy of the existing wildlife protection regime is wanting owing to the plummeting wildlife populations primarily driven by international trade in wildlife resources and more so illegal trade in the said wildlife resources.

Chapter three presented the study findings on the link between poaching of ivory and its inverse effect on international security. The chapter first identified the poaching trends in Kenya with key elephant ecosystems being identified as Samburu, Amboseli and Tsavo ecosystems. The chapter discussed the rationale for poaching of ivory in Kenya and classified poaching as either opportunistic or commissioned<sup>199</sup>. Poverty among communities neighbouring the identified ecosystems and corruption among law enforcement officials were identified as the main facilitators of opportunistic poaching. Though poverty, per se, was argued not to be a key facilitator of poaching as poor communities would not engage in poaching unless there was demand from wealthier communities<sup>200</sup>. The study found out that the involvement of armed non-state actors in cross border poaching, either by themselves or use of proxies and associates, has

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<sup>199</sup> UNODC 2014 Report, *Trafficking of Ivory from Eastern Africa to Asia*, <https://www.unodc.org/> accessed on 20/July/2015.

<sup>200</sup> Dutty, R., St John, F., “Poverty Poaching and Trafficking: What are the Links”, <http://www.evidenceofdemand/docs/pdf> accessed 20/August/2015

an inverse effect on state stability. The study established that the said armed non-state actors depend on transnational organized crime networks (TNOCs) as the conduit to offload the poached ivory in exchange for primarily arms and food. The TNOCs on their part, it was established, in illegal trade in wildlife and wildlife resources, exploit similar routes as those utilized in the trafficking of arms, drugs and other contraband. The study further established that corruption-aided poaching, complacency and corruption of officials particularly at transit stage of ivory or ivory products erodes states authority undermining governance and the rule of law. The study established that for ivory to reach its consumer market, the ivory offload network is complex involving TNOCs and aided by state or law enforcement officers at entry and exit ports who are bribed to turn a blind eye<sup>201</sup>. The high profits associated with the illegal trade compared to the low risk in relation to penalties for offenders renders the trade lucrative for TNOCs. This “high profit-low risk” phenomenon is experienced across the states involved in every chain link of the trade be it the range, transit or consumer state.

Chapter four examined the opportunities and challenges available to the international community in view of the security threats posed by illegal trade in wildlife and wildlife resources. CITES was identified as the primary wildlife trade instrument and illegal trade in wildlife trade per definition, takes place outside the said Convention and national legislation. The study established that negotiations within CITES are largely influenced by the protection versus sustainability debate<sup>202</sup>. These conflicting interests have to be weighed and balanced in the negotiation process not only under CITES but also under other Multilateral Environmental Agreements (MEAs). The study identified a primary opportunity under CITES as the trade instrument and it is implemented through national legislation by member states and under its

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<sup>201</sup> Op. Cit., UNODC.

<sup>202</sup> Op. Cit., Reeve.

self-policing mechanism through reporting mechanisms. Other opportunities were identified under both the Lusaka Agreement and the Maputo Convention. A major challenge for implementation of CITES is reluctance of member states in implementation of resolutions and entering of reservations against what would be perceived as resolutions against national interests.

On the challenges, the study observed that the major impediment is weak capacity particularly within the African range states. Porous borders and protracted conflicts within range states or in neighbouring range states make it difficult for law enforcement. The study however noted that overall opportunities for international cooperation and better exchange of information among the international community present a key channel for trade controls.

## **5.2 Study Conclusion**

This chapter concludes this study by revisiting the study hypotheses tied to chapter three. Chapter three discussed the actors involved in illegal trade in wildlife trade and their motivators. The first study hypotheses stated that increased involvement of armed non-state actors and international criminal networks in illegal trade in wildlife resources undermines state stability. Based on poaching trends as well as seizure data, poaching is more aggressive and involves use of automated weapons, necessitating militarization of wildlife protection. This indicates that actors involved at every chain link of the illegal trade they are well funded and more organized, making it impossible for wildlife protection agencies to counter poaching as well as track or trace transit routes.

