

**A PhD Thesis:**

# **UNVEILING THE CHALLENGES OF CURBING WILDLIFE CRIME IN KENYA:**

***Evaluating the 3Cs solution.***



**THIS THESIS IS SUBMITTED TO THE SCHOOL OF LAW OF THE  
UNIVERSITY OF BOLTON, IN FULFILMENT OF THE REQUIREMENTS  
FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY (PhD)**

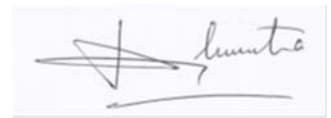
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**JULY 2018**

## **STATEMENT OF ORIGINALITY:**

I hereby confirm that this Research Thesis submitted to the University of Bolton in partial fulfillment for the award of the degree of Doctor of Philosophy represents my own original work carried out at the University's Faculty of Business and Law during my candidature as a full time PhD student. I declare that the materials in this Research Thesis have not been submitted either in whole or in part for the award of any other diploma or degree at this or any other university. To the best of my knowledge and belief, this Research Thesis contains no material previously published or written by any other persons or institutions except where due reference and acknowledgement has been made.



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## **DEDICATION:**

DEDICATED WITH EXTREME AFFECTION, APPRECIATION AND GRATITUDE TO: My Parents, my Wife and Children, my Supervisor, my siblings and our extended families and also to all the Game Wardens, Rural Communities neighboring game parks and all other dedicated Actors involved in combating wildlife crime in Africa.

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## **GLOSSARY OF ACRONYMS**

<b>ACF</b>	<i>Conservation Foundation</i>
<b>AWI</b>	<i>Animal Welfare Institute</i>
<b>CBNRM</b>	<i>Community-based Natural Resource Management</i>
<b>CC</b>	<i>Community Conservation</i>
<b>CFFC</b>	<i>Community-Friendly Fortress Conservation</i>
<b>CITES</b>	<i>Convention on International Trade in Endangered Species of Wild Fauna and Flora</i>
<b>CJS</b>	<i>Criminal Justice System in Kenya</i>
<b>CM</b>	<i>Collaborative Management</i>
<b>CPS</b>	<i>Crown Prosecution Services</i>
<b>EAGLE</b>	<i>Eco Activists for Governance and Law Enforcement</i>
<b>EIA</b>	<i>Environmental Investigation Agency</i>
<b>EU</b>	<i>European Union</i>
<b>GDP</b>	<i>Gross Domestic Product</i>
<b>HWC</b>	<i>Human-Wildlife Conflicts</i>
<b>ICCWC</b>	<i>International Consortium on Combatting Wildlife Crime</i>
<b>ICDP</b>	<i>Integrated Conservation and Development Projects</i>
<b>IFAW</b>	<i>International Fund for Animal Welfare</i>
<b>IPCC</b>	<i>Intergovernmental Panel on Climate Change</i>
<b>IUCN</b>	<i>International Union for Conservation of Nature and Natural Resources</i>
<b>KWS</b>	<i>Kenya Wildlife Services</i>
<b>NAO</b>	<i>Nairobi Animal Orphanage</i>
<b>NGO(s)</b>	<i>Nongovernmental Organization(s)</i>
<b>PAO</b>	<i>Protected Area Outreach</i>
<b>PAWM</b>	<i>Planning and Assessment for Wildlife Management</i>
<b>SADF</b>	<i>Southern African Defence Force</i>
<b>SASUSG</b>	<i>Southern Africa Sustainable Use Specialist Group</i>
<b>SCP</b>	<i>Selous Conservation Programme</i>
<b>SGR</b>	<i>Selous Game Reserve</i>

<b>TI</b>	<i>Transparency International</i>
<b>UK</b>	<i>United Kingdom</i>
<b>UN</b>	<i>United Nations</i>
<b>UNCCPCJ</b>	<i>United Nations Commission on Crime, Prevention and Criminal Justice</i>
<b>UNEP</b>	<i>United Nations Environment Program</i>
<b>UNSC</b>	<i>United Nations Security Council</i>
<b>UNU</b>	<i>United Nations University</i>
<b>UNU-IAS</b>	<i>United Nations University Institute of Advance Studies</i>
<b>WCO</b>	<i>World Customs Organization</i>
<b>WEMS</b>	<i>Wildlife Enforcement Monitoring System</i>
<b>WSPA</b>	<i>World Society for the Protection of Animals</i>

## **THE ABSTRACT**

This is an original thematic research thesis that investigated the causes that lead to the current unprecedented escalation of wildlife crime in Africa that threatens to destroy our global environment by decimating and driving our wildlife which is a global heritage to extinction. The research study which was conducted both in Kenya and in the United Kingdom, has developed unique and distinguishable proposals, methods and recommendations, referred to as the 3Cs solutions, which can be effectively utilized in combating and curbing wildlife crime at a global scale.

Nature has provided very delicate and sophisticated ecological systems where all plants and animals have very important roles that they play which keeps this planet Earth's environment habitable. The realization that the future of this World and the entire human race is greatly linked to these global ecological systems and their biodiversity balance has caused a new global awareness and eagerness to view these eco-systems and the entire global environment as one and to halt destruction of any of these eco-systems taking place anywhere on planet Earth. Wildlife crime is currently the greatest threat to the ecological system and its bio-diversity balance in Africa and by extension to the global environment, as it is destroying an ecological and bio-diversity system of a globally important biome and green belt area south of the Sahara.

East, Central and Southern Africa have been identified as the largest source markets that supply illegal wildlife trophies to the consumer markets in the Far East Asia, Western Europe the Middle East and the USA. Yet some of these supply source countries have functioning legal systems that have failed to curb this crime. Kenya is one such country. Kenya was selected for this study because it is the region's major logistics and trading hub for illegal wildlife crime trophies. Kenya has a functioning Criminal Justice System mandated to combat wildlife crime yet it has badly failed to do so. The three departments within that Criminal Justice System which are mandate to protect wildlife by enforcing wildlife crime laws in Kenya are Kenya Wildlife Services (KWS) warders for policing, the Prosecution and the Judiciary

The main purpose of this study was therefore to investigate and understand why a functioning legal system is unable to combat wildlife crime by determining the challenges it faces in curbing this vice. The study focused on wildlife crime committed for commercial export purposes and identified 5 prime species that are targeted for their trophies for illegal export which are the elephant, rhino, lion, leopard and cheetah herein after referred to in this study as the 'Charismatic Five.

The study employed Empirical research methods to conduct the research and to answer the research questions. Qualitative and quantitative research techniques were utilized. The study adopted the descriptive survey research design in order to assist the researcher achieve the objective of the study. Five national parks were selected for the study being the parks where the charismatic 5 wildlife species are abundantly found and therefore the targeted parks by poachers. The population of the study were therefore Kenya Wildlife Service Wardens in the selected national parks, Magistrates and Prosecutors serving in the courts where these parks are located.

A peer review of this study's research tool was first done followed by pilot study carried out at the Nairobi National Park in Kenya, which tested and found the research tool to be suitable, reliable and valid to achieve the overall research objectives. The main survey was conducted in Kenya and took over 4 months for data collection to be completed. Data analysis was done in the United Kingdom. Inferential statistics were used in drawing conclusions. Out of the 156 questionnaires distributed, 152 were completed and returned, representing a 97% response rate due to massive interest shown on the topic by the respondents. The study identified 20 causes and challenges being experienced within the criminal justice system and made recommendations for each challenge that offers the best solution to resolving that challenge.

This research study has developed and promulgates some conclusive proposals as its original contributions to knowledge. These contributions are supported by analytical and empirical evidence from this research study and are as follows: Firstly, it challenges the Apocryphal Cause that corruption is the cause of the escalation of wildlife crime. Based on the evidence collected through this research, it can now be categorically and authentically proved that the sudden upward surge of demand in wildlife trophies in the consumers markets of the Far East Countries is the leading cause of escalation of wildlife crime in the source markets like Kenya.

Secondly, this study has developed a new concept called 'The 3Cs' concept, through which it proposes and offers new methods for combating wildlife crime. The concept is conceptualized and propounded in a pack consisting of The Concept; The 3Cs Test; The 3C's Model; and, the 3 Cs Application Tool Kit.

Overall, it is sincerely hoped that the finding of this research will dominate discussions in the global arena dealing with wildlife crime and contribute tremendously as a solution to this global cause

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## **CHAPTER ONE**

### **INTRODUCTION**

Nature has provided a very delicate and sophisticated biodiversity and ecological balance where every animal and plant, from the smallest known living bacteria to the gigantic blue whale and from the smallest plant to the giant Trees in the Amazon and in Africa, whether on land or in the seas, all have a very important role that they play, in order maintain this Planet Earth as a habitable Planet.

These biodiversity and ecological factors working meticulously together form this planets eco-system which makes it the only known Planet, in the entire Universe, that is habitable by us humans. (NASA, 2015). Our very existence in this Universe is therefore linked to this eco-system. The only known important role and function given to the intelligent human species in this elaborate eco-system, is to conserve and protect it by carefully managing the existing plants and animals which do all the other work. Without every living animal and plant performing its role and function in order to maintain the very important eco-system balance, Planet Earth would become uninhabitable and the human race would become extinct from the natural catastrophes and disasters that would follow. Like the Dinosaurs before the ice age, the human race will become history. Therefore maintaining and managing this eco-system is a very important function and responsibility bestowed on the human race at its creation. The Bible records:

In the Book of Genesis (1:26) on the Sixth Day then God said, "*Let Us make man in Our image, according to Our likeness; and let them rule over the fish of the sea and over the birds of the sky and over the cattle and over all the earth, and over every creeping thing that creeps on the earth.*"

To rule means to govern with a set of rules that will enable those who are governed, be they plants or beasts to also flourish and prosper in their natural way, so as to enable them to perform the functions bestowed on them by nature, for the benefit of planet earth and all living things that exist on it, including humans themselves.

However, humans have totally been unable to rule or govern and are therefore unable to manage and maintain planet earth's eco-system that is so important to them. The Intergovernmental Panel on Climate Change (IPCC 2007), The Fourth Assessment Report (AR4, 2007) warned that the warming of the climate system is unequivocal and that it is affecting ecosystems worldwide. Human activities are now contributing to the adverse climate change being experienced globally. (IPCC, 2007) Wanton felling of trees in the rain forest and poaching and destruction of wildlife that is important to the growth of plants and trees continues unabated. Humans also continue to release billions of

tons of carbon dioxide (CO<sub>2</sub>) and other heat-trapping gases, known as greenhouse gases, into the atmosphere every year that contribute to the destruction of the Ozone Layer and over-heating of planet earth. (Spencer 2016). In terms of contribution to this tragedy by nations, developed nations stand accused of destroying the environment in the air by releasing billions of tons of harmful gases into the environment in the name of industrialization. (Egan 2010). Developing nations stand accused of destroying the environment on the ground by wanton felling of trees and clearing green areas for human settlement and also of their government's security agencies inability to protect the wildlife all of which is contributing to the current destruction of the entire global environment. The harmful gases, destruction of the green vegetation and slaughter of wildlife interferes with nature's ecological and bio diversity system resulting in the environment itself not being able to use the mechanisms (i.e. the ecological and biodiversity balance) to repair and maintain itself. (IPCC, 2007, Griffin, 2015) This has led to global warming as layers that protect harmful direct sunlight rays from the sun like the ozone layer are depleted. Consequently ice bergs at the Poles are melting leading to rising sea levels, hurricanes, storms and others natural disasters from the ocean while on land there is drought and flooding sometimes brought about by natural phenomenon like El Nino and La Nina. That is what has caused current adverse Climate Change and we are now in reality living in the dreaded Movie scenes that we saw in movies such as in the 'End of the World – 2010'.

Whilst many scientists have for years been warning us about the dangers associated with destruction of the planet's ecological and biodiversity systems through humans excessive environmental harmful activities which were causing depletion of the Planet's protective layers against harmful direct sunlight beams like the ozone layer, that as a consequence was leading to over-heating of planet earth and melting of ice bergs at the poles, the dangers appeared in the very distant future. (Griffin, 2015; Spencer, 2016). It is not until recently when increased number of storms, hurricanes and other natural disasters and catastrophes lead leaders to seek a scientific explanation as to what was going on. (Griffin, 2015. IPCC 2007) Pictorial images from the Poles via satellites pictures showed that gigantic Icebergs that were meant to exist for the next 200 years had melted due to the excessive over heating of planet earth's environment and ocean levels had risen. (Steinber 2017) Earth's flooding and destruction has now begun as forewarned by the scientists, and the distant future has now become the near future. Consequently, the conservation agenda has become a real concern and in the forefront of all our minds.

We know the importance of trees and other plants in cleaning up the atmosphere of the harmful gas and also bringing rain fall without which the human species cannot exist as they will be adversely

affected in terms of health and agricultural productivity as a food source. (Wood, 2000). Around the World, there exist a few gigantic green belt areas and biomes where the great rain forests are found and are the largest sources of rain water and water tables for the planet and also reduce the greenhouse gas effect. These are very important areas and biomes in the maintenance of the environments ecological and biodiversity system as this ensures global environmental protection against harmful gases and sun rays and food productivity through controlled seasonal rainfall. (Perrings; 2008, Griffin, 2015) These green belts biomes of which the main ones are found around the equator run through the centre of Africa called the great green belt and the Amazon in South America. They are richly endowed with vast and variety of flora and fauna. Destruction of any one of these great Green Belts biomes will have severe adverse effect to the entire Planet's environment, from the North Pole to the South Pole. The destruction in the poles is already on going. (Steinber 2017).

Plants and wildlife existing in all green belt biomes existing around the planet all have an integral and interlinked role and relationship which they each perform as a part of the global ecological system and biodiversity balance mechanisms that sustains our environment. None can survive without the other while the suitability and sustainability of the global environment and by extension the existence of humans on this planet, is dependent on this ecological and biodiversity balance that the wildlife and plants maintain. (IPCC, 2007, Griffin, 2015) For the first time in history, it is now being understood and clearly seen by all global citizens of this planet that beyond scientific terminologies and explanations, the importance of a healthy global environment is dependent on maintaining the environment's ecological systems and biodiversity balance (Griffin, 2015) and that the wildlife and plants play a very important integral and interlinked role in that regard and do not exist on this planet for humans entertainment, pictorial beauty or to offer a tree shade

The realization that destruction of any part of the planets ecological and biodiversity systems in one part of the planet can have severe adverse environmental repercussions, like climate change and over- heating of the planet that affecting the entire global environment, has led to an unprecedented international awareness on all environmental matters with keenness at looking at the entire global environment as one.(IPCC 2007, Griffin, 2015; Spencer 2016), Therefore now for the first time in history, there are wider calls for a common international approach to global environmental matters, global environmental management and international environmental laws to be applied and enforced across international borders, continents and oceans. (Esty and Ivanova 2001; IPCC 2007; Griffin, 2015) Re-examination of existing international environmental organizations their policies and regulations is currently under way including setting up environment law enforcement management

organizations with global reach across all borders and creating new international environmental organizations while revamping the older organizations by giving them more powers and funding which they hitherto did not enjoy. (IPCC 2007)

Within the context of this thesis, in Africa, south of the Sahara, there exists one of the greatest and very important Green Belt areas in the entire world. It transcends through several African nations, including Kenya. It lies between two deserts, the Sahara in the North and Kalahari to the south. The partitioning between the deserts and the green belt are called the Great Green Walls. This green belt is very richly endowed with vast and variety of beautiful flora and fauna including splendid and spectacular wildlife of iconic picturesque which are found here and nowhere else on this planet. Here within this green belt, there exists a very delicate ecological and biodiversity balance that naturally functions as it should on daily basis between the wildlife and the vegetation. Wildlife play a very important, integral and interlinked role with the green plants and any destruction or removal of any species within any habitat will have very serious consequences.

In ecology, removal of a wildlife species and thereby stopping the role it plays in the areas ecosystem will lead to what is called terrestrial tropic cascade. The tropic cascade occurs when a predator in the five levels food chain is removed. As a consequence, this results in either increasing or suppressing the abundance of the predators on the level above or below there by dramatically altering behavior and growth of animals and plants in the food web and affecting the ecological and biodiversity balance of the entire area the animals exist within. This mechanism was first described by Aldo Leopold, who noted the increase of elks and other herbivores resulted in grazing pressure on grasslands and this was adversely affecting the areas riparian ecosystems. This was caused by the removal of wolves in the food web which led to an increase in the elk population as its next predator in the food level which controlled the elks had been removed. (Leopold. A., 1949).

This fact is very well captured in the documentary film "*How wolves change rivers*" narrated by George Monboit (2014). This documentary film shows the effect of the reintroduction of wolves in Yellow Stone National Park in the USA after their absence for 70 years. Within that period, after their removal by humans through hunting the wolves down for various reasons like for their fur, protecting livestock and also due to the natural fear humans have for apex predators as they are also capable of hunting humans. But in the case of the wolves there was also an added fear associated with superstition of them transforming into werewolves or half human and half wolf in times of full moon, a superstition brought about by old folk tales, publicized by cinematography movies and made plausible by the scary and shrilling howling that wolves make during such times.

