

**ADDRESSING THE CHALLENGES OF POACHING AND ILLEGAL
WILDLIFE TRADE: LEGISLATIVE FRAMEWORKS; PROSECUTION &
CLOSING TRAFFICKING ROUTES – EXPERIENCES FROM KENYA**

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INTRODUCTION

- I was requested to share lessons from Kenya [and East Africa] on how the ‘poaching scourge’ has been dealt with using:
 - The law;
 - Prosecutions; and
 - Policies aimed at closing trafficking routes.
- The presentation is therefore divided into the following parts:
 - 1. Poaching Trends in Kenya in Recent Years [Elephant and Rhino].**
 - 2. Wildlife Law and Enforcement in Kenya.**
 - 3. Prosecution of Wildlife Crimes in Kenya.**
 - 4. Closing Trafficking Routes.**
 - 5. Conclusion**

THE NATURE OF THE CHALLENGE



- *Elephants in the Dust, the African Elephant Crisis* (UNEP, CITES, IUCN, TRAFFIC (2013):

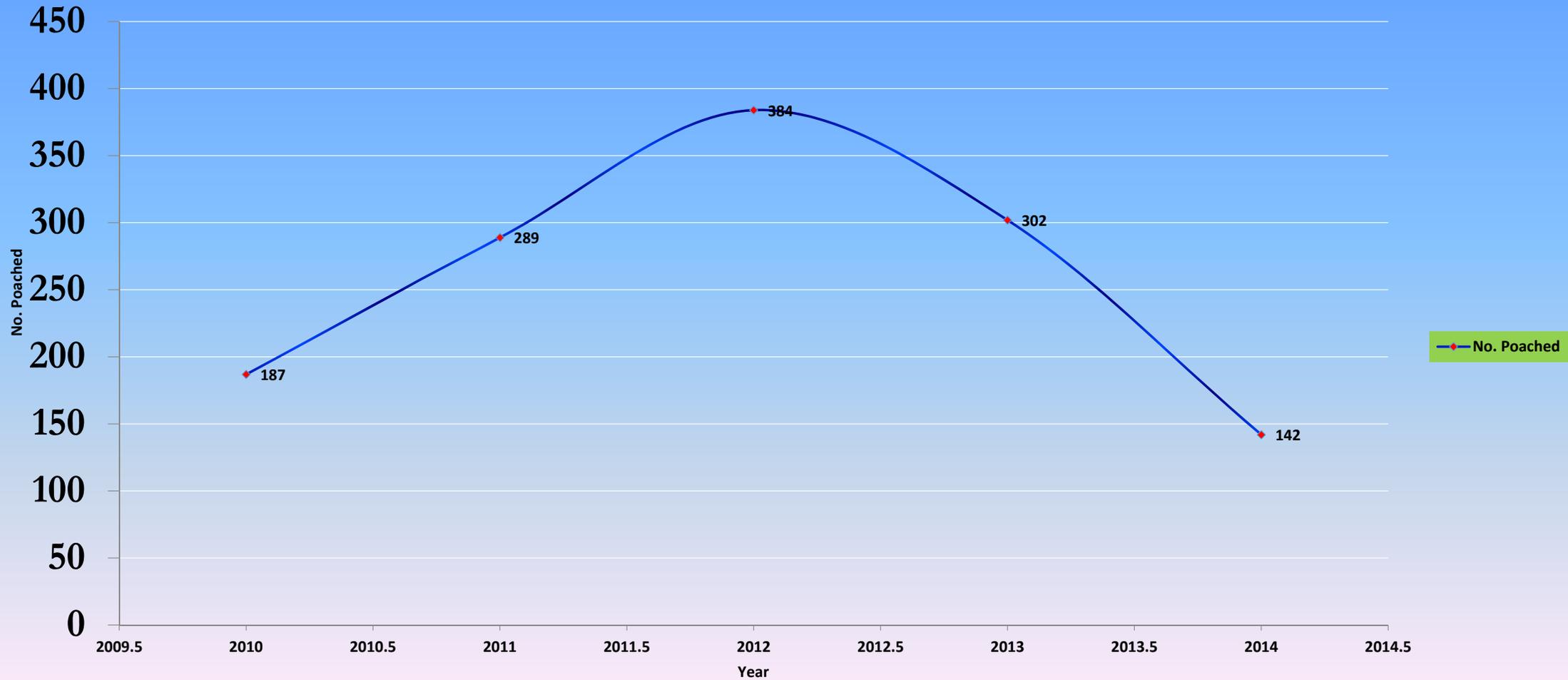
'For many of the range states..., the extent of the killings now far exceeds the natural population growth rates, forcing their elephants into widespread decline and putting them at risk of extinction in those countries...'

'Poaching levels have tripled in recent years, with several elephants killed every single hour of the day. [T]he elephant may soon disappear from whole areas unless urgent action is taken.'