The study established that poaching funds activities of armed non-state actors. They exchange ivory for arms and food. Arms are supplied by TNOCs in exchange for ivory, which is transported to consumer markets through similar routes used for trafficking of drugs, arms and other contraband. Such arms are used in civil conflicts and they may also be sold to individual

buyers proliferating to household level. The actors involved are able to exploit institutional weaknesses, civil conflicts, porous borders and legislative loopholes in range, transit and demand states to feed the rising demand for ivory and ivory products. A discourse between national legislation and institutional capacities for implementation on the one hand and MEAs such as CITES on the other means that national legislation remains inadequate to support implementation initiatives, protect endangered species and regulate cross-border trade. Domestic politics and national sovereignty over natural resources shape MEAs negotiations with debate between protection of wildlife resources versus sustainable use of wildlife resources. These factors too play a role in the national level implementation of MEAs. Existence of unregulated domestic ivory markets counter international policy in trade controls making noncompliant states joy riders. Attempts have been made to enhance international cooperation and enhance support for national level implementation, such as through the International Consortium on Combating Wildlife Crime (ICCWC).

The second study hypotheses stated that poaching and trafficking of wildlife resources are fueled by corruption undermine governance and the rule of law. The study established that illegal wildlife trade erodes states authority and fuels civil conflicts, threatening national stability, governance and rule of law threatening national stability. The illegal wildlife trade involves poachers, armed non-state actors, international organized crime networks and institutional corruption within the range and transit states. To combat the threat leaders in the international community need to expand and deepen their level of cooperation. Better sharing of information, enhancing implementation of national legislation and regional mechanisms and stricter and enhanced penalties against traffickers and traders, will position governments to counter this transnational crime more effectively.

### **5.3 Recommendations**

This study proposes policy responses to the ramifications of illegal wildlife trade on international security in order to formulate effective appropriate policies to counter the illegal wildlife trade through a targeted collective response. To counter illegal trade in wildlife resources a multifaceted approach is required aimed at strengthening compliance at all levels of the trade chain link.

#### **5.3.1 Strengthen National Legislation**

Discrepancies between countries in their legislation in so far as compliance with CITES and other supporting conventions is concerned, need to be addressed as this creates loopholes and leeway for poachers and illegal wildlife traders to exploit. Compliance requires considerable funding: in public education, sensitization of legislative arm of government and capacity building and therefore countries which have successfully integrated CITES into national legislation, can support others in their efforts to strengthen legal frameworks and implementation, particularly African range and transit states with insufficient resources to enforce legislation and prosecute smugglers.

#### **5.3.2 Strengthen Capacities of Regulatory Institutions**

Strengthening law enforcement and regulatory institutions is paramount to combat corruption which has played a huge role in eroding state authority and rule of law. Regulatory institutions include wildlife management agencies such as Kenya Wildlife Service, management and scientific authorities, customs and the police service. Tapping community cooperation, participation and information sharing is crucial as well. Exchange of information and collaboration among these agencies will facilitate for a harmonized accountability and

monitoring system that will reduce, if not, eradicate corruption aided illegal trade in wildlife resources and apply available resources to boost effective public use and benefit.

### **5.3.3 Increase International Cooperation and Multi-agency Collaboration**

The role of international cooperation in combating illegal wildlife trade cannot be over emphasized. The international community ought to acknowledge the multiple dimensions of environmental crime and its impact on the environment and sustainable development goals and help support and balance the appropriate coordination and sharing of information from stakeholders, such as academia, civil society, national citizens and governments. The international community, to this end, through the UNGA adopted Resolution A/RES/69/314 in July 2015 which encourages member states to “cooperate at the bilateral, regional and international levels to prevent, combat and eradicate international illicit trafficking in wildlife and wildlife products through, inter alia, the use of international legal instruments such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption”. The reluctance of African states to adopt regional measures to apply the regional conventions that bring home the implementation of global conventions, need to be addressed with an effective non-compliance response system as is the case under CITES. A deliberate effort must be undertaken by African states and people to prioritize application of financial resources and gains to African needs and development.

Support need to be strengthened for ICCWC to enable it support member states and other relevant stakeholders to further identify, develop and implement the most appropriate responses to environmental crime. This to a large extent included funding and need for its efforts to be meet by complimenting national level law enforcement measures.

#### **5.3.4 Increase Awareness on Role of Illegal Trade in Wildlife**

Both the demand and supply sides of this illicit trade need to be addressed for effective policy development. Demand has been identified by this study as the ultimate driver of this illicit trade. Thus governments and the international community should focus on largely raising awareness through public campaigns and public education to influence consumer behavior. On the other hand range states need to besides public education, develop sustainable and alternative livelihoods for communities affected by illicit trafficking in wildlife and its adverse impacts, with the full engagement of the communities in and adjacent to wildlife habitats as active partners in conservation and sustainable use, enhancing the rights and capacity of the members of such communities to manage and benefit from wildlife.



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