The removal of the wolves transformed the area as the elk's population increased leading to over grazing resulting in a total breakdown and destruction of the ecological and biodiversity system in the area affecting all animals, plants and even rivers. The re-introduction of the wolves amazingly changed this destruction and the ecosystem dramatically improved including the flow of rivers and other animals like birds, rabbits, and other smaller herbivores, carnivores and insects returned. This is a classic example of the adverse effect that will follow by the removal of any wildlife species be it an herbivore or carnivore in an areas food web chain. It will transform an entire ecosystem for the worse in a very short period

Amazingly, even with warnings from international organizations like the IPCC which in its 43<sup>rd</sup> session sounded yet another warning that global warming is already having significant and harmful effects on our communities, our health and our climate. which is affecting all countries north to south of the planet, but especially more in the islands due to rising sea levels as a result of melting ice bergs and in the third world countries where farming and food production is still dependent on timely seasonal rainfall but now the El Nino and La Nina phenomenon have become common and are lasting longer (IPCC, 2007. Griffin, 2015; IPCC 2016)), destruction of these biomes continues unabated. While images of all these catastrophes taking place anywhere in the world are broadcasted via television and internet with wide global coverage so everyone is aware of the precarious state of our global environment, some human beings are still busy destroying the eco-system, either by felling trees, engaging in wildlife crime like hunting (poaching) down these important endangered wildlife species, while others are busy buying wildlife products and trophies poached from critically endangered and extremely valuable wildlife thereby fueling the slaughter and fast tracking the drive to extinction of these wildlife.

Wildlife crime is currently the greatest threat to biodiversity and ecological balance in this great green belt biome and region in Africa.(WWF 2012) The entire species in the endangered species list namely the Elephant, Rhino Lion, Leopard and Cheetah in this area have of late been hunted down to the extent that their extinction appears imminent in the next 10 years. (WWF 2013, WWF 2017) Wildlife crime though once considered a victimless crime has now been upgraded to the same level of serious international organized crime as human and drugs trafficking by the UN Commission on Crime, Prevention and Criminal Justice (UNCCPCJ) through its Resolution of 26 April 2013. A world without African wildlife roaming in the wild is a high possibility if the current upsurge of wildlife crime is not curbed as most of these important wild animals are already on the critically endangered species list of CITES It is therefore important that this runaway wildlife crime in Africa

is curbed to protect and stop the destruction of this delicate ecological and biodiversity balance in this entire biome and green belt area in Africa. The realization that the future of this World and the entire Human Race is greatly linked to the global eco-system and its prominent biodiversity and ecological balance has caused the new awareness and eagerness to halt any destruction of the eco - system that is taking place anywhere on planet Earth.

Kenya is technologically and logistically the most advanced country in the entire East and Central Africa Region where the Great Green Belt sits. The others are: Tanzania, Uganda, Congo DRC, Congo Brazzaville, Rwanda, Burundi, Southern Sudan, Somalia and the Central African Republic (CAR). However, most unfortunately these countries are today the largest global source market for the illegal wildlife trade products and trophies. Kenya due to its strategic positioning and advanced telecommunication system within East Africa region makes it the region's hub for this illegal wildlife global trade. It is the export hub for these products to Europe especially the UK, North America and to the Far East markets especially China and Taiwan which have the largest Consumer markets for those products (WWF, 2012). Therefore in order to deal with wildlife crime from the source market in Africa, Kenya is the best starting point as this will enable us to appropriately understand and analyze this problem that has global ramifications.

Once a problem with global ramification has been identified, determining the effective action that needs to be taken and at what scale it is to be applied is the most important thing for sustainably and effectively combating the problem. It requires adjusting the lens until the problem is clearly visible, explicable, can be analytically dissected into portions that can be explicitly and intelligently analyzed and are researchable to solve the puzzle and give credence to the discovery. Similarly, the action to be taken to solving this problem, must also be examined critically and thoroughly within the scope and scale of the microscope to ensure it is the solution that will solve the puzzle and cure the problem. That is therefore what this thesis seeks to do. By administering theoretical, conceptual and empirical research analysis to this study at the appropriate scale, the research problem will be solved.

This introductory chapter of this thesis discusses the background of this research project, including the research problem, research objectives, research questions, the scope, the basic framework, brief methodology and the research study intended contribution to knowledge. Accordingly, this Chapter reviews the concept of wildlife crime from the perspectives of corruption and governance in Kenya as well as articulates the research hypothesis.

## **Background to the Study**

According to Blevins, & Edwards, T. (2009), the history of wildlife crimes commences in the 1600's with the first laws regulating hunting and fishing being legislated and implemented in England in an effort to protect the wildlife and properties of the landowners and the aristocracies. However, because of the challenges associated with prosecuting an offence without a human face or without a testifying complainant, such crimes were considered victimless and were problematic to prosecute. In Africa at time, hunting wild game especially herbivores was both a source of food and a cultural practice.

Today however, “natural disasters associate with the current adverse climate change has caused an increase in awareness of the dangers associated with the degradation of our environment and the realization that our complex web of life on earth depends on careful and thoughtful use of wildlife species and their habitats” (WWF 2012). It has now become abundantly clear that protecting parks, swamps, rain catchment areas, rain forests and green belt areas are a waste of time if we do not also protect the wildlife that live in those areas. These wildlife probably play the most important role in conserving the vegetation in those areas through pollination and trimming the vegetation to ensure healthy growth of the vegetation is sustained and nutrition to the soil is maintained. That is the ecological and biodiversity balancing systems of the environment that takes place on a daily bases in those areas. Every species in the existing flora and fauna has a role it plays in that ecological and biodiversity balance. Wildlife crime is therefore a threat to that balance. (WWF 2017)

Though most countries have some legislation against wanton hunting and poaching it must also be noted that severity of the offence seems to vary depending on whether the animal is on the endangered species or not. Therefore any successful legislation on environment laws must include protection of all wildlife and stiff penalties for combating wildlife crime.

Lack of cohesion among nations in Africa who are members of CITES has not helped matters much as some nations demanded and were allowed to sell stock piles of endangered wildlife trophies in 2008. This opened the flood gates for renewed poaching in endangered species and prosecuting persons found with the trophies became impossible. After this major set-back in combating wildlife crime and conserving endangered wildlife species, Kenya was the first country to burn all its stock piles of wildlife trophies and has done so consistently, the latest being in October 2015. The message it wanted to convey by setting its stock pile of ivory and other wildlife trophies on fire was symbolically that there should be no trading allowed in wildlife trophies for whatever reasons and that these trophies were only worthwhile to the world when they were on the wildlife species that



they belonged to when it was alive. The ivory and other wildlife trophies are now useless bones and parts that cannot in any way help the human race. This set the pace for a total ban on trading in endangered wildlife species by other nations with stockpiles. Many other nations have since followed suit. Legislation of laws to deal with wildlife crime has also varied from nation to nation. For a crime that must have international mobility from nations which are the source markets to nations that are the consumer markets, this should have a strong effect in combating wildlife crime as a crime and conserving endangered wildlife species. But the opposite is the reality on the ground.

Consequently, Wildlife crime though once considered a victimless crime has now been upgraded to the same level of serious international organized crime as human and drugs trafficking by the UN Commission on Crime, Prevention and Criminal Justice (UNCCPCJ) through its Resolution of 26 April 2013. The realization that if we allow the greed of a few individuals to destroy the delicate biodiversity and ecological balance through wanton destruction of endangered species of our wildlife, will lead to the absolute destruction of the earth and the extinction of the entire human species in the near future.

### ***Wildlife Crime***

Wildlife crime once considered a Victimless Crime, is defined as including “offences like poaching, killing or disturbing protected species, and illegally trading in endangered species” (Wildlife and Countryside Act 1981, UK). In Kenya, it includes capturing, killing, poaching, trading or being in possession of any animal not being a domestic animal or any part of such animal including the eggs (The Wildlife (Conservation and Management) Act, 2013. Kenya). A common definition of wildlife crime “states that it is any violation of a criminal law expressly designed to protect wildlife” (Blevins, & Edwards, (2009).

The effect of uncontrolled wildlife crime in Africa has been catastrophic.

*“Across the continent, for the first time, the number of carcasses recorded as a result of poaching exceeds the number reportedly dying from natural causes”* wrote Jim Leape, the Director General of the World Wildlife Fund in the WWF Report of 2012.

Will Travers the CEO Born Free Foundation UK, wrote in Africa’s Killing Fields Revisited in 2012, that.

*“The bloody ivory trade has reached new heights of destruction and depravity in 2012”* (

The single largest threat to wildlife in Kenya is poaching.

“In tourist-friendly Kenya, the Kenyan elephants may face extinction by 2023, if poaching persists. Unless this crisis is averted, in 10 years there will be no wild elephants left in Kenya. At least 183 elephants have been killed in the East African nation this year, 15 of which were killed in one day, destroying an entire elephant family, in the Tsavo East National Park. Seventeen rhinos were poached in the first 10 weeks of this year” (United Nations News Report June 2013). In 2012, 384 elephants were slain. Expectations are that this year will be even worse (Standard Newspaper Media Report, 2013). Not since the bloodbaths of the 1980s has poaching been so severe. During that decade, the Kenyan elephant population dropped from 165,000 to 16,000 (KNBS Report, 2012).

Wildlife crime must be read and understood not only as a serious offence by itself, but also one with potential of serious cross- over tentacles to other serious crimes like terrorism, human trafficking, narcotics drugs trade, illegal arms trade and organized crime and is also used as a source of revenue to fund militias in civil war strife torn countries in East and Central Africa, where human rights abuse is the order of the day. But also of concern is the effect it is having on the Government systems in East and Central Africa. It is a fact that corruption leads to poor governance and erosion of a State’s ability to maintain law and order. It eats at the supporting fabrics of the state and that is law enforcement, making the states weak and venerable. (Gastrow,2011).

### *Corruption and Wildlife Crime*

Corruption, which is defined as ‘the unlawful use of public office for private gain’ (Transparency International, 2003), is an ancient and widespread affliction and a systemic feature of many economies (Azfar and Swany, 2001). It manifests itself in a variety of ways, including the embezzlement of funds, the demanding of bribes for compliance, patronage or political influence, and the acceptance of bribes to overlook illegal activities (Davis, 2004). The added costs that corruption places on society, and its impact on investor and donor confidence, generally limits economic growth and productivity (Mauro, 1995; Kauffman, 1997; Tanzi, V. (1998); Corruption Around the World. IMF Staff Papers. Washington, D.C.: International Monetary Fund (December). Campos et al., 1999; Doh et al., 2003; Lambsdorff, 2003; Rock & Bonnett, 2004). This is particularly so in developing countries and those with weak or transitional governments (Sajo, 2003; Tanzi, V. & H. Davoodi. (1998). This way, it leads to under development in nations where it exists, which includes poverty, unemployment, poor distribution of a nation’s wealth, and wanton destruction of the nation’s natural resources, illiteracy, poverty, hunger and diseases.

When corruption penetrates institutions of the Criminal Justice System of any nation, it weakens law enforcement and makes Mockery of Justice. Criminality and criminal activities become the order of

the day as organized gangs and militias' takeover. Finally, there is a total breakdown of law and order and the nation becomes a failed State.

The effects of a failed State will fast be felt by the neighboring countries through influx of refugees and ultimately through smuggling of illegal products and proliferation of arms. There will be wanton destruction and sale of anything sellable in the failed state including its wildlife, for food and as sellable trophies, in order to arm and cloth the militias. (Gastrow 2011) After these are depleted, the militias will move into the stable neighboring countries seeking anything easily reachable, sellable, or edible. Since the wildlife exists in isolated areas, they become the fast victims in the neighboring stable state as they are easy to targets for food and for trophies for sale. These neighboring stable countries like Kenya generally have porous borders through which the militias easily walk in and out.( UN, 2008) *United Nations Report on the Monitoring Group on Somalia Pursuant to Security Council Resolution 1853 (2008)*

Kenya is a live example of this situation. One of its neighboring countries, Somalia is a failed state. One of the militias operating within it is a terrorism organization called Al-Shabab with direct links to Al Qaeda. This terrorist and criminal gang infiltrates Kenya at will and has caused a lot of human and wildlife casualties through terrorism and criminal activities of poaching in Kenyan parks. The Kenyan government is currently constructing a wall along this porous Kenya Somalia border at a great cost for this developing country.

These militias groups operate with links to other International Organized Crime Syndicates. The syndicates sell arms to the militias in exchange for anything illegally sellable in the international illegal markets. These includes wildlife trophies which are currently very profitable A source market is thereby created and because of the need for transnational and multinational mobility of the illegal products to the consumer markets in overseas continents, a stable and technologically advanced country like Kenya is very important ingredient for the Syndicates to complete the crime mix.

Organized crime and corruption are different sides of the same coin (Gastrow, 2011). These international organized crime syndicates have the sophistication, experience and resources to penetrate a gullible criminal justice system and corrupt it to the extent that not only does it ensure that the criminals operate freely and with impunity but also protects them and covers up for them by clearing their activities and making them look legitimate. An example is where ex-parte 14 days prohibitory orders are issued by a court of law against a search of a premises where illegal products are suspected to be stored in order to give the criminals time to clean up and put in legitimate

products as cover ups. Consequently a criminal justice system operating like that is in all essence showing or teaching criminals how to circumvent the law and is not worthy the name. This research seeks to investigate the extent and effect of corruption if any within the criminal justice system in Kenya as pertain to law enforcement and prosecution of wildlife crime and the effect this has on wildlife conservation as a result.

## **Governance and Wildlife Crime**

Governance is the set of processes, policies, regulations, systems and laws that affect the way a country, its institutions, societies and system of government operations, are directed, managed, administered, controlled and essentially governed. Proper and equitable governance insinuates that these mechanisms must operate in way that the rights and interests of all stakeholders are observed in the spirit of democracy. It must enhance accountability and confidence in government management and administrative structures. The link between superlative and responsive governance and improved economic empowerment and development, has stimulated demand for monitoring the quality of governance being delivered across most nations both internally and externally.

Superlative and responsive governance is found in those nations where the governing authority and its institutions, structures and instruments of governing are answerable, effective, efficient, equitable and provide for public participation in decision. Abuse of power and impunity is therefore totally unacceptable in establishing good governance. Corruption is the number one enemy of good governance.

Good governance in institutions that manage Kenya's wildlife resources and also those that are entrusted in law enforcement pertaining to wildlife crime like the criminal justice system, is a pre-requisite in combating wildlife crime.

### ***Criminal Justice System in Kenya***

Historically, in the Continent of Africa, before the Colonization of the African territories, the African Traditional Communities (ATC) used various systems and styles for ensuring justice was served which were guided by customs, cultures, religious rules and laws, in gathering of tribal elders and chiefs, in shrines, churches and in mosques. The ATC also engaged in other alternative dispute resolution mechanisms that included reconciliation, mediation and arbitration. Colonization introduced a more sophisticated Justice System that was based on written and coded laws that were universally applicable among all communities. Institutions for ensuring the system functioned and laws were enforced were set up in most cases similar to those that existed in the colonial home

country. Kenya was colonized by British and was a colony of the British Empire. As in all its colonies, the British introduced Justice Systems similar to those that functioned in Britain. Some of these systems still exist like in Kenya, in the same style and functionality save for a few changes to cope with changes in society and environment.

The Criminal Justice System in Kenya is charged with the responsibility of law enforcement in dealing with wildlife crime. It is functionally similar with the one found in the UK. At the first level of the System are the Game wardens and Police. At the second level is the Directorate of Public Prosecution, the equivalent of the Crown Prosecution Services in the UK while the third level is the Magistracy courts and finally the prisons.

At an International level the Authorities charged with maintaining law and order in the wildlife sector globally are, the Interpol and the United Nations Commission on Crime, Prevention and Criminal Justice (UNCCPCJ). The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international regulatory treaty between nations that regulates the international trade in wild species of plants and animals.

This research aims at analytically examine the Criminal Justice System in Kenya with a view of giving it the correct direction for governance and capacity building in combating wildlife crime.

### ***Illegal Global Trade***

Wildlife crime in Kenya has now been linked to International organized crime syndicates. Illegal game trophies are not sold in Kenya which is only a Source market. The major consumer markets are in Europe, North America and Far East countries like China and Taiwan where the demand is exceptionally high. No ordinary “run off the mill” criminal can operate in Western or Far East countries capitals, unless supported by the resources, sophistication and connections of Organized crime syndicates operating in those capitals that trade in illegal wildlife trophies and other illegal products there. Demand creates Suppliers. If the demand for an illegal product is high, there will be a supplier willing to take the risk and the riskier the business, the greater the profit. The big profits will attract criminals unmoved by the repugnancy and cruelty of the wildlife trade. Demand in illegal products anywhere in the world is a highly profitable business due to the risks involved and the fact that only criminals or criminal oriented persons are capable of carrying it out thereby limiting competition. The criminal gangs themselves are known to engaging in murderous gang wars fighting for control of territories and to eliminate competition like drug gangs of USA and Southern America.

Therefore illegal international wildlife trade is not just an ordinary illegal trade being perpetrated by small time smugglers.

The European Parliament recognized that demand and supply is an essential ingredient in illegal wildlife trade in its Resolution 2013/2747(RSP) (2013) on wildlife crime. Trade and markets are controlled by the forces of Demand and Supply. As long as there is a demand there will be a supplier. As long as there is a lucrative market demand for wildlife trophies, there will be a supplier. The international illegal trade also includes the international offence of Trafficking in other illegal products. The Criminal Actors who will engage in international trafficking of wildlife trophies are the same Actors who will traffic in illegal drugs, arms and even human. (Gastrow 2011)

The supply and the supplier in the illegal wildlife trophies commences at the source market. Previously the supplier was the local poacher who understood the terrain as the animals live in Jungles and not just any one can penetrate those Jungles armed or not. However, after the entry of militias and International organized crime syndicates, poaching has become better organized, sophisticated and deadly. The Syndicates now use GPS system to track down the wildlife in Parks. They then use helicopters to fly into the Parks and to gun down animals like elephants from the air. In January 2014, a herd of 22 elephants including calves were found gun down in the Tsavo National Park and all their ivory tusks removed. It was established that a helicopter was used because of the way the carcasses were distributed as the animals tried to run to safety. This was a merciless waste and an end of a current and future generation of that family of African elephants which are known to pass on from generation to generation, habits unique to each family and the travel routes they follow through the jungles to green pastures and watering holes. It was also established that the trophies were flown out of Kenya to China using a Lear Jet the same night.