- Black Rhino populations in many African Range States face similar threats. 'Critically endangered' in Kenya. [Current population stands at 670]

1. POACHING TRENDS IN RECENT YEARS (KWS DATA)

Elephant Poaching Trends (2010 - Oct 2014)



2. WILDLIFE LAW & ENFORCEMENT IN KENYA

- The primary legislation is the *Wildlife Conservation and Management Act, 2013* ('**WCMA**'). It repealed and replaced the 'Wildlife (Conservation and Management) Act, 1989
- The **Kenya Wildlife Service (KWS)** is a **specialized wildlife management and law enforcement agency**. It was established in 1989, in response to the poaching crisis prevailing at the time...It was continued as such in the 2013 WCMA.



KWS functions include:

- ✓ **Conserving and managing** national parks and other wildlife protected areas under its jurisdiction, and providing **security for wildlife** and visitors in these areas;
- ✓ Undertaking and conducting **enforcement activities** such as **anti-poaching operations, wildlife protection**, intelligence gathering, and investigations. KWS has armed personnel, authorized to use firearms in the course of their duties.



SOME HIGHLIGHTS RELATING TO ENFORCEMENT

- WCMA was prepared and enacted against the backdrop of **rampant poaching and trafficking** in 2012 to 2013 . Legislative intent, among others, was to deter poaching and trafficking.
- Prescribes very stringent, minimum penalties, especially for offences involving elephants and rhinos or their trophies:
 - s. 92: *‘Any person who ‘commits an offence’ in respect of an endangered or threatened species or any trophy of that endangered or threatened species shall be liable upon conviction to a fine of not less than twenty million shillings [approx. 200,000 USD] or imprisonment for life or to both such fine and imprisonment.’*

ENFORCEMENT CONTD.

- WCMA also creates **offences** in respect of:
 - ✓ **Possession** of or **dealing** in wildlife **trophy** (dealing broadly defined to include **transporting** or **conveying**) without a permit [s. 95] ...Penalty is fine of **not less than** KShs. 1 Million (Approx. 10,000 USD) or imprisonment for **not less than 5** years, or both fine and imprisonment.
 - ✓ **Importation and exportation** of wildlife **species** without a permit [s.99] fine of **not less than** KShs. 10 Million (approx. 10,000 USD) or imprisonment for **not less than 5** years, or both..
 - ✓ **Administrative offences** relating to permits, including false statements and representations; falsification of documents and breach of permit terms.

3. PROSECUTION OF WILDLIFE CRIMES IN KENYA

THE DIRECTOR OF PUBLIC PROSECUTIONS

- Constitution of Kenya, 2010 established Office of the **Director of Public Prosecutions (ODPP)**. Consolidated State prosecutorial power. No other functions, unlike under previous dispensation where Attorney General was both ‘chief government advisor’ and ‘DPP’. Not subject to ‘direction or control’.
- ODPP phased out ‘lay’ **Police Prosecutors in all courts**. All now fully qualified Advocates. Qualified to do court battle with defense Counsel, previously advantaged.
- **2012** – ODPP established a **specialized/thematic Wildlife Crimes Prosecution Unit**. Has [47] Prosecution Counsel spread throughout the country. Only prosecute wildlife-related crimes.

ODPP Contd...

STANDARD OPERATING PROCEDURES AND RAPID REFERENCE GUIDELINES

- Rapid Reference Guide for Investigation & Prosecution of Wildlife Crimes in Kenya:
 1. Standard Operating Procedures
 2. Decision to Charge/ Cooperation/ Minimum File Requirements
 3. Rapid Reference Guide on Relevant Laws:
 - a) Statement of Offence
 - b) Applicable Sentence
 - c) Points to Prove
 - d) Ancillary Powers
 - e) Agencies Required
 - f) Evidence Required
 - g) Sample Charge Sheet
 - h) Drafting Guideline in Bail-objection Affidavit
 - i) Reporting Mechanism
 - j) Relevant Provisions /Guidance on Expert & Digital Evidence

INTER-AGENCY COLLABORATION



- ODPP has championed **inter-agency capacity building** for investigators, Prosecutors and Judicial Officers.
- Twenty Six inter-agency training workshops, all with a common training curriculum, have been held in Kenya between 2013 and 2016 (**ODPP, African Wildlife Foundation Reports**)
- At the **East African Community level, East African Association of Prosecutors (EAAP)**. Established in 2010 to **promote cooperation** among National Prosecution Authorities within the EAC Partner States; **to review legal and policy framework** for the criminal justice sector. Ongoing initiatives.