Militias now stage paramilitary like operations into highly guarded conservatoire. They overpower the guards using their superior weaponry and still slaughter and remove the horns from the “highly guarded” rhinos. It has been established the horns will be in Hong Kong still oozing blood the following day before the nation has woken up to the news of the raid and slaughtered. The killing is done often by paramilitary gangs associated with crime syndicates or terrorist groups (Andreas, 2014). The major source market for wildlife trophies of the charismatic 5 animals in East and Central Africa is Kenya as besides also being a victim itself, it is the export hub for the trophies from other neighboring countries.

The major consumer countries for the illegal wildlife trophies are the Far East Countries, the Americas, Europe including the UK & German, and of late, Russia. The Middle East countries are also known consumer nations. However the largest consumers markets are in the Far East Countries of China, Japan, Hong Kong, South Korea, Taiwan, and Vietnam. In these countries, the wildlife trophies besides being used as ornaments to wear to show off individual wealth status are also used for “medicinal purposes”. That is the current situation today and that is why Wildlife crime has reached crisis point. The illegal trading in ivory has more than doubled since 2007. Poaching of rhinos has increased by 50 times. Rhino horns are selling for thousands of dollars a kilo and are now worth more than gold. Last year, it is estimated that at least 22,000 elephants were poached in Africa. This alarming rise in the illegal slaughter and trade of endangered animals is a cause of great concern. The first World Wildlife Day was celebrated globally on March 3 2015.

The illegal trade in wildlife is a serious crime against a globally natural and international heritage belonging to all humankind as wildlife knows no borders or nations. An example is the seasonal migrating birds across continents and oceans. No nation can claim ownership over the wildlife within its borders as it cannot grant it citizenship nor stop it from migrating across the border where the wildlife roams free. Each nation is therefore duty bound and incumbent to protect the wildlife when it is in its territory as it has an important environmental role its serving for that nation at that moment in time.

Therefore this escalation of poaching, trafficking and other forms of wildlife crime, comes with severe economic, social and environmental consequences to both the source and consumer markets nations. It drives up corruption. It hampers sustainable economic development. It undermines the rule of law. It threatens the livelihoods of communities dependent on that natural resource. It is now a serious global security threat. Proceeds from the trafficking of poached animals and wildlife trophies often ends up in the hands of armed militia and terrorist groups like Al-Shabaab. Therefore, the problem of wildlife crime is more than a major concern and challenge to just conservationists. Eradicating this illegal trade in wildlife is a cross-cutting issue with global relevance in many areas.

We therefore welcome the outcome of the End Wildlife Crime conference in London organized by the British Royal Family. The participation of high ranking representatives from 46 nations and the United Nations, including delegates from Vietnam and China, led to agreements on key actions to be undertaken at a global scale against wildlife crime. International media coverage ensured the entire world’s attention was then focused on the conference and for the first time the challenges of wildlife crime and combating it at the source and consumer markets was being discussed. This

conference brought about much needed global awareness to extent wildlife crime was decimating the charismatic 5 wildlife to the extent their extinction now appeared imminent. The positive effects generated from this conference had an immediate impact on the ground in the source markets East and Central Africa and all global consumer markets as evidenced by unprecedented and rapid increase in arrests of poachers and traffickers and seizures of wildlife trophies at a global scale and reduced poaching activities in the source markets.

In addition, besides the global awareness and publicity through international media coverage that the conference created on the Run-away poaching in East and Central Africa and the illegal global Markets in Far East Asia, the reaction on the ground was like an instant jolt of lightening hitting the wildlife crime actors from wherever they were operating from. There was a sudden stop on poaching and the daily local media reports of latest attacks and figures of wildlife slaughtered have fizzled out since or reduced to one or two per months. But that should not fool anyone that it is over. It is probably the calm before the storm. To wildlife crime criminal actors, the lure for easy money has no bonds or pride and probably now with the heightened awareness in wildlife crime within the region, the risk has gone slightly up and they are just observing and studying it.

Therefore, major lesson learnt from the conference was that international community must keep working together to combat wildlife crime as a threat to our common global heritage. Wildlife is an international heritage and no wildlife belongs to a national heritage. Wildlife knows no borders, nor continents, but just where nature placed them on this planet to perform their ecological and biodiversity roles for the benefit of all humanity. This thesis will seek out and make recommendations on how to tackle those illegal global markets.

### ***The Charismatic Five***

The charismatic five animals for the purpose of this study are the Elephant, Rhino, Lion, Leopard and the Cheetah. All these animals are on the list of most endangered animals with the CITES and WWF.

The illegal trade in the elephant's ivory tusks, the rhino's horn and the fur, fangs, bones and claws of big three cats originates in Eastern and Central Africa and partly in Asia for the big cats. These are the largest source and supply countries in the world for these illegal trophies.

The importance of these five species of animals in the ecological and biodiversity balance can never be over emphasized, as earlier pointed out in this Chapter. These animals are indeed the 'Kings of the jungles' with no known predators other than Man who today hunts them not for food but for



ornaments and imaginary medicinal values. In ecological terminology they are referred to as the Apex predators sitting at the top of the food chain.

All the Charismatic 5 species are Keystone species in terms of their importance to the ecosystem. A keystone species is a species that has a disproportionately large effect on its environment relative to its abundance. (Paine, R.T. 1995). Although this concept is valued as a description particularly for strong inter-species interactions, it has also allowed easier communication between ecologists and conservation policy-makers. Yet Mills, L. Scott et al (1993) have also criticized it for oversimplifying complex ecological systems. Their research, however, focused on curbing wildlife crime and the illegal international trade. This they did by examining legislation, government and international policy as well as the practical applicative mechanisms in the Kenyan criminal justice system. They determined the cause of the escalation of the current wildlife crime affecting the charismatic 5 as discussed in this thesis.

### **The sad reality of poaching**

Poaching is driving some popular species of wildlife to near extinction. These are the Elephant, Rhinoceros, Cheetahs, Leopards, and Lions which are hunted for their ivory, horns and for game trophies. Other animals that are poached are Buffaloes, Zebras, Gazelles, Giraffes, Antelopes which are hunted for food since livestock meat, which is a staple food for some local communities has become very expensive. The other animals also hunted to be sold as pets are Mountain Eagles, Hawks and the Yellow Billed Kites all which are classified as Critically Endangered species. Poachers raid the nests and take away the eggs or nestlings, thereby destroying the prospects of a next generation of these birds in the area. A grim example of the consequence of such action is the Red Kite which became extinct in 2000.

### ***The Actors***

Wildlife crime is both a transnational crime in the source market and international crime once the trophies are trafficked from one country to another whether within the source markets countries of East and Central Africa or exported to the consumer markets in the international capitals of the West and Far East countries. It therefore has various Actors all playing a role in its commissioning.

For the purposes of this research, the actors will be classified as state and non-state actors and further classified as armed and non-armed state actors and armed and non-armed non state actors. All these actors are active participants in the wildlife crime and conservation sector both at a local and international level. (Details of their roles are in chapter two of this thesis). The non-state actor at the

source market will range from the Poacher, to the Handler, the corrupt official (also a state actor) and the Exporter, whilst, at the consumer market, the Actors will be the trafficker or importer, the handler and the purchaser or consumer. Although recent reports have shown the local poacher as being driven out of the mix by modern technology, reports emerging from Kenya have some very positive developments in this class of Actors. The local poacher sensing he is being eliminated into oblivion has now turned into an informer and is now engaged protecting the wildlife. The case of Kuyaso Lokoloi, a former poacher who had turned to a gatekeeper was widely reported in an article in the Daily Nation newspaper of the 7th April 2013. Lokoloi is pictured having been joined by peers and former poachers who had also converted to gatekeepers and were assisting KWS arrest poachers. They are now being referred to as “Poacher turned Conservationist”. The Kenya Wildlife Services has set up a department to recruit these former poachers, train them and convert them into game wardens.

The Actors in the Source Countries will vary from country to country. Poaching activity in East and Central Africa is concentrated in the wildlife game parks and reserves. For example, poaching in the Great Lakes Region is carried out around Garamba National Park in the Democratic Republic of the Congo (DRC). Agger and Hutson (2013), LRA Crisis Tracker, Titeca (2013), the Resolve and Invisible Children (2012) have all written how the peasant or traditional poacher in this area has now been replaced by the Government soldiers or military from the DRC, Rwanda and Uganda. The Military from these countries neighboring the DRC, which for one reason or another are currently engaged in armed combat in the DRC, are accused of engaging in poaching and mineral resources theft as well as trafficking. They are all engaged in this theatre of operation under the guise of combating numerous rebel groups also operating in the same areas some of which are backed by the same military and Governments supposedly combating them.

According to Titeca (2013), while analyzing the scale of the ivory trade in and around Eastern Africa, it was observed that the transit hotspot of Mombasa, the port city of Kenya, is where ivory is exported through from the DRC and Uganda for shipment to Asia. In the former Sudan, the Traditional poachers who were the rebel troops of the MPLA and SPLA which latter joined forces after Independence of Southern Sudan to become the South Sudanese Army are still engaged in poaching and ivory trafficking. These two groups again split in 2013 and are now engaged in an extremely violent and bitter combat against one another in a separatist conflict. The other traditional poacher known to operate in this region is Kony and his Lord Resistance Army (LRA). Kony is the leader of this rebranded militia and is wanted by the ICC in The Hague for committing massive crimes against humanity. But he has eluded the Ugandan Army, the UN Forces and South Sudanese Army for many

years. Yet it is known that the LRA major source of revenue is wildlife poaching and the export of the trophies which are trafficked through Kenya. According to Titeca (2013), “ivory harvested by the LRA are exchanged for food and arms”. Lancaster and Cakaj (2013) have expressed the view that although the LRA poaching operations cause instability within the region, their engagement ivory poaching and trafficking for basic survival is a significant departure with past their previous practices of self-sufficiency. This may suggest that the LRA may be running out its notorious survival options thereby becoming more desperate. Agger and Hutson (2013)

Other organized armed non-state actors operating in East and Central Africa region include Somalia’s Al Shabab terrorist group, and the Sudanese Janjaweed militia, the latter being reported as being responsible for the large scale slaughter of elephants in Chad. (International Fund for Animal Welfare (2008, 2013): Haken (2011); Douglas Hamilton (2013).

There have been assertions that various terrorist groups such as Al Shabaab are using the illegal ivory trade to financially support their activities within Kenya. These claims were first made after the group carried out the Westgate shopping Centre attack in Nairobi, Kenya on 21 September 2013. However there is growing evidence that the KWS has been aware that the group and other Somalia bandits operating in the northern eastern parts Kenya are engaged in poaching and illegal wildlife trade to finance their criminal activities (Elephant Action League, (2012). They take advantage of the porous border Kenya shares with Somalia.

The fact remains that Kenya is the export point or hub for all illegal wildlife trophies to overseas destinations and having a conniving and corrupt government officials are an essential ingredient in trafficking these trophies either through Kenya’s guarded airports and port. Such an official will only succeed if the Law Enforcement Agencies within the Criminal Justice System are weak and there is a network of corrupt officials who are accomplices of the trafficker and participate in the corrupt activities to facilitate the process of exporting the trophies.

This study will focus on and investigate each known Actor and the known roles that they have been recorded to play through its secondary research. However, the main focus of this thesis shall remain the effectiveness or otherwise of the Kenyan Criminal Justice System as the actors would not have such an easy rein that they are recorded to enjoy if the system was effective.

## **The Research Problem**

Not since the bloodbaths of the 1980s has poaching been so severe (KNBS Report, 2012). The extent of poaching in Kenya and other East and Central African countries has reached such alarming proportion that not only is it a looming ecological and economic disaster for the entire region, but it has also been identified as a danger to world peace warned Jim Leape then Director General of the WWF International (WWF, 2013). Consequently, Elephants may face extinction by 2023 (UN News Report, June 2013). The other members of the 'big five', namely the Lion, Rhino, Leopard and Cheetah are not fairing any better.

Therefore when a population of charismatic wildlife species are threatened by wildlife crime to the extent that their extinction appears imminent, then wildlife conservationists, legal practitioners and other interested persons, groups and organizations must team up to study what has caused this new wave and escalation of wildlife crime (Smith and Walpole 2006).

More specifically, in Kenya, the Criminal Justice System is the single most important tool for combating wildlife crime in order to ensure wildlife conservation and preservation is lawfully maintained and observed by all. Yet it has failed in its duties of maintain law and order to protect the wildlife. So where has this system failed what are the causes of this failure?

Although it was previously thought that corruption and lack of harsh laws was the reason for this failure by the System to combat wildlife crime, recent research has placed some doubt on this conclusion. Laws have been amended imposing very stiff custodial penalties on convicted offenders. Yet the wildlife crime continues unabated. Doubt has also been placed on Corruption as a cause. Some researchers have acknowledged that indeed, considered with other facets of conservation, the impact of corruption remains inadequately researched.

There is therefore a need for further research studies in this area. (Williams, Baldus and Smith, 2008).

So, where has this system failed and what are the challenges that have caused this failure, since doubts have been placed on the presumed cause of the failure by prominent British Researchers from British Universities on whether Corruption is actually the real cause?

According to Smith and Walpole, (2005),

*“Unfortunately, research into the topic lags behind that in other sectors and empirical studies are scarce and underdeveloped. The result is that, whilst some academics and practitioners cite corruption as a threat to biodiversity and call for efforts to increase transparency and*

*accountability, we currently know little regarding the nature and magnitude of any effect it may have on biodiversity. Whilst precautionary measures can be built into conservation projects to preempt corruption, further research would help to shed light on this issue and aid the development of appropriate responses” (Smith and Walpole, 2005).*

These challenges of combating wildlife crime in Kenya by the Criminal Justice System may be due to corruption or poor governance even armed conflict in neighboring failed state of Somalia, or perhaps, due to an up surge of demand for wildlife trophies and products in the illegal global markets. But while we acknowledge that may be corruption exists, but could there also be other challenges clogging down the CJS and undermining law enforcement and wildlife conservation efforts. There are examples of some new challenges the system has to deal with such as the direct involvement of foreigners in actual poaching and not just as trafficking, using very sophisticated weaponry and equipment unknown by law enforcement in this region. Another is conflict in neighboring countries and the immergence of militias and Islamic Jihadist and terrorists of which law enforcement agencies are not trained on how to combat these emerging major challenges. The involvement of International Crime Syndicates and Conflict in the neighboring states has also exposed the wildlife to armed militias looking for money to arm themselves through poaching.

Therefore, whilst we may be tempted to conclude that Corruption is the pivotal point and cause of the current escalation of wildlife crime as suspicion of its existence is rife since it appears like an essential ingredient for successful execution of wildlife crime, a cautious holistic approach must be applied and research based evidence and conclusions drawn. It is a fact that the Charismatic 5 wildlife are found in restricted areas guarded by game wardens. Game trophies obtained from the wildlife after their slaughter have to be transported to airports or ports patrolled and manned by police and customs official. There is also the national criminal intelligence services and KWS intelligence units in the parks. Besides all these units, there are other institutions within the CJS also operating to stop wildlife crime. But therein lies the problem. It simply is not possible, practical nor economical for a poacher or trafficker to corrupt all this lineup of government officials in order to accomplish the crime. Furthermore it is appropriate to considering the amount of resources put into fighting corruption and note the global and national media attention has been focused on wildlife crime. This has prompted drastic penalizing actions being taken by the government, like immediate sacking of all game wardens in the park where an elephant has been slaughtered including taking the game wardens who were on duty at the time to court and tracking down the trophies. Yet the upsurge and slaughter of wildlife continues unabated. This may therefore place some doubt to the conclusion that corruption is the pivotal cause of the current escalation of wildlife crime.

Due to this doubt other causes must also be considered like the legal legislative gap causing inadequate penalizing laws and incompetent prosecutorial services, indicating a lack of political good will on the part of the government and a lax jurisdiction that allows poachers and traffickers to easily operate in, or lack of institutional capacity and equipment to effectively tackle wildlife crime indicating poor prioritization when dealing with wildlife crime. Inconsistent international policy and lack of consensus among CITES state members, conflict, growth of other structural drivers, emerging new conditions and trends and are also other causes that are blamed for the current escalation of wildlife crime. While the blame game continues to grow by the day, in the parks of Africa, wildlife continue to be slaughtered at an alarming rate.

It is therefore important to know, through well-researched evidence, what is the cause(s) of the failure(s) of the criminal justice system in Kenya to protect wildlife. Also, what is the cause(s) of the upsurge in wildlife crime? If it is corruption as presumed, then at what level, and to what extent and in which government departments is it most prevalent so as to have such a draconian hindering effect on curbing wildlife crime in Kenya and by extension the entire east and central Africa region. Therefore while further scrutiny has revealed that the above preliminary observation that corruption is the major impediment for law enforcement in combating wildlife crime within the Criminal Justice System in Kenya, it lacks substantive evidence and needs to be tested through research. No one can actually pin point what is the true nature of the problem that has led to the escalation of wildlife crime in the east and central Africa region other than admit that it exists and make guesses on what they think it is and admit this requires further research in order for the problem or problems to be correctly identified and understood and then solved. This is the research problem this study will solve.

There is obviously a gap in knowledge in the area of this research study and many researchers to-date have admitted this and called for further research on it in order to solve the existing research problem. In order to fill in this gap and add new knowledge to the area of this study, it is necessary to research further and find out conclusively if there are other challenges besides corruption that are a hindrance to the system ability to effectively combat wildlife crime or is it just the many faces of corruption rearing its head in other forms disguised as new challenges and causes. This is the phenomena which this study will seek to answer and address through this Research. Such phenomena can only be resolved by answering the proposed research questions.

## **Research Questions**

Given the aforementioned background that has all been earlier considered, this thesis will examine the following Research Questions:

1. What is the extent and Influence of corruption at the different level of the Criminal Justice System in Kenya and at which level of the System is the problem prevalent?
2. What is the influence of poor governance as an impediment to law enforcement in wildlife crime at the different levels of the Criminal Justice System in Kenya
3. Which other challenges also afflict the Criminal Justice System at its different levels, in the Law enforcement process?
4. What is the impact of CITES and international treaties in combating wildlife crime in Kenya?
5. Who are the actors, state and non-state, in the wildlife crime sector and what roles do they play?
6. How effective has WCMA (2013) been in combating wildlife crime in Kenya?

## **Research Objectives**

Given these research questions, to that end, the main purpose of this study will be to investigate wildlife crime as a prelude to evaluate the effectiveness of the Criminal Justice System in Kenya, in order to determine what are the challenges it encounters in combating wildlife crime in Kenya that has made it ineffective in curbing the current and previous escalation of wildlife crime.

This thesis will specifically seek to:

- To determine the extent of corruption at the different levels of the Criminal Justice System in Kenya.
- To determine the influence of corruption and poor governance as an impediment to law enforcement in wildlife crime.
- To determine what other challenges are affecting the Criminal Justice System and at which level that is resulting in the escalation of wildlife crime in Kenya.
- To determine the actors in the wildlife crime sector and the roles that they play.
- To evaluate other challenges that afflicts the Criminal Justice System and impeding law enforcement as a result of CITES, international treaties and illegal global markets..
- To evaluate the impact of the new WCMA (2013) in its penal section as a deterrence wildlife crime.

## **Research Hypotheses**

The initial hypothesis of this study was that the escalation of wildlife crime in Kenya was as a result of corruption within the Criminal Justice System. However, upon further reading, it was revealed that there is a need to establish the link between corruption, current upsurge of wildlife crime and the inability of the criminal justice system to curb wildlife crime, by testing the relationship between these three factors since there wasn't a precisely identifiable link that could pin point exactly that this link between these three factors existed. Such a situation calls for further research. The hypothesis therefore changed to critically evaluating whether there is a causal link between corruption, the escalation of wildlife crime and a failing criminal justice system.

Accordingly, while considering the secondary data to establish the link, a second hypothesis emerged:

Are the challenges of combating wildlife crime within the Kenyan criminal justice system due to corruption and poor governance?

Yet, further reading revealed:

Is law enforcement in combating wildlife crime through the Kenyan criminal courts, impeded by weak legal provision?

And,

Are there other challenges known and unknown that impede the criminal justice system in combating wildlife crime

This study will therefore test each hypothesis, in order to assess whether the escalation of wildlife crime in Kenya is as a result of a weak criminal justice system?

## **THE RESEARCH THEME**

The main theme of this research thesis is exploring the proliferations of wildlife crime in Kenya through empirically discovering the inadequacies of law enforcement and presenting the appropriate solutions.

This research theme resonates with the research aims and objectives, research findings and the research's pronounced and proposed solutions and recommendations, as presented in Chapter 6, which also offers the conclusion and pronounces this thesis original contribution to knowledge.



## **Significance of the Study**

The real dilemma relating to tackling the current escalation of wildlife crime becomes more pronounced when Governments, international organizations, civil society and conservationists cannot agree on how to tackle the problem

Consequently, while stakeholders, academicians and researchers are now engaged in a controversial debate about whether the problem is corruption alone or are there other causes, none is venturing beyond showing the need and calling for further research in this topic of wildlife crime. The academic literature on this topic ends with that call. This thesis is the response to that call. Through answering the proposed research questions and testing the central hypotheses, the puzzle will be unraveled and solved. When completed, this study will add to academic literature on this topic and contribute original knowledge that is obviously lacking in this field. Moreover, it will advocate for reform which will significantly improve enforcement of wildlife crime. Above all, the findings from this research will help in developing an appropriate response to all factors that are a hindrance in combating wildlife crime and it will also offer sustainable solutions that can be implemented by the government, international agencies and other stakeholders. The success derived from implementing those solutions will save our wildlife and the ecological and biodiversity balance that is very important in dealing with global climate change. Besides, regional economies dependent on tourism will greatly benefit from the findings of this research both in terms of enhanced tourism and a halt to organized crime and terrorism that is reportedly taking root around wildlife crime, through better law enforcement in combating wildlife crime.

To the best of my knowledge no similar research has been undertaken before. The findings of this research may surprise academics and researchers in this subject-area. This study will bridge this gap in knowledge and will make original contribution to knowledge in the field of effectively combating wildlife crime. This will enable all stakeholders both locally and internationally, to evaluate their contribution to wildlife conservation effort, factoring in the findings of this study. Consequently, the findings from this study are expected trigger off a ricochet of actions in different directions for the purpose of enhancing wildlife conservation effort through effectively curbing of wildlife crime. Moreover, the findings of this study will also add value to the existing knowledge on prosecution of crime in general and this will provide a bench mark upon which more studies can be under taken. This will be useful to all future researches and their researchers as this study will act as a reference for their research.

A broader empirical study and review of wildlife crime from a major supply source and route like Kenya would clearly benefit the Wildlife Crime Research Community and in particular, many International Organizations that are tasked with combating wildlife crime, especially now that it has been ranked alongside other international crimes. The police units, like the Interpol and other Crime Prevention Police Units located in different jurisdictions globally that is tackling wildlife crime, especially now that it has been linked to International Organized crime syndicates, would also tremendously benefit from such a Research. Furthermore, there are several diverse areas involved in the Wildlife Management Sector such as wildlife biologists, environmentalists, conservationists, law enforcement, legal practitioners and policy-makers. A more detailed elucidation through empirical research as the one proposed in this study will show the nature of the interdependence that exists in those diverse areas and identify points of entry for integration.

An active synergy among these organizations is required and by establishing what the real challenges in combating wildlife crime is through this research, each player will understand the nature of the problem; the importance of devising strategies for tackling wildlife crime within their areas of specialties; the importance of their active participation; and, the dosage of effort and resources that they should apply in order to ensure success in curbing of wildlife crime today.

### **Scope and Limitations of the Study**

This study will only focus on commercial poaching for export purposes of wildlife trophies obtained from the charismatic five animals, namely: the Elephant, Rhino, Lion, Cheetahs and Leopard and the trafficking of the trophies from the supply countries in particular Kenya to consumer countries in Far East, Europe and North America, There is no consumer market for such game trophies domestically in Kenya or within the regional. The research will cover six Parks namely: Nairobi, Tsavo East and Tsavo West; the Masai Mara; Amboseli and, the Meru National Parks. These are the Parks, where the Charismatic 5 Animals are found. Moreover these Parks are served by Magistrates Courts within which Jurisdiction all wildlife Crime cases occurring in each of these Parks are prosecuted. The Game Warders and Prosecutors involved in the arrest and prosecution of wildlife crime for cases involving the Charismatic 5 are found within the Jurisdiction of these Courts and Parks.

### **Aims of the Study**

The primary aims of this study are to discuss the concept of law enforcement and the Criminal Justice System, as tools for combating wildlife crime and the consequences of their ineffectiveness and failure. This study will explore and contribute the African Perspective to the general discussion on

combating wildlife crime as a global concern for environmental protection in order to ensure Africa's effective participation in such environmental initiatives globally.

Furthermore, it will review the relevant literature on the antecedents of combating wildlife crime and to specify how it relates to the variables of this research. This study will also aim to establish how these variables of this research relate to combating wildlife crime and to specify the possible impact of corruption and governance on the same. The study also aims to propose a conceptual framework and to test the direct impact of the variables on combating wildlife crime among the hypothesized guidelines, as well as, indicate the relationship among the variables. This study will also investigate whether in the international arena, the Coordination of biodiversity related multi-lateral environmental agreements (MEAS), formation of the African Elephant Coalition, CITES and other international organizations involved in combating wildlife are living up to the expectations of the states that established them and the purpose that they were set up for.

The study will review wildlife-related policies and legislation in Kenya, with a bid to enhance KWS effectiveness in combating wildlife crime. With its wealth of experience on the ground, KWS plays a major role in policy formulation on land, tourism, fisheries, forest conservation, water and environmental management. Through this review, this study will enable KWS to have an assessment for their use in order to continue to strengthen the approach of wildlife conservation and management.

Finally, the study will also aim at reviewing the various International conventions like CITES and other international treaties on wildlife that Kenya is a signatory too. It will analyze those international conventions in relation to the current challenges that confronts Kenya and test through this research as to whether their adaption serves the local conditions, and whether they have had an impact or been effective in Kenya.

The other Aims of this research will be:

1. To explore the possibility of links between the upsurge of wildlife crime in Kenya and the emergence and the escalation of armed conflicts within the east and central Africa region.
2. To explore and discover and offer practical solutions to the government of Kenya and other regional governments that can be utilized for combating wildlife crime which will not burden them with the need to source for more resources, but draw from what is already existing on the ground through promoting synergy among all stakeholders, so that after

identifying the challenges and offering the solutions through this research study, they will share the resources they possess to implement the proposed solutions.

## **Summary**

This chapter explains the meaning of governance, corruption, wildlife conservation before defining the research problem, questions, objective, the significance and Aims of this research. A global perspective of wildlife crime is analyzed in detail with focus on how governance and corruption have impacted on combating wildlife crime. An over view of the local wildlife sector is highlighted acknowledging the level of transformation experienced in the sector in the recent past. The fact that the international researchers have recognized the need for further exhaustive research studies on the impact of corruption in facets of conservation like wildlife crime makes carrying out this research important. The threat wildlife crime poses to the charismatic 5 wildlife to the extent that their extinction now appears eminent, makes carrying out this research a matter of urgency if the international community is to stop that extinction clock. This chapter has shown that ultimately without this research being carried out and unless the research problem and research questions contained in this chapter are answered, no appropriate response to save the charismatic 5 will be achieved. It is important to remember this as we turn our attention to the literature review in the next chapter.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

This chapter is about literature review on the challenges of combating wildlife crime in Kenya. It also brings out the proposed conceptual framework and challenges of combating wildlife crime in Kenya. The key independent variables are social, political, economic, legal, poaching and corruption, in so far as they relate to wildlife crime. These key variables were tested against the process of combating wildlife crime commencing from: reporting and detection, investigations and arrest, prosecution and sentencing or acquittal in wildlife cases.

By virtue of its geographical location, Kenya is surrounded by countries undergoing civil war or are at different levels of conflict including one failed state, Somalia. These theatres of conflicts operating outside Kenya contribute tremendously to the escalation of wildlife crime in Kenya and have an overall adverse effect in curbing wildlife crime. They must therefore be treated as macro environmental factors and an Intervening Variable for the purpose of this Research since they have a very strong influence on all the other variables in this research and are therefore an intervening variable.

Other macro environmental factors that similarly have an impact and intervene effect between the existing variables within the systems of combating wildlife crime in Kenya but operate beyond the jurisdiction of the legal framework in Kenya are geo-political and diplomatic implications as well as the international organized crime syndicates. It was therefore essential that this intervening variable be examined and tested along other variables as well. It was interesting to test and observe the interrelationship and reactivity of all the variables in this research in order to determine the research findings and answer the research questions.

The aims of this chapter was to review relevant studies and their rational arguments into the variables under research, as well as the supportive streams that provide insight to the topic of study. Further, to critically evaluate the relevant literature on the variables for this study as they relate to combating wildlife crime and to specify the possible impact of corruption and governance. Moreover, to propose a conceptual framework (Figure 1), in order to test the direct impact of the variables on combating wildlife crime among the hypothesized guidelines. This chapter forms an extensive interrogation of the relevant literature through which the key antecedents of combating wildlife crime were identified and their possible impact on corruption and governance were scrutinized.

Finally, this literature review also consolidated literature on the relevant theories and their rational arguments in form of a theoretical framework that identifies with some key studies in crime and enforcement with the aim of determining if they can relate to wildlife crime in Kenya and thereby establish a new theoretical paradigm

### **Literature related to the antecedent of the Wildlife Crime**

The literature on the topic of wildlife crime is vast as wildlife exists in every continent on this planet. Wildlife is uniquely distributed with every species having a role it plays to the environment that it exists on. For the purpose of this study, the scope of the literature used to underpin this research in this chapter focuses on Africa and the unique wildlife that exists on it. The antecedent perspective of the harmonious co-existence between wildlife and the people is well documented.

The charismatic 5 namely the elephant, rhino, lion, leopard and cheetah were once highly regarded creatures and commonly referred to in folk tales. Even the great explorers referred to the creatures in awe in their writings. Stories of their exploits enchanted and shocked many, such as those told in the famous book “*The Man Eaters of Tsavo*” by John Henry Patterson in 1907. Today the animals are on the verge of extinction solely due to the fact that they are being preyed upon by the weaker but very intelligent co-species on the planet called the human species and not for food, but for their parts or trophies to be worn by humans as a sign of newly acquired wealthy status or consumed as mythical medicine for some unimaginable ailments.

Wildlife crime is no longer an emerging issue but one that for the last 50 years, the international community has tried to address. In 1963, the IUCN (International Union for Conservation of Nature) General Assembly held in Nairobi, Kenya, reached a decision to form the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The scale and nature of the challenges in combating wildlife crime globally has been recognized and accepted in decisions of the (CITES, 2013), the UN Commission on Crime Prevention and Criminal Justice and UNODC (UNODC, 2014), the Economic and Social Council (ECOSOC), the UN Security Council, UN General Assembly, INTERPOL, the World Customs Organization (WCO) and others, including a significant number of nations, internationally. High level political conferences have also addressed the issue, most notably the recently convened conferences in Botswana and Paris December, 2013, London February, 2014, and Dar-es-Salaam May, 2014. (Nellemann et al., 2014).

However, the responses in terms of impact on the ground are still behind the scale in the development of the threat to wildlife, including forests (Nellemann et al., 2014). Transnational organized environmental crime involves primarily five key areas:

1. Illegal poaching and illegal wildlife trade
2. Illegal logging and deforestation
3. Illegal fisheries
4. Illegal mining and trade in minerals including conflict diamonds
5. Illegal dumping and trade in hazardous and toxic waste.

The illegal trade in wildlife is particularly challenging as it involves multiple dimensions, like corruption and governance as well having a spill-over of linkage with other crimes and is often hidden in legal trade. It also commonly involves the mixing of legal and illegal harvesting of resources. Corruption is a deeply embedded feature of environmental crime, facilitating crime across all levels of the supply chains. Comprehensive anticorruption measures must be a key feature of the overall effort (Nellemann et al., 2014).

To fully understand the phenomenon of illegal wildlife crime and why it has become a challenge for law enforcement authorities, one requires a broad insight into the relationship between the various variables that have a direct impact on it, including the dynamics of the demand and supply that drive the illegal wildlife trade market, the actors and their roles, the legal framework and legislations and if there are any loopholes being exploited in them. Conflicts, militias and terrorists have become an integral element in the supply chain of illegal wildlife trade that continues to finance and fuel instability and under development in Africa due to the participation of international organized crime syndicates in that supply chain. The resulting threat of Illegal trade in wildlife is depriving developing economies of billions of dollars in lost revenues and development opportunities (Nellemann et al., 2014).

### **Conceptual Framework**

The analysis of the existing literature indicates that more evidence based research is required into the true challenges of combating wild life crime in Kenya. In order to create sustainable policy responses to effectively counter the illegal wildlife trade, there is a need to promulgate what has triggered the current upsurge in wildlife crime to the international community ; who are the actors involved whether as the conservationists or the criminals ?; what may happen if the wildlife criminals are not denied and are denied access to these wildlife resources ?; what poaching methods are being used in Kenya ?; the nature and effect of wildlife legislation and corruption in Kenya; and

the nature and effect of the global consumer market in illegal wildlife trade. All these can be articulated into seven variables. Therefore for this research, there are six independent variables and one intervening variable to be examined and tested. Existing literature indicates that more evidence-based research is required into the true challenges of combating wild life crime in Kenya.