Kenya - Tanzania Collaboration

- Kenyan and Tanzanian authorities engage in **cross-border wildlife security operations targeting illegal firearms; illicit trophy trade.**

3. APPROACH TO PROSECUTION IN KENYA

- The **WCMA, 2013** remains the **primary law** for combating poaching and wildlife trafficking.
- **Multiple players**, involvement of the criminal gangs, and **intricate networks at various levels of the poaching chain** necessitate recourse to other laws...‘**Full range of the law**’ approach. Laws include:
 - ✓ **Prevention of Organized Crime Act, 2010;**
 - ✓ **Anti-Corruption and Economic Crimes Act, 2003;**
 - ✓ **Proceeds of Crime and Anti-Money Laundering Act, 2009;**
 - ✓ **The East African Community Customs Management Act, 2004;**
 - ✓ **Kenya Revenue Authority Act;**
 - ✓ **The Firearms Act; among others.**

IMPACT OF WCMA, 2013 & INTER-AGENCY EFFORTS

- Wildlife crime no longer a ‘misdemeanour’ but a serious offence (felony). Custodial sentences imposed as the norm. **Clean break from previous Wildlife Act.**
- Conviction rates have increased from 4% to 97% since formation of specialized prosecution unit by DPP. Examples:
 - ✓ January 2014: **Chinese ivory smuggler** on transit from Mozambique was arrested with 3.4 kgs of raw ivory – Fine of KShs. 20 Million or 7 yrs. in default.
 - ✓ July 2016 - **Feisal Ali Mohammed**, a Mombasa poaching kingpin was convicted for possession and attempted sale of ivory worth 430,000 USD. **Jailed for 20 years** and **ordered to pay fine of KShs. 20 Million** (Approx. 200,000 USD) Feisal was sought and listed among the 9 “**most wanted**” for **environmental crimes** by Interpol. He was arrested in Dar es Salaam, Tanzania in December 2014.

CHALLENGES

Progress in the right direction but some challenges have been experienced:

- ✓ **The full legislative intent of s. 92 of the WCMA has faced challenges** owing to inconsistencies and lack of clarity...challenged on appeal. High Court of **Kenya...nature of offences not explicit.** More a 'punishment' provision that a 'penal one' Curative amendments are underway.
- ✓ High minimum fines and penalties have led to more full trials. Increased burden on limited human resources [**investigators, prosecutors, scenes of crime officers, expert witnesses**]
- ✓ **Many appeals** are pending before the High Court. Likely to proceed to higher courts on second appeals, compounding resource challenges above.
- ✓ KWS established a **forensic laboratory...Limited expert personnel** for adduction of DNA evidence linking ivory and rhino horn to specific crimes

4. CLOSING TRAFFICKING ROUTES

- Kenya is **both a source and a transit country** for illegal trophies, owing to relatively well developed transport network...The national carrier, Kenya Airways, operates direct flights from Nairobi to eastern Asia, where there is rising demand for wildlife trophies in the illicit markets... **‘white gold’ and rhino horn** for imagined **‘medicinal properties’**.
- Kilindini Port in Mombasa and Jomo Kenyatta International Airport, Nairobi have been identified as the leading export points for **large volumes of wildlife contraband leaving Kenya.**
- Electronic money transfer [MPESA] makes it easy to send and receive money within and out of Kenya.



RESPONSES

KWS has put in place a number of enforcement measures:

- ✓ Deployment of **sniffer dogs** and **handlers trained in gathering evidence** at major exit points, including JKIA in Nairobi and Kilindini Harbour in Mombasa. Has been particularly effective in detecting contraband trophies. Major seizures.



- ✓ Use of **scanners** for enhanced surveillance and detection of illicit wildlife products

- ✓ Breaking down ‘silos’, and nurturing **robust partnerships** with:
 - **other uniformed services** including Interpol, the National Intelligence Service, National Police Service, Directorate of Criminal Investigations – sharing of intelligence and information; surveillance of poachers.

 - **Civilian agencies** [Kenya Ports Authority, Kenya Airports Authority, Kenya Revenue Authority] in monitoring inbound and outbound cargo;

RESPONSES CONTD.

✓ **Communities** – KWS offers paramilitary training (at subsidized cost) to wildlife scouts from private sanctuaries at its Law Enforcement Academy and facilitates their appointment as Kenya Police Reserves after the training; joint security operations.



✓ **NGOs** – KWS supported by the African Wildlife Foundation in purchase of sniffer dogs, training of dogs and dog handlers.

CONCLUSIONS

- Poaching and trafficking wildlife products is a **complex, multi-dimensional challenge** with far-reaching ecological and economic ramifications.
- There is **no silver bullet** that will put an immediate end to the poaching ‘pandemic’ in Africa
- Appropriate **multi-pronged, coordinated national, regional and international approaches to augment the legal and policy frameworks; spirited enforcement is essential** if Africa’s elephants and rhinos are to be rescued from the imminent threat of condemnation to extinction.

THANK YOU !