The diagram (in Figure 2.1) below shows the relationship between the Independent variables, the Intervening variable and Dependent variable:

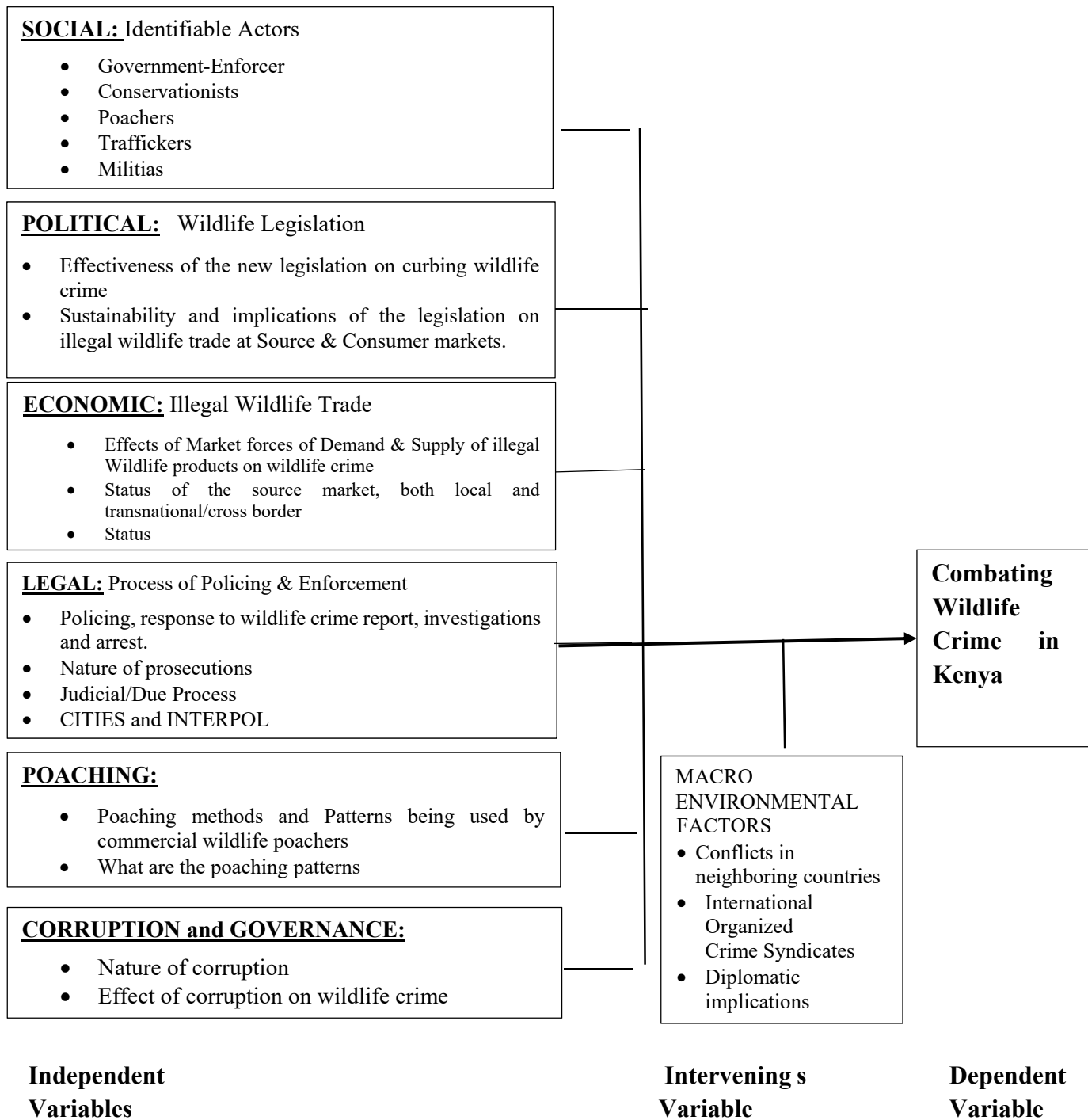


Figure 2.1:- The Conceptual Frame work (Source: Author 2016)



## **(1) SOCIAL**

Wildlife trafficking now ranks among the top five most lucrative illicit trades in the world, alongside drug smuggling, weapons proliferation, counterfeit goods and human trafficking (Lawson and Vines, 2014). In 2014 the crime was worth 10 billion dollar. (Cites 2013) This is bound to attract all manners of actors and we must identifying them by the roles that they play in this sector for the purpose of carrying out intensive research in literature review and collecting secondary data on this independent variable in this Research study. The identifiable Actors can be placed in two categories depending on the role they play. These are State Actors and Non-State Actors.

State actors are the Government, and all other actors involved in law enforcement and conservation in the wildlife sector. State actors can further be classified into two for the purpose of this research, Armed state actors and Unarmed state actors. Armed state actors include all law enforcement agencies in Kenya as well as foreign law enforcement agencies like the Interpol and British Army which is currently guarding parks in Kenya and any other agency that is armed for the purpose of protecting wildlife. Classification of actors as state actors should not be strictly confined to just the state as a state actor, based only on its role, functions and instruments that it uses in that performances. This is because today there are organizations performing roles of independent states even in regulations and enforcement through international treaties.

Classification should take into consideration in which field, subject and even context this classification is being done in. In the economic sector, Bridget M Hutter (2006) in *The Role of Non State Actors in Regulations* considers the role civil society in state regulation and self-regulations. Hutter (2006) points out the trend now is a move by government which is inclined to outsourcing and privatization of public management functions. What will the organizations performing public management functions be called for ease of understanding what role they are performing and what will those not performing those roles but being served by those other serving organizations be called?.

Carolyn Abbot in *Enforcing Pollution Control Regulation Strengthening Sanctions and Improving Deterrence* (2009) refers to regulatory enforcement as can be carried out through public enforcement, that is enforcement by a public agency and private enforcement that is enforcement by non-public agency. She however acknowledges private enforcement complements public enforcement. She cites the example of the Royal Society for the Prevention of Cruelty to Animals (the RSPCA) in the UK, through which its prosecutions department in 2007 notably achieved conviction in 1,104 cases out of the 1,860 animal welfare offences cases reported to it. Distinction needs to be drawn between

private individual enforcers and institutions and organizations set up to among other functions enforce the law relating to the function it performs.

Abbot (2009) quite correctly points out that in the case of private individual informers, although they may supply information that may lead to legal intervention, the decision to enforce rests with the public enforcer, as does the cost and resource implications associated with action for obvious reasons. Such acts by a private individual may not be a daily duty for the individual. However organizations like RSPCA UK are founded by an Act of parliament in particular the Royal Society for the Prevention of Cruelty to Animals Act of 1932, 1940 and 1958 and variously amended since, which gives the organization powers to arrest and prosecute crimes against animal welfare. Such an organization can at the very least be called a private state enforcer while the public enforcer may be referred to as the public state enforcer. The common denominator here is that they are both acting for the state and are therefore state actor.

There are instances where through international bilateral agreements, nations agree private organizations to monitor and enforce regulations created through the bilateral agreement, especially in those areas where they have a commonality of interest which may even provide that no public enforcer from either country or state party can intervene. Such organizations would be acting for all states involved in the enforcement process and are for all intent or purpose state actors. It is therefore not uncommon to find international agencies and private companies, civil society and self-regulatory institutions in certain fields like wildlife conservation and combating wildlife crime engaged in wildlife laws enforcement as assigned duties by the state or through international conventions and treaties like the WWF, CITES, UNCCPCJ, UNEP etc. What is essentially is that they are performing state functions. To refer to them as non-state actors or private enforcers when they are performing state functions and in some instances possibly assigned to them by the law or regulations in enforcement, would create confusion and legal complications in the enforcement mix, which instead of being considered as complimenting state functions would turn them into busy bodies meddling in functions of the state. Actors should be identified by the role that they perform and if it is for the state or with the state, then they are state actors.

Therefore we shall consider civil society conservationists and other organizations both local and international organizations like CITES as Unarmed state actors due to the role and functions that they perform in protection of wildlife and law enforcement which technically compliments the state's function in this field. Unarmed State Actors like civil society and conservation groups actively involved in wildlife conservation and protection alongside armed state actors, but are not

themselves armed for that role. In fact in this area of wildlife crime especially where the organizations have to operate in the wild jungles, they have to work together with the state and compliment its functions. It may be noted that some conservationists and high profile conservatories have hired armed private international security companies to guard wildlife in their conservatories and to also supplement KWS wardens.

Non State Actors are the poachers and traffickers and any other person or organization involved in committing wildlife crime or facilitating commissioning of the offence whether as an accomplice or an observer when it is being commissioned. Some persons in neighboring villages to the park have observed the slaughter of wildlife without reporting to law enforcement in the false belief that less wildlife will mean more grazing fields for their livestock, while less big cats mean safety for themselves and their livestock. They also feast on meat from the carcasses of the slaughtered herbivorous wildlife like the elephants and rhinos. Non State Actors can also be classified into two, unarmed, these are the traffickers or any other person partaking in wildlife crime but is not armed. Armed non state actors will also include poachers or wildlife criminals also armed with crude weapons and not just guns.

This may be a unique way of classifying Actors in this research, but it is basically meant to ease the readers the burden of reading criminal gangs in wildlife crime being referred to as non-state actors while international organizations, conservationists and NGO assisting in combating wildlife crime also being referred to as non-state actors. Yet one of the aims of this research is to promote synergy among all stakeholders and harness resources from private sector as allies of the state in this war against wildlife criminals. Therefore recommendation herein is the use of this classification be measured against the purpose it is being used for.

#### **(a) The Government- The Enforcer**

*“A catastrophic loss of wildlife resources on this scale is evidence of a major failure in both the formulation and implementation of policy and clearly more than corrupt officialdom and wily poacher are involved” (M. Norton- Griffith, 2000).*

In Kenya, while it is a function of the legislature (Political) to create, amend and enact laws, it is the role of the government to implement and enforce those laws. This it does through various mechanisms and legal frameworks. The government will also set up structures to ensure proper functionality in legal framework enforcement process, like ministries and government departments responsible for proper functionality and compliance with set laws and regulations. The Kenya

Constitution 2010, is the supreme law that set up structure of the state and governments i.e national and county governments. It is supported by numerous subsidiary legislations, regulations and policies manuals that ensure smooth and synchronized functioning of government. In Kenya, environmental laws are now also anchored in the Constitution 2010, as a right and fundamental freedom under Article 42 and specifically Article 42 (a) which provides for environmental protection for the benefit of the present and future generations through legislation and other measures. Wildlife can be protected under this fundamental right as it is a natural resource which plays an important environmental role. Chapter 5 of the constitution on land and environment also provides in Article 69 obligations of the state and persons in protecting and conserving the environment. While the constitution does not specifically mention wildlife, however wildlife in Kenya is considered as a natural resource. The state and all person are therefore bound by this supreme law of the land to protect and conserve the nation's environment and natural resource. (The Constitution of Kenya 2010). Therefore although it is the duty of every Kenyan to conserve and protect the environment including wildlife, the ministry of environment and various government departments and parastatals have been established within Kenya's legal framework to ensure compliance and enforce control where necessary. Examples are like the CJS, KWS, National Environment Management Authority(NEMA) and a host of other departments and enforcements agencies at national and county governments level all dealing with matters concerning conserving and protecting the environment.

Abbot (2009) provides that most governments have provided for command and control techniques in the enforcement of environmental law. The government will provide the regulations that must be complied with which is command technique. Secondly, non-compliance with the command would attract negative sanctions such as prosecution in the criminal courts, which is the control techniques. Ultimately both lead to punishment. In some jurisdictions or countries like Kenya, under the 2010 Constitution it provides distinct separation of powers between the executive or government, legislature or parliament, the judiciary and county governments all forming the State of Kenya. Under Article 131 (1) of the Kenya Constitution 2010, the President is head of state and government. The legislature enacts the regulations or law and then pass them on to the executive for implementation as the government holds the institutions and mechanism for enforcement like the police and KWS wardens who are a para military unit. In case of breach then the judiciary takes over as control. The Judiciary is a part of law enforcement under the criminal justice system and is required under Article 160 of the new Constitution 2010 to act independently. For punishment, that is imprisonment or payment of fine, again the executive is charged with managing the prisons and

all government finances. Article 157 of the constitution 2010 provides for the establishment of the Director of Public Prosecution whose office is responsible for the prosecution of criminal cases like wildlife crime. Therefore in this research, the legislature and legislation process of law enactment like wildlife crime laws, is treated as a separate variable from the government as the enforcer, as they play different but very crucial roles in combating wildlife crime.

There is conflicting views in Kenya on the role of government in protection and conservation of wildlife as the sector has been dominated by conservationists, civil societies, well-wishers and volunteers especially from Europe who view the current problems in the sector as created by government officials through interference for whatever reason including corruption. This has often led to an unwelcome and raised bitter exchanges and acrimony between these two very important state actors. This conflict has sometimes played out very loudly in the international arena creating more confusion on the causes of wildlife crime. These bitter exchanges have also drawn in experienced and well known international conservationists and experts in this field on opposing sides like the current one between Griffith and other conservationists in Kenya and within the region. Griffith in his writings has often accused conservationists and the Kenya Government as having caused the massive loss of wildlife through the use of faulty land policy that protect large land owners (read: conservatoires, mostly owned by western nationals from the colonial days) for tourism revenues. He too does not think corruption is the cause of the loss of wildlife in such great numbers and accuses fellow conservationists of using it as an excuse or cover up for various other benefits that they enjoy. He asserts on his current web site that he still holds the same position and is fine being at logger heads with other conservationists due his position.

While no one denies there is a problem in combating wildlife crime, corruption and poaching have for long been suspected to be the nemesis. The killing of 21 elephants in a single day in January 2013, or the arrest of a Chinese trader with 233 tusks representing about 117 elephants cannot under any circumstance or description be called the work of 'a wily poacher'. Definitely there is a problem. The harmonious synergy of state actors is greatly required at this time of crisis in the wildlife sector to solve the problem. This research is the answer to that problem.

Moreover, whilst we can fold our hands and blame the run-away wildlife crime on the government, law enforcement, the law, the policies and their formulation and implementation, it is important to critically examine what role the government plays as an actor, its relationship with other state actors, the laws and policies put in place to enforce wildlife laws and to combat wildlife crime. It is also very important to examine the effectiveness of the agencies and departments the government has

established to combat wildlife crime and understand why so much effort is being put in without yielding any results. For example, why have the agencies put in place by the government and laws like the criminal justice system seem challenged and ineffective in combating wildlife crime to the extent that it is now considered a run-away crime and uncontrollable. Many researchers have seen this challenge and have only called for further research. This research is the answer to that call and will examine and answer question raised in this paragraph through empirical research.

However in order to adequately understand the government's role and appreciate the one played by the government of Kenya and other regional governments, it is important to examine it from a historical perspective bearing in mind that this research will be read by persons who are not lawyers.

Historically, the primary function of any Government is to manage the affairs of a nation and most importantly, provide security to its citizen and any other person within the borders. People within the nation must be able move around the country freely and to engage in any lawful activity whether in business, employment, schooling or just simply socializing or relaxing as nationals or tourists. The Government ensures security is provided through established law enforcement mechanism. All persons are required to observe and obey the laws of the country and law enforcement agencies are put in place to ensure action is taken on those who breach those laws.

If a government fails to provide security or to enforce the nation's laws and where law enforcement agencies no longer function, ultimately there is a breakdown of law and order and such a country is referred to as a 'Failed State'. An example of one is Somalia where the government collapsed in 1991. A more recent example is Libya, Syria and Yemen where the governments have lost control of most of parts of their countries and are unable to maintain law and order in those regions, since the regions have been taken over by either bandits or civil war combatants.

Sometimes there can be situations where there is a functioning government in place but is challenged in enforcing laws in one sector of its operations. In Kenya and indeed the rest of East and Central Africa countries, the governments though plagued with various challenges are functioning and do enforce laws. However, the efficiency and effectiveness in how they do so are now said to be under serious threat by regional instability and international organized crime syndicates moving their operations into the region (Gastrow, 2011). Armed non-State actors together with organized local criminal syndicates are reported to utilize funds obtained from the illegal trade in ivory, rhino horns and other wildlife trophies to exacerbate the armed conflicts that are taking place within these animal habitats (Lawson and Vines, Chatham House (2014).

## **The Government, Law, legislation and enforcement**

The government through the legislature (Political) has established a new law after much criticism that the old act was not effective in combating wildlife crime. Let us briefly examine the former Act. The Wildlife (Conservation and Management) Act of 1976 (WCMA) was the old legislation criminalizing the hunting of protected animals and the unlicensed hunting of game. This law WCMA (1976) also prohibited other acts, which include importing or exporting trophies without licensing, dealing in trophies without a license, and transfer of trophies in disregard of legal procedures for proper transfer of ownership. The task of enforcing the law was shared across various law enforcement agencies, firstly, the Kenya Wildlife Service (KWS), forest officers, police officers, and administrative officers. However, the principal enforcement agencies under the Act was the Kenya Wildlife Service (KWS), which also had investigative and prosecutorial powers in enforcing laws against wildlife crimes.

This law was greatly criticised for what was termed as inadequacies or leniency in the penalties it imposed on persons who had been convicted for committing a crime under the Act. Consequently, the Wildlife (Conservation and Management) Act of 2013 (hereinafter referred to as WCMA 2013) was enacted and came into operation in January 2014. The contributions of all stakeholders were to a large extent put into effect in this new Act – the WCMA 2013, and therefore this has been widely acclaimed as the first law passed under the new Constitution with full public and stakeholder participation and supported by international agencies like the WWF. Although it raised the level of fines steeply, some stakeholders who had canvassed for full custodial sentence without the option of a fine were not too pleased with just raising the level of fines arguing that in any event the value of an ivory tusk for a grown elephant or rhino horn, still exceeded the steepest fine in the new Act. It was therefore not deterrent enough. But let us compare the fines under the old and the new Act.

Under WCMA (1976), a person convicted of hunting any animal in a national park was subject to a fine ranging from Kshs 5000/= (around US\$58) to Kshs 20,000/= (around US\$232), and/or imprisonment ranging from six months to three years, which may include corporal punishment. But under WCMA (2013) although it categorized the animals into four classes, the consequences of being convicted for hunting an endangered species is now Life imprisonment and/or a fine in the amount of at least KES20 million (about US\$230,540). The court can also order confiscation of properties acquired through proceeds of illegal wildlife trade.

Another notable common offence under both Acts involves trafficking and importing and exporting products from endangered species in category 1, which upon conviction under the new Act carries

a sentence of five years' imprisonment or a fine of at least KES10 million (about US\$115,270). But under the old Act, any person committing an offence involving a protected animal, listed in Part I of the First Schedule of the controlling law (an elephant, leopard, lion, or rhinoceros), was punishable by a fine of up to 40,000 KES (about US\$464) and/or up to ten years in prison.

Any unlicensed dealer, illegally trading in wildlife products under WCMA (1976) without a license or in violation of the terms of one was subject to a fine of up to Kshs 20,000/= (about US\$230,540) and/or a prison term of up to five years. Under the new Act, such a person will be subject to a fine of at least KES10 million (about US\$115,270) or five years' imprisonment. Under the old Act, Any person who trafficking trophies in violation of the WCMA was, on conviction, subject to a fine of up to Kshs 10,000/= (about US\$116) and/or one year imprisonment. However an offence involving an animal listed in Part II of the First Schedule (a bongo, reticulated giraffe, Rothschild giraffe, Kenya hartebeest, greater kudu, black-and-white Columbus monkey, beisa Oryx, fringe-eared Oryx, or Gravy's zebra) or the animal's trophy, attracted a fine of up to 20,000 KES (about US\$232) and/or a prison term not exceeding five years.

Other notable changes is the bringing of all regulatory and policy making organs under the Act and setting up institutions under it that will assist in management of wildlife and the parks. Also the new Act recognizes Conservatories owned and managed by individuals and organizations and their inclusion as well as that of communities living around the parks to share in resources and finances obtained through wildlife. But the Jury is still out on the actual implementation on this all-inclusive Law.

### **The Kenya Wildlife Services (KWS)**

The Kenya Wildlife Services (KWS) is the body mandated by the Law as the enforcement authority to protect wildlife anywhere in Kenya and manage the Parks. It was established under the WCMA (1976) as a state corporation with the mandate to conserve and manage Kenya's wildlife as well as enforce all the relevant laws pertaining to conservation of wildlife. Kenya Wildlife Service manages 8% of Kenya's total landmass, including 59 National Parks and Reserves, and fourteen Marine National Parks, Reserves and Sanctuaries

The KWS's has a Para-military Security Division that is mandated to protect wildlife and enforce the law whether in or outside the Parks. It therefore has jurisdiction to arrest perpetrators of wildlife crime wherever they may be in Kenya. Under WCMA (2013) the KWS is required to operate like a semi police force with a Security Division consisting of the Wildlife Protection Department, the Intelligence Department, Investigation Department and Prosecutions Departments. Also there are



certain enforcement powers that will be shared with other government institutions. The WCMA (2013) gives any authorized enforcement officer including an officer of the KWS, a forest officer, a police officer or an administrative officer, enforcement powers, which includes, power to carry out inspection, detention, arrest, and search-and-seizure on any suspect suspected to be committing an Wildlife crime or offence under the WCMA (2013).

Whilst Kenyan legislature recently passed the law with stiffer penalties against poachers, KWS has sought out cross-border wildlife security collaborative initiatives with Tanzanian and Ugandan Wildlife Authorities to ensure that it does not suffered losses like the 60 rhinos it lost to poachers in 2013. (KWS, 2014). It is noteworthy that the first person to be arrested and prosecuted under the new legislation, WCMA (2013) was a Chinese citizen arrested in Kenya on 28 January 2014 with 3.5 kg of ivory in his luggage. China's support for combating wildlife crime is essential. Its spectacular destruction of part of its ivory stocks in January 2014 was a step in the right direction. Similarly, its support for action plans of various nations both at source and consumer markets is crucial for their success and for China's influence in Africa to be considered a positive factor in the war against wildlife crime. (Hellwig-Bött, 2014; Karanja, 2012).

Kenya Wildlife Service (KWS) has a board of directors who are political appointees and are therefore dependent on political patronage for appointment to these much coveted positions of directorship. Therefore, sometimes the KWS Board of directors to whom KWS management including its CEO report to cannot always be expected to act in the best interests of conservation especially when it is pitted against political expediencies of that moment.

### **The Government and Politics of Wildlife Crime**

The Government's political leadership can do and must do more and not just enact the legislation like WCMA(2013) and then leave everything to security agencies like KWS and the other organs of Criminal Justice System to deal with. They political leadership are the decision makers in the top to bottom decision making structures of the government. Top government leaders across Africa can play a more proactive role of sensitizing both local and international communities of the challenges and gains in combating wildlife crime. It was notable that until the British Royal Family intervened and drew global attention to the run-away wildlife crime in East and Central Africa, was when suddenly a lot of positive action was taken with positive results immediately seen on the ground in Africa. The issue of diplomatic etiquette and not wanting to do or say anything that can annoy a development partner country, whose citizens have been accused of being the ones behind the escalation of poaching and illegal wildlife trade, has no place when it comes to protecting wildlife

and the environment. The governments in Africa cannot abdicate their responsibilities to the global community. Top government political leadership in any nation must ensure environmental degradation within its borders due to poaching leading to extinction of charismatic animals for the sake of tarmac roads and bridges being constructed by the development partners is not acceptable.

That demands a political approach that pays equal attention to the needs of environmental protection and agriculture especially intensive subsistence agriculture, while preventing the invasion of national parks protecting wildlife and ecological and biodiversity systems. For a long time now, German and other Europe government have concentrated their African development cooperation on agricultural projects, good governance and fighting corruption. They should now firmly anchor wildlife protection and anti-poaching in these programs (Hellwig-Bött, 2014).

Many leaders and governments internationally have taken proactive action to protect wildlife in Africa, notably Gabon's President, H.E Ali Bongo, the African Development Bank (AfDB) and its president, President Donald Kaberuka, the EU Ambassador to the Republic of the Congo, H.E Marcel van Opstal, President Obama, the Secretary of State, Hillary Clinton, the UK Royal family and the UK government announced a £10 million grant to support efforts to tackle the illegal wildlife trade in ivory and rhino horn. In Kenya and Togo, over six tons of ivory were destroyed in June 2013. Similar destruction of stock piles of seized wildlife trophies was also done in China and the Philippines. (WWF, 2013) These high level government actions has a strong positive trickledown effect on the rest of government's civil service, the citizenry and the entire global community ((Fedotov, 2013; UK Government, 2013; Chatham House Lawson and Vines, 2014).

The East and Central Africa Governments should also participate in international politics involving illegal wildlife trade where big consumer nations like China and Taiwan are called upon to act on illegal wildlife trade activities. This brings about much needed international publicity and awareness. Similarly at the local level, the governments should not shy away from politically expressing similar sentiments to their populaces. This way the populace will understand that the law protecting wildlife applies in equal measure to both the local and foreigners as well. The key to successfully combating poaching lies in integrating the local populations in the source countries in combating wildlife crime.

Ultimately the goal of the government and the political class globally would be to direct the discourse on the politics of wildlife crime into effectively curbing wildlife crime menace because of the disastrous environment, economic and global security concern it raises. Lawson & Vines through Chatham House (2014) have amplified this security challenge as not just afflicting the stability of

governments but also the security of the habitats of the endangered species. The habitats that wildlife exist on needs to be protected as each form of life existing on it contributes to its survival and to the overall wellbeing of the environment. Any destruction of an ecological and biodiversity system in a biome should be a global concern.

**(b) CONSERVATIONISTS: Local and International**

*“Since we humans have the better brain, isn't it our responsibility to protect our fellow creatures from, oddly enough, ourselves?”* (Adamson Joy, 1960).

There can never be a complete discussion involving wildlife conservationists without the mention of the names of the pioneer conservationists and most famous and renowned couple in wildlife conservation, George and Joy Adamson, of the ‘Born Free’ fame. Through their work in wildlife conservation and also as authors and wildlife film producers, they helped bring much awareness to millions of people globally about the plight of the big cats and other wildlife species in Kenya and Africa in general. This is credited as the fast major step in wildlife conservation as it was a major step in stopping licensed hunting and also criminalizing any hunting of the big cats and other wildlife species which then was a sought after sport. Through their work and movies like Born Free which won Academy Awards, they showed the world that animals have emotional feeling of love, pain, joy and sadness. Elsa the lioness, Pipa the cheetah and Penny the Leopard are some of the animals the tamed which showed devotional love to the Adamsons. Thanks to the Adamson’s work, beasts became individuals, with personalities, feelings, emotions (Adamson, George and Joy (1960); Born Free Foundation, 2012),

Another conservationists who has achieved global recognition in wildlife conservation and politics in Kenya is Dr Richard Leakey. Although a paleoanthropologist, Dr Leakey turned to conservationists and was the first chairman of the KWS and is still the current chairman. He has written extensively about his experiences in his memoir called “Wildlife Wars: My fight to Save Africa’s Natural Treasure”, Leakey et al (2001).

Wildlife conservation can be defined as the preservation and protection of wildlife and the habitat that they live. It assumes an international prominence when it includes protecting wildlife in CITES endangered wildlife species list.

**Organizations involved in wildlife conservation:**

The inadequacies associated with KWS in protecting wildlife has led to mushrooming of NGO’s, wildlife trusts and clubs and other civil society associations including, private individuals both local

and foreign wildlife enthusiasts all stepped in to play a role in protecting wildlife in Kenya and the rest of Africa. They all must however register their objective with the government in order that they be allowed to operate within the parks where they can achieve their main set up goal which is to ensure and enhance wildlife conservation and that is also the goal of the government and the KWS. There is now a regulatory framework called the Public Benefits Organizations (PBO) Act 2013 under which NGOs and other forms of civil societies are registered under and their operations monitored including their bank accounts in Kenya. Environmentalists lobby groups some working as NGOs have mushroomed to prominence as they are seen as challenging environmental unfriendly decisions of government and KWS and in most instances with a measure of success. Friends of Nairobi National Park (FoNNP), an NGO and conservationist group successfully stopped the government from acquiring land from the park for road expansion of the Nairobi southern by pass.

Our concern for the purpose of this Research will be the Conservationists who are State Actors. These may be divided into two depending on their background and field of operations:

1. At a local level, conservationists will include the Non-Governmental Organization (NGO) both local and international, the Trusts, conservancies and their owners, wildlife and habitat enthusiasts, botanists, biologists; and,
2. At an International level these include international agencies mandated by laws and treaties, with some authority and enforcement capability, e.g. CITES, organizations set up to organize funds for the protection of wildlife like the WWF, organizations set up by world governments for orderliness in the world and are also mandated to assist in combating wildlife crime, organized crime and trafficking of wildlife trophies, like the United Nations (UN), the United Nations Commission on Crime, Prevention and Criminal Justice (UNCCPCJ), The International Consortium on Combating Wildlife Crime (ICWC), African Union (AU), European Union Parliament (EUP), World Commission on Environment and Development (WED), The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Worldwide Wildlife Fund (WWF), and East African Wildlife Clubs and societies generally run by nationals from foreign countries especially the UK and supported diplomatically by several European Governments, prominent among them Britain and Germany.

The organizations can also be classified by type and the degree of autonomy that they enjoy from the State and political authorities.

There are two main types of NGOs that can be identified within the wildlife purview. One is the small or medium local NGO which specializes in small to medium localized projects that may be directly linked to wildlife conservation or assisting communities with an aim of promoting wildlife conservation in the process. The second type are large international organizations which may even enjoy diplomatic accreditation like the International Union for Conservation of Nature and Natural Resources (IUCN), WWF, CITIES and many others supported mainly by western governments through their development agencies like USAid. Due to their expected observances of diplomatic etiquette and collaboration with the Kenyan government, they are prevented from being directly critical of how government institutions are performing. Some are therefore known to clandestinely support a local NGO to be critical on its behalf. This way they still manage to ensure that their views are heard and political expediency does not destroy wildlife or their habitats.

Consequently, some NGOs and other organizations in clause 1 (above), have become large and even have decentralized units and informants within the parks. It was therefore surprising how wildlife crime suddenly escalated to such an alarming level within a very short period, threatening entire species of the charismatic 5 animals and yet there are international agencies with links to NGO's having a presences in the parks where the slaughter was taking place.

In Kenya although an elaborate scheme of national wildlife parks and wildlife Reserves as well as other sanctuaries was established and set in place to protect and conserve the country's wildlife resources and for the their utilization to earn tourism revenue, there has been notable and gradual loss of these habitats and consequently the wildlife species that lived on them. Recent surveys have indicate there is a steep decline in wildlife living in non-protected areas which is bad news considering 65% of the country's biodiversity exists outside protected areas.

In order to stem this encroachment and conflict, various initiatives have commenced either by the government KWS, the NGO's and other conservation organizations, like fencing off the parks, Integrated Conservation and Development Projects (ICDPs) which aims at empowering local communities neighboring the parks so that they can control resources, as well as integrate bio-diversity conservation and rural development schemes in order for the local people to improve their lives. Another initiative is Community-based Conservation (CBC). The fundamental belief of CBC is that local participation in decisions and benefits could reduce hostility toward conservation efforts (Western and Wright, 1994).

A more radical initiative that seems to be gaining credence is placing more wildlife into conservancies. Proponents of this proposition argue that already private conservancies control 6 million acres in Kenya that can be better utilized if they were allowed by KWS to manage more wildlife resources on their land and gain from tourism revenue. Some of these conservancies border the parks and the proponents propose that the parks should be privatized or amalgamated with the conservancies. This would ensure more effective management of wildlife resources under entrepreneurs.

Meanwhile, skeptics of these initiative have been quick to point at the rather lackluster growth of the much hyped Community based Eco-Tourism initiative that was meant to encourage wildlife and habitat protection by the communities especially those living around the parks. The skeptics also point to the fact that some of the poaching especially of rhinos took place in well-guarded private conservancies. Whatever the initiative, conservationists are state actors who play a very important role in combating wildlife crime.

It is noteworthy to observe here that it is not unusual for NGO's in the UK and those in Kenya to have similar postures when it comes to wildlife crime law enforcement. This is because there is a strong presence of UK nationals who settled in Kenya from the colonial times and many operate businesses relating to agriculture, tourism and wildlife. They therefore will attempt to copy whatever takes place in the UK that can be of benefit to wildlife and their businesses in Kenya. Due to similarities in legislation and policy creation and formulation regimes, political drivers and policing resources are important factors in the effectiveness of wildlife law legislation and enforcement in both nations.

**The Convention on International Trade in Endangered Species of Wild Fauna and Flora. (CITES)** CITES is an international agreement between state parties that ensures international trade in species of wild animals and plants does not threaten their survival. It was established as a response to growing concerns that over-exploitation of wildlife through international trade was contributing to the rapid decline of many species of plants and animals around the world. The Convention was signed by representatives from 80 countries in Washington, DC, on 3 March 1973, and entered into force on 1 July 1975. There are currently 183 parties to the Convention. CITES parties regulate wildlife trade through regulations and controls on species listed in three appendices. Appendix I lists species endangered due to international trade and can only permit such trade only in exceptional circumstances. Appendix II listed species are those that may become endangered if their trade is not regulated and therefore require controls aimed at preventing unsustainable use, maintaining

ecosystems and preventing the species from entering Appendix I. Appendix III species are those subject to domestic regulation by a party requesting the cooperation of other parties to control international trade in those species. In order to list a species in Appendix I or II, a party needs to submit a proposal for approval by the Conference of Parties (CoP), supported by scientific and biological data on population and trade trends. The proposal must be adopted by a two-thirds majority of CoP parties present and voting. As the trade impact on a species increases or decreases, the CoP decides whether or not the species should be transferred or removed from one appendices to another. (CITES 2014).

There are approximately 5,600 fauna species and 30,000 flora species protected under the three CITES Appendices. Parties regulate international trade of CITES species through a system of permits and certificates that are required before specimens listed in its appendices are imported, exported or introduced from the sea. Each party is required to adopt national legislation and to designate two national authorities, namely a Management Authority, responsible for issuing these permits and certificates, and a Scientific Authority, responsible for providing advice. These two national authorities also assist with CITES enforcement through cooperation with customs, police and other appropriate agencies. Parties maintain trade records that are forwarded annually to the CITES Secretariat, thus enabling the compilation of statistical information on the global volume of international trade in appendix-listed species. The operational bodies of CITES include the Standing Committee (SC) and two scientific committees: the Plants Committee (PC) and the Animals Committee (AC). (CITES 2014)

### **Conference of the Parties**

The first CoP was held in Bern, Switzerland, in November 1976, and subsequent CoPs have been held every two to three years. The CoP meets to, *inter alia*: review progress in the conservation of species included in the appendices; discuss and adopt proposals to amend the lists of species in Appendices I and II; consider recommendations and proposals from parties, the Secretariat, the SC and the scientific committees; and recommend measures to improve the effectiveness (CoP17, 2016).

### **International enforcement**

CITES is the key instrument for international co-operation against the illegal wildlife trade. Although CITES has been in effect for more than three decades, the implementation of CITES commitments by States Parties continues to be mixed. Moreover, substantial variations exist among countries regarding the regulation of domestic wildlife trade. This lack of consistency in the

implementation of legal frameworks can be exploited by wildlife traffickers, who may actively seek out lax jurisdictions to traffic goods. Legal gaps may also indicate a lack of political will to correct and amend variations in the law. They may also highlight a lack of international policy consensus or prioritization on how, and how much, to curb wildlife trafficking (Bennett, 2012). There remains a lack of international consensus of approaches on how best to address elephant ivory trafficking. Ongoing debates have centred on whether to establish a universal trade ban against all ivory sales, including potentially domestic sales, and what to do with existing government-stored stocks, including the possibility of authorizing future CITES-led international sale to select countries in Asia (Wyler and Sheikh, 2013).

### **CITES and Kenya**

Kenya is a state party and signatory of the convention that created CITES. It is therefore bound by the decision passed by member states in CITES Conference of Parties. Kenya was opposed to the one off sale of ivory in 1998 and 2008. In COP17 held on 24th September to 4th October 2016 in Johannesburg, South Africa, Kenya successfully led the opposition of the application by some Southern African states to be allowed to sell their stock piles for game trophies including ivory and rhino horns. Kenya explained that such permission will only put pressure on the few remaining charismatic five wildlife and drive them into extinction. Gabon dramatically showed it was not just the animals that were killed by poachers but also game wardens, by dressing up in the uniform of game wardens for the conference in memory of game wardens that the country had lost to poachers.. Kenya explained that it had destroyed its stock pile of game trophies symbolically to tell the world that wildlife trophies were only useful to humans when they were on a living animal and therefore letting the animal perform the role nature set out for it to perform for all humans. It explained that allowing another one off sale would make law enforcement and protection of wildlife more challenging as poaching would increase since illegally poached trophies would be sold along those allowed in the one off sale as CITES had no capacity to ensure only those trophies allowed to be sold in the one off sale was sold in the various wildlife trophies market globally. (CITES Cop 17; 2016)

### **Communities Neighboring the Parks**

This has been a much ignored conservation group possibly because these communities are located in areas around the park which with the exception of Nairobi National Park, are considered rural areas and the communities living there are considered poor and illiterate rural folks. Also in the midst of these communities are also some individual criminal elements who are poachers while others have engaged in running battles with KWS after cutting park fence wires and driving their



livestock into the parks to graze. Unfortunately these two aforementioned issues of being poachers and trespassers into the parks are the common narrative and image the rest of the global community have of these communities because the media has focused on these narratives as news for their viewers. This narrative may also have been pushed on to the media by some conservation groups in order to attract donor funding. Whilst it is accepted that criminal elements do exist in the community, tagging and stereotyping an entire community was a mistake as it failed to recognize the historical relationship those communities have with the wildlife and cultural change they were undergoing with western modernization, the presence of tourists and monetization of wildlife. The governments in Africa from the colonial time and subsequent independence government have followed the policy of prioritization and investment in wildlife as a source of revenue and foreign exchange from the tourism. They have engaged in curving out parks and evicting some communities without compensation. This made the communities to view the wildlife's presence near them as a threat to their land and general wellbeing. Furthermore the governments were not investing much if anything at all in those communities.

Although the KWS has set up a department called Community wildlife service and has identified some key functions for its working relations with these communities, it is also quick to point out that community based wildlife conservation is not embedded in the current legislation and hence the current challenges facing wildlife conservation and management outside protected areas since the establishment of CWS department (KWS 2017). The current legislation therefore requires some amendments.

This thesis proposes that community participation be also included in unprotected as well as protected areas as well through community leaders and recommends to escalate this proposal further by promoting participation of these communities in the management of the neighboring parks. A lot has changed within those communities and in those areas as there is growing awareness amongst them that the wildlife is actually their natural resource which if harnessed can benefit the communities through tourism, direct donor funding to community organizations which can eliminate poverty in the communities. Furthermore having experienced adverse effects of climate change, these communities which are agriculturally dependent now understand the importance ecological and biodiversity balance. After all they wake up each morning and look at the declining white snow caps of Mount Kilimanjaro and Mount Kenya which are the sources of the dwindling rivers below and understand all is not well with the weather and it is having tremendous negative effect on their lives. What they need is leadership on how to manage, protect and utilize the natural resources whose misuse or destruction is the source of poverty and starvation to them.

It is important for Kenya and the rest of the east and central Africa region that interests of all landowners both community and private including KWS be meaningfully incorporated into wildlife conservation planning and policy formulation in order for wildlife management to be sustainable.

In CoP17 the rural communities were for the first time recognized as conservation groups and a team is being set up in CITES for the purpose of ensuring their inclusion in all future CITES meeting including CoP18 where they will play an active role.(CoP17 2016). This development is welcome as it is expected to give the communities a voice in the international stage decision making processes which if their proposal are passed, governments which are signatories to the treaty have to implement.

**(c) POACHER.**

*“The extent of poaching in Kenya and other East and Central African countries has reached such alarming proportion that not only is it a looming ecological and economic disaster for the entire region, but it has also been identified as a danger to world peace” ( Leape J., wwf(2013)).*

**Introduction:-**

Poachers are Non-State actors who are either armed or unarmed and are criminals. Poaching is defined under the WCMA (2013) as *“the illegal hunting, illegal capturing and illegal harvesting of any wildlife, but does not include the control of species widely and commonly regarded as pests or vermin, as listed in a schedule of this*

*Act”*. A more generally accepted definition would be that a poacher is any person who illegally captures, hunts, kills, collects or is possession of any wildlife ,bird or fish or its part thereof, that is a protected animal under any law globally including being in possession of instruments and equipment used for poaching purpose is a poacher. Therefore anyone who commits any of those prohibited acts will be guilty of a wildlife crime called poaching.

At an International level, the term wildlife crime refers to any involvement or dealing with the capture, poaching smuggling, engaging in illegal trade, collection of endangered species and protected wildlife or their derivatives or products which includes animals and plants that are subject to harvest quotas and regulated permits which is committed in contravention or violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Wildlife crime is also globally recognized as an international crime and it does not matter where it is committed, one can still be arrested through Interpol police for committing such an offence wherever they may be.

Pre-historically, according to Darwin's theory of Evolution, the pre historical man of the Homo species was a hunter (Charles Darwin, 1859, *The Origin of Species*). Hunting was implemented to sustain their hunger and the fur from the animals used to cover their bodies and to keep themselves warm. Hunting is today banned in most legal jurisdictions globally.

Poachers can be classified according to the reasons why they poacher, and methods they use. There are sustenance poachers who hunt for food. Generally they are very difficult to track because they hunt non endangered small game. But once in a while they may hunt an endangered species including a large mammal like a hippo for meat. The carcasses of such large animals are difficult to conceal and the jungles aerial "watchtower" which is the vulture, reports to the authorities through their large presence hovering over the carcass which leads to investigations and culprits face possible arrest. Therefore sustenance poachers will only illegally hunt what they can quickly consume. However in some countries west and south of Kenya, law enforcement is non-existent in some parts of those countries. An example is the Democratic Republic of the Congo and Central Africa Republic both of which have parts of their respective countries controlled by rebel groups where lawlessness is the order of the day. It is therefore not surprising to find body parts of endangered species like the mountain gorilla which is a delicacy there, being sold in open-air village markets.

### **Commercial poachers**

These are the bane of wildlife conservation, primarily due to their large scale demand and specific targeting of a particular species of animals which consequently become endangered and ultimately extinct if no action is taken. History is replete with wildlife that became extinct for one reason or another especially due to commercial poaching. Cites quotes the figure at 35,000 species in all forms of animals that are known to have become extinct through the ages (CITES Report, 2013).

By commercial poachers, we refer to those poachers who capture or kill wildlife for trade either to sell as live animal, or their parts as trophies, or their carcasses for commercial meat sale, or even take away eggs to sell in cases of birds. They come in many ways and forms and identifying them is generally difficult due to the multiple roles that they play in wildlife crime and trade. But the identifiable ones are:

- (i) The simple commercial poacher: - This is the poacher who kills any wildlife for its meat or trophies for local sales. This type of poachers lacks the sophistication and market accessibility to be large commercial wildlife poachers. They remain in the peripheries of serious wildlife crime, killing

zebras and passing of its meat in the market as beef. They are normally quickly put out of operation by wildlife law enforcement and even jailed.

- (ii) The larger commercial poacher: - These are the local organized criminal groups involved in illegal commercial crime activities such as drugs, human and arms trafficking. These group are now involved in the more profitable activities of environmental crime, of which wildlife trade is one of the most lucrative (Milliken; Shaw, 2012; Duff, 2013; Durant 2004). This type of poachers has the knowledge of the terrain, sophistication and daringness to carry out mass slaughter of wildlife if it will rake in a good profit. They will target wildlife species whether endangered species or not which have trophies that will fetch good profits in the market. These type of organized crime groups have organizational structures including a kingpin at the top directing and financing operations. The kingpins may even be senior government officials, political leaders, prominent businessman, senior wildlife officials or policemen, diplomats, or even a wildlife conservationists operating a Non-Governmental Organization or wildlife trust as cover up for wildlife crime activities. Obviously these are dangerous powerful people who will corrupt, influence the sacking and even murder of a wildlife enforcement officials who stands on their way. They have links with international organized crime syndicates who buy the trophies from them to export to overseas markets. The local organized groups operation generally do not go beyond their nation's borders and have no access to consumer markets. They poach to meet orders from the international crime syndicates who control the respective consumer markets in the export markets.

Recently one of the kingpins was arrested in Tanzania in a sting operation by the Interpol: *"A Kenyan court Wednesday charged a suspected kingpin of the illegal ivory trade, who was on Interpol's most wanted list and described as an "environmental criminal", with smuggling tusks. Kenyan national Feisal Mohammed Ali, who figured on an Interpol list of nine most wanted suspects linked to crimes against the environment, was arrested in Tanzania on Monday. He was charged in a Mombasa court with dealing in wildlife trophies "contrary to... the Wildlife Conservation and Management Act". (Daily Mail newspaper report, 24<sup>th</sup> December 2014).*

Obviously this group is under threat now that the Interpol has focused its attention on Africa in order to combat wildlife crime.

- (iii) International organized crime syndicates: - International organized crime syndicates: - The UN Commission on Crime, Prevention and Criminal Justice - UNCCPCJ Resolution of 26 April 2013 upgraded wildlife crime to the same level of serious international organized crime as human and drugs trafficking. The global illegal trade in wildlife is worth \$19bn (£12bn) a year. This is bound

to attract all top notch criminal gangs in the world. Plainly put, there is no way traditional local gangs can be able to export illegal trophies or operate an illegal trade in the foreign capitals of Europe, Asia or the Americas without the cooperation of the local gangs operating there. It would be suicidal to try. These criminal gangs operate in defined territories which they fiercely and ruthlessly defend. These criminal gangs are usually more sophisticated, better organized, and are well resourced enabling them to expand their criminal activities on a global scale converting them into international criminal gangs. This is evidenced by the way they have entered the African capitals and have virtually eclipsed or taken over wildlife crime from the traditional local gangs which are now being pushed to the peripheries of that illegal trade.

Africa is the world's second largest continent and home to thousands of species of wildlife. Unlike in Europe, Asia and North America, most of these animals roam completely free in untouched habitats. But now the East, Central and Southern Africa regions are now considered among the illegal wildlife trade hotspots across the globe, which means there is a lot of illegal trade going on. The world is dealing with an unprecedented spike in illegal wildlife trade, threatening to overturn decades of conservation gains (WWF, 2012; GFI 2012; IUCN, CITES & TRAFFIC 2013).

#### **(d) MILITIAS & TERRORISTS**

These will be referred to as armed non state actors and are classified independently for the purpose of this research. Kenya which is the scope of this research does not have armed insurgents and militias opposed to the government but there are believed to be several armed non state actors from neighboring countries operating in Kenya, albeit secretly, for commercial purposes. Al Shabab is a terrorist organization operating in Somalia but is believed to carry out its economic activities in Nairobi, in an overly crowded suburb called Eastleigh predominantly inhabited by Kenyans of Somali origin and Somali refugees. Therefore the organization can hide its economic operations in this area. It is no secret that Somali war lords and even other war lords of other insurgent groups with theatres of operations in neighboring countries live in high class suburbs of Nairobi while their children go to school in the UK and the USA. It is also common knowledge that many of these insurgent get medical treatment in Nairobi. One would not expect a person with millions of US Dollars obtained from wildlife crime and illegal export of other natural resources like gold and diamond to be living in the bushes with his troops. Such war lords only make occasional trips to visit their troops and to take supplies or to collect illegal trophies. That is why some have refused to engage in Peace talks with their governments although they are not making any progress in their insurgent war and are unlikely to win it.

To put it bluntly, most of these so called insurgent groups operating in east and central Africa are actually local organized criminal gangs, masquerading as insurgents, utilizing political emancipation and revolutionary sounding slogans and titles to carry out criminal activities and human rights abuse.

Kenya is surrounded by countries in armed conflict status. There is the long running conflict in Somalia which is also a failed state to the east. To the northwest, there is the recent South Sudan conflict which has escalated into a full fledged civil war since 2013 and there is also the Janjaweed conflict within the same South Sudan region. To the northeast, there is Ethiopia which has clans at war and an on-going conflict with Eritrea, To the west of Kenya, there is Uganda and the Lord's Resistance Army insurgency, while other major conflicts in both Congo's, Brazzaville and DRC, Rwanda and Burundi all of which though not sharing a common border with Kenya are within its periphery, just a few hour's drive across Uganda and therefore impact onto Kenya as well. Due to this Kenya has borne the blunt of having to face regular attacks on its wildlife from those insurgents and even regular terrorist attacks.

At this stage, a distinction must be drawn between poaching for subsistence or self-sufficiency by small bands of rag tag militias or hooligans, some of whom may be armed with machetes or a single rifle for an entire group and poaching for commercial purpose by large organized militias for commercial purposes for the purpose of arming themselves. This latter group trades with the international or local crime syndicates who deliver arms, medicine, food, military fatigues or money in exchange for the trophies. One illustrative example is the case of Garamba National Park in the Democratic Republic of the Congo (DRC) which is UN Educational, Scientific and Cultural Organization (UNESCO) World Heritage site. The DRC government lost control of the park in 1995 to insurgents after which the northern white Rhinoceros was hunted to extinction and only five (5) remain globally in Kenya and Europe. Thousands of elephants in the park were also slaughtered and only a few remain because the park is now under the control of UN peace keeping forces in the DRC, MONUSCO In 2012, 650 elephants were slaughtered in Cameroon's Bouba N'Djida Park by heavily armed poachers. Poaching on such a scale is not driven by opportunism or subsistence imperatives, but by armed non-state actors and organized groups with wider links (Chatham House, Lawson and Vines, 2014), to the international crime syndicates who export the trophies to the consumer markets.

The UN Environment Programme estimates that 90 per cent of hunted down elephants within striking range of conflict zones are killed by armed non state actors. The potential value is estimated to be between \$3.9 and \$12.3 billion depending on the sale price. This revenue can prolong civil wars and

generate capacity for terrorist attacks further afield. For instance, attacks by Al-Shabaab have extended well beyond Somalia's boundaries.

#### **(e) TRAFFICKERS**

Trafficking of wildlife products within and from Kenya is carried out locally and transnationally across its porous borders and exported internationally. Ultimately most wildlife trophies not seized by law enforcement and are trafficked to consumer markets in Asia, Europe and Americas. In trafficking which is the supply chain side of wildlife crime, there are considerable variations in the typologies of the offenders involved ranging from individual subsistence hunters to sophisticated crime syndicates depending on the market demand and on the different species traded (Warchol, 2004; IFAW 2008).

Zimmerman (2003) has identified three main types of criminals involved in wildlife trafficking: the local farmers trying to supplement their incomes, mafia-style groups operating in developing countries, and international smuggling rings. Evidence suggests that most wildlife trafficking, particularly in regards to the initial part of the market supply chain, is carried out by individuals; opportunistic villagers who try to supplement their income and professional trappers. However, in other stages of the trafficking chain and especially in international trades higher levels of sophistication and several organizational layers may be required (Warchol et al., 2003; Wyatt, 2013;).

The traffickers therefore include:

##### ***Local Farmer/ Individual Poachers cum trafficker***

In this category are individual poachers who are the poacher and trafficker at the same time. They have to take the trophy to a local middleman which is a hazardous business especially if the trophy is for an endangered species and the profits are not as high for such an individual, but the risk of getting caught is high. He lacks the ability to bargain with the middleman for a good price for the illegal trophy which he must dispose of as quickly as possible. He also lacks means of private mobility and relies on public means to take the trophy to the middleman. More often than not such poachers may succeed just a few times but will eventually get exposed and either law enforcement agencies catch up with him or the local organized criminal gangs who are poachers themselves will take him out of the business one way or another for encroaching in their territory and giving them competition.

### ***Local Organized Criminal Groups***

The Illegal trade in CITES protected fauna and flora offers opportunities to make enormous profits because it supplies products that are considerably cheaper to source than those legally sourced. (WWF, 2012; Gabriel2014).

The supply chain for illicit wildlife trafficking now involves organized criminal groups whether local or international. They are attracted by the availability of huge profits and the low-risk nature of the crime, including the absence of credible enforcement, prosecution, penalties and other deterrents. Although there may be different actors who facilitate this supply side of the illicit wildlife trafficking, like the state and non-State actors at the local level, it is the organized criminal gangs that are able to cross borders with large cache of illegal wildlife trophies without detection or arrest. (Gastrow, 2011. Garnett et al, 2007). Although fingers may point at local organized criminal gangs, it is an open secret that these gangs have police, military, magistrates, county administrators and even KWS official either in their pay roll or as active members and even leaders of these gangs.

### ***International Smuggling Rings***

International smuggling rings involves criminal gangs belonging to the countries that the wildlife trophies are to be exported to. There is no market for wildlife trophies in Africa as a whole. Therefore the product must be exported to the lucrative markets of the far east, countries, Europe and the Americas. Wildlife crime is a big business run by dangerous international networks, wildlife and animal parts are trafficked much like illegal drugs and arms. By its very nature, it is almost impossible to obtain reliable figures for the value of illegal wildlife trade.(WWF Report, 2012) The existing gaps in domestic and other international control regimes creates difficulties in identifying illegal commodities and secondary products This coupled with the intricate trafficking routes utilized by the smugglers have resulted in the inability to effectively curtail the illegal international wildlife trade (UNODC, 2012).

International criminal gang syndicates have the advantage of already trading in other illegal international products like drugs and arms and therefore already have an existing trading base in illegal products. Therefore they can easily incorporate smuggling of wildlife trophies activities within that base using other types of contraband an also using pre-established trafficking routes or even by employing wildlife as currency for money laundering (Zimmerman, 2003; IFAW 2008, EMCDDA, (2013),). Secondly, the extent of wildlife trafficking and the need of facilitators such as forgers to make fake export/import documents and businessmen in the transport sector imply the



need of organized criminal structures in the foreign capitals which local criminal gangs cannot access (IFAW, 2008; Wyatt, 2009;).

The linkages between wildlife trafficking and armed groups suggest that the illicit wildlife trade is entrenched in the crime, conflict and terror nexus. Poaching and trafficking relies on the instability provided by conflict, with the revenue contributing to prolonged violence and terrorist activity (Jespersion, 2014; Levy, 2007).

According to a series of U.N. studies on the illicit traffic of wildlife, wildlife experts claim that Chinese, Japanese, Italian, and Russian organized crime syndicates are heavily involved in illegal wildlife trade. Triad societies, such as the Wo Shing Wo group, the 14K and the Japanese Yakuza are reportedly engaged in smuggling ivory, rhino horn, tigers, shark fin, whale meat and abalone. Moreover, the Neapolitan Mafia is said to be behind illegal trading in endangered parrots, while most of the illegal caviar business is reportedly controlled by Russian organized crime (CRS, 2008; ECOSOC, 2002; Gittleman, 2003). Within the EU, organized crime groups which are involved in drug trafficking, the facilitation of illegal immigration, fraud, and the distribution of counterfeit products have recently become active in the wildlife trade along routes established for other types of illicit commodity (Europol, 2011).

There is an abundance of evidence of organized crime involvement in fisheries as a cover up for carrying out other illegal; activities like wildlife trophy trafficking, human trafficking, trafficking of counterfeit products and even narcotics and arms trafficking. A UNODC study on Transnational Organized Crime in the Fishing Industry (UNODC, 2011) even documented cases of human slavery where humans were trafficked for the purpose of forced labor on board fishing vessels and that frequently involving children. Several instances were recorded where human trafficking on board fishing vessels was linked to marine living resource (MLR) crimes (McLellan et al., 2014 Jain, 2001).

In 2013 the international community registered the dramatic drop in wildlife stocks and became aware of the close links between poaching and international organized crime. At their June 2013 summit, the G8 states agreed to take more resolute action against the illegal trade in endangered species. A meeting in September 2013 during the UN General Assembly, arranged by the German foreign minister and the president of Gabon, identified the new quality of poaching and illegal wildlife trade as a threat to peace and security, development, and human rights. The African Elephant Summit in Gaborone and a meeting during the Franco African Summit in Paris in December 2013

maintained international scrutiny at a high level. On 15 January 2014 the European Parliament passed a resolution calling on the Council of Ministers and the European Commission to adopt an EU plan of action against wildlife crime and trafficking, to establish a specialized Wildlife Crime Unit within Europol, and to make the issue a priority in the programming of the financial instruments for development aid. The G 8 has the potential, for example in association with the proclamation of the new World Wildlife Day on 3 March 2014, to maintain UN attention on the issue, include more destination countries in the process, and permanently integrate China (Hellwig-Bött, 2014).

#### **(f) MILITIAS: Types and Identification Pattern**

These are armed non state actors known to be actively involved in poaching and other forms of wildlife crime. The three prominent well-armed and organized militia operating in forests of East and Central Africa are the Al Shabab, Lords' Resistance Army and the Janjaweed. In January last year 2012, Janjaweed militia gunned down more than 300 elephants in Bouba N'Djida National Park in Cameroon. In March, 22 elephants in Garamba National Park, Democratic Republic of the Congo (DRC), were slaughtered in a single attack, many with shots to the top of the head. A Ugandan army helicopter was seen flying low-level over the park a few days after. In December 2012, an illegal shipment of 6 tons of poached ivory was seized in Malaysia, one of the largest such hauls in recent history (National Geographic Voices 2013 Douglas-Hamilton I). One can easily guess where this ivory came from. At the beginning of August 2014, the minutes of a meeting of intelligence chiefs from African states were released, revealing the extent to which poaching and the smuggling of ivory and rhino horn were being used to fund insurgent groups in South Sudan, Al Shabaab in Somalia and the Ugandan Lord's Resistance Army (LRA) (Somerville; 2014). So who are these groups racking havoc on members of the charismatic 5 which are also the most endangered wildlife in Africa?

##### ***The Al Shabaab***

After the Islamic court abandoned Mogadishu in Somalia and retreated to the port city of Kismayo, the group split in to several factions of which the stronger to emerge was the Al Shabaab. The name in Arabic means "youth" and the group proclaimed itself as a Jihadist army fighting the enemies of Islam. It pledges allegiance to Al-Quaeda and is currently engaged in combat against the TFG and the African Union Mission to Somalia (AMISOM).

##### ***The Lords' Resistance Army***

This began as a tribal protest by the Acholi tribe in Uganda and is currently lead by one Joseph Kony. It is a brutal insurgent group which involves in kidnapping children and turning them into child

soldiers, capturing women as sex slaves and murderous attacks on unguarded villages in Uganda, Southern Sudan and the DRC supposedly in retaliatory attacks against the Ugandan army which has reportedly been able to push the group out of Uganda into the forests of the DRC. Its leader Kony has a warrant for his arrest by the International Criminal Court.

### ***The Janjaweed Militia***

The name means a man (bandit) on a horse in Arabic. The group was a creation of the government of Sudan (now North Sudan) which when faced with armed rebellion in the Darfur region from the African agriculturalist tribes in Darfur after they were attacked by the Arab nomadic tribes, militarized and armed the Arab nomadic tribes under the name Janjaweed to attack the African agriculturalist's tribes in the Sudanese Darfur region and eliminate them.. This was termed as ethnic cleansing and mass genocide of the area as a result of which over 400,000 African agriculturalist's tribe's people lost their lives. It was only halted after the international community intervened and the International Criminal Court (ICC) issued a warrant for the arrest for Sudan President Bashir which still stands to this day and he is an international fugitive. The effect the warrant of arrest had on the attitude of many African leaders was astounding.

The Darfur region was placed under the protection of the UN and African Union forces called The African Union/UN Hybrid operation in Darfur (UNAMID). The Janjaweed who were denied by the Sudanese government became the bandits as the group is named and now operate in the forests of Central Africa killing wildlife and trading in their trophies.

The severity and security implications of this variable has been more extensively covered in Case Study No 8 on the appendices of this Thesis under the heading Licenced Hunting and Transnational Poaching.

### **(2) POLITICAL: Wildlife Legislation**

In Kenya laws are legislated, enacted or amended in parliament where the elected political class sits as legislators. The laws are thereafter handed over to the Government to implement and enforce through its various agencies like the CJS. Kenyan legislators understand the importance of wildlife both for the economy and the environment and as well as a natural resource that should be regulated, protected and managed. They also appreciate that laws need to be amended to keep up with changing and emerging trends within any sector like wildlife. There was heated debate both in the legislature and also outside especially among conservationists, lawyers and media houses when the motion on the WCMA (2013) Bill was moved in Kenya's Parliament.

Various stakeholders and interest attempting to influence or counter the presentation. Three schools of thought evolved basically revolving around whether stiffer penalties without enforcement will be sufficient to stop the “run-away” wildlife crime in Kenya. The big question that needed to be addressed was:

Is it the fear of the penalty proscribed by the law or is it the fear of getting caught that deters would be offenders? This question was made even more prominent by calls from proponents of stiff penalties for the introduction of the death penalty to convicted poachers and trafficker saying that would be deterrence enough due to the penalty itself.

Whatever the opinion, the practicality of law is as good as those entrusted to enforce it. Even the best drafted law with the stiffest penalty will be useless if it is not enforced. How effective the new law is, the jury is still out. But at least the new wildlife laws did proscribe life imprisonment or a fine of 150,000 pounds for the killing of an endangered species which hopefully will prove a significant deterrence to would be wildlife crime offenders.

The main distinguishing factors between the old law and the new WCMA (2013) is that in the new law there is enhancement of penalties for persons convicted of committing wildlife crime and recognition of other players participating in its implementation. No matter how good a law is drafted, its implementation and enforcement is as good as those who are authorized to ensure compliance and to enforce it. But, without dedicated political will, money and leadership, attempts at curbing poaching and combating wildlife crime can easily fail, with the gains of many years being lost in a few short months, a situation seen repeatedly across Africa. Experienced brokers and exporters know exactly how to avoid being arrested or convicted even with adequate evidence being adduced that would otherwise ensure their conviction.

Although securing sufficient evidence to sustain a conviction is usually a challenge for many prosecutors in case of wildlife crime, this is due to the fact that wildlife crime is a victimless crime and prosecutors have to rely on uncorroborated evidence in most cases. Uncorroborated evidence have to achieve standard of proof threshold Other than the local farmer or petty poachers, other non-State actors have the money to hire good lawyers who punch holes into the Prosecution’s case. Prosecution’s case which more often than not have to rely on evidence of being found in possession of the trophies and are therefore are forced to pursue trafficking charges as opposed to actual poaching charges.. However most of the non-State actors or offenders of wildlife crime more often

are arrested in possession of the trophies. And the burden of proof should shift for them to explain how they came to be in possession of the trophies.

In order to assess how effective the new law is, it is important to examine the expected outcome. In the case of WCMA (2013), reading from the preamble of the Act, it is enacted in order to provide for the protection, conservation, sustainable use and management of wildlife in Kenya and for all other connected purposes.

As laudable as this new legislation on wildlife crime is, it must be emphasised that it is not the stiffer penal sentence that the written law provides for a would-be offender that matters. It is the offender's belief that a term in prison is a real possibility that will deter the offender. According to Wright (2010), more punitive laws and harsher sentencing and enhancing the severity of punishment will have little impact on people who do not believe they will be apprehended for their actions. We must understand that when dealing with a type of offence like wildlife crime, damage caused like murder, cannot be compensated by way of damages (money) or even sentencing and jailing the offender to a life term. When a poacher kills an elephant or any other member of the charismatic 5 endangered species, the animal is gone and that can only be described as an irreversible loss. In law it can be described in legal terminology as “ No degree of compensation or damages can ever be sufficient to adequately compensate for the loss” It is therefore better to deter the poacher by making the detection, investigation prosecution and sentencing a very traumatizing likelihood, sufficient to completely dissuade the offender from committing the offence.

Therefore while the input of the NGO'S and other conservationists in the drafting of the new legislation was recognized not just for this wildlife legislation, but because it was the first time there was open public participation in drafting of a law under the new Kenya's Constitution. The experience learnt by the NGO'S and Kenyans in general then was invaluable. Many other changes to this law and to other related laws are expected, Wildlife crime, while primarily situated within the sub-category of animal rights and species justice (White, 2008, Kiser, 2012, Martin, 2011) is a topic which allows for the study of private policing and the influence of Non-Governmental Organizations (NGOs) on policy development and law enforcement policy. Therefore the effectiveness of the new legislation will keep on being tested and compared with other legislation until one time when it will be the best.

## **Sustainability and Implications of the Legislation on Illegal Wildlife Trade at Source & Consumer Markets**

There are reports that numerous groups of armed non-state actors in Africa are now engaged in poaching and illegal wildlife trade to support their criminal activities, insurgencies and for acquiring arms through which they commit atrocities and human right abuse on the populace in their areas of operation. Many of the offences that they commit in their criminal undertaking fall within the jurisdiction of international crimes as establishes under the International Criminal Court (ICC) in The Hague and United Nations Convention against Transnational Organized Crime. Kony the leader of the LRA in Uganda is a fugitive wanted by the ICC. Jean Pierre Bemba Gombo was convicted and sentenced to serve 18 years in prison by the ICC for committing crimes against humanity in the Central Africa Republic (CAR) while as a leader of an insurgency group operating from the Congo called Movement de Liberation du Congo(MLC). This movement was responsible for the slaughter of thousands elephants and rhinos in the Congo, Gabon and CAR. Therefore it is now common knowledge insurgency groups use wildlife crime and trade to fund their militancy in the Great Lakes region and are now active armed non state actors in the illegal wildlife trade chain (Chatham House, Lawson and Vine 2014; UNODC, 2012; Wellsmith, 2010; Hilborn, 2006).The Interpol has therefore enhanced its surveillance in the East and Central Africa and even set up a wildlife crime most wanted list containing nine persons, two of whom have already been arrested. Western countries like the UK have sent in their military to assist and train wildlife game warders in Kenya on the latest surveillance technology like drones in order to enhance security in the parks.

From 2012 to date, wildlife crime has become an issue of global concern especially at the highest political offices internationally that has the full attention of the United Nations General Assembly and the Security Council. At regional levels, in Africa, Europe and Asia, it has become an agenda listed for discussion in all the Africa Security Summits, the APEC Leaders Meetings and the European Union conferences; while a growing number of Heads of States and world leaders, from President Ali Bongo of Gabon and President Jakaya Kikwete of Tanzania, to the US President Barack Obama and the UK Royal Family are giving it the political weight required to keep it on the surface in media reports (McLellan et al., 2014). Celebrities too have not been left behind. With so much attention focused on wildlife crime, is the current wave of change sustainable and can stiffer penalties, new legislations and attention from the world's most influential leaders be enough to stop the decline and eminent extinction of the charismatic five due to wildlife crime ?. The implication of failure for this good wave of change in favor of the wildlife is unimaginable.

In furtherance to the anti-poaching and anti-trafficking campaign , the Government of Kenya established a multi-agency Taskforce in 2014 to conduct a comprehensive audit of wildlife security situation in the country with the aim of coming up with sustainable and effective long-term interventions to address security challenges in the wildlife sector. The task force completed its work and a report entitled report of Lifting the siege: Securing Kenya’s wildlife; report prepared by the Task force on Wildlife Security for Ministry of Environment, Water and Natural resources 2014 launched. (GOK Report 2014) However it raised eye brows as it seemed to focus on KWS and the infighting between the organizations management, the Ministry and the board of trustees rather than proposing sustainable strategies meeting international standard in combating international crime as Kenya’s wildlife crime problem is not just local one.

### **(3) ECONOMIC: Illegal Wildlife Trade**

Poaching and wildlife crime have evolved from an economy of proximity to economy of networks. (Vira. V and Ewing. T (2014). What this means is that wildlife crime has become a sophisticated global economic activity with economic trends that are determined by economic forces of demand and supply and illegal consumer markets all of which essentially govern this trade. These economic aspects have become an essential part of wildlife crime today and must be considered when discussing wildlife crime. Besides although wildlife crime and other environmental crimes represents a significant economic, environmental and not least security threat at a global scale not all wildlife trade is illegal. The legality and illegality of wildlife trophies is determined within regulations of CITES. Some wildlife trade including in critically endangered species may at one time been authorized by CITES like the one off sales of ivory trophies in 1999 and 2008. Annually, the international wildlife trade is estimated by CITES to include hundreds of millions of plant and animal specimens (CITES, 2013).

Furthermore the effect of wildlife crime on national economies in source countries may be different from the effect on the economies of the consumer nations, some of which even have ivory curving factories. However China undertook to place a total ban on domestic ivory trade by the end of 2017. (East African; 2017) In any case, being an illegal trade, getting reliable cumulative statistical national data on the effect of the illegal trade in the national economies of the source and consumer nations may be impossible as it may not even exist.

The trade is diverse, ranging from live animals and plants to a vast array of wildlife products derived from them, including food products, exotic leather goods, wooden musical instruments, timber, tourist curios and medicines. Levels of exploitation of some animal and plant species are high and

the trade in them, together with other factors, such as habitat loss, is capable of heavily depleting their populations and even bringing some species close to extinction. Many wildlife species in trade are not endangered, but the existence of an agreement to ensure their sustainability is important in order to safeguard these resources for the future (Nellemann et al., 2014).

CITES, in collaboration with member states, helps provide varying degrees of protection to more than 35,000 species of animals and plants, whether they are traded as live specimens, fur coats or dried herbs. CITES also regulates trade in marine species following COP 16 decisions.

### **Effects of Market Forces of Demand & Supply of Illegal Wildlife Products on Wildlife Crime**

To curb the rise of wildlife crime the response must involve legal responses, enforcement, legislation, regulation, environmental management, consumer- and demand-reduction strategies, and alternative livelihood opportunities. Understanding the phenomenon requires a broad insight into the relationship between the environmental resources at stake, their legal and illegal exploitation, loopholes, as well as the scale and type of crimes committed. The finance fuelling the conflicts and terrorism is often an integrated part of this picture, and must be taken into account (Nellemann et al., 2014).

According to Haken (2011), the most lucrative products in illegal wildlife trade are elephant ivory, tiger bones and rhino horns, with demand falling into three categories: traditional East Asian medicine (TEAM), commercial products and exotic pets (Haken, 2011). China is the largest consumer of ivory products, and has used rhino horn for traditional medicinal purposes for thousands of years (Ellis, 2005). In other Asian countries however, the use of products derived from endangered species has been falling.

Esmond and Vigne, 2011 note that much of the available literature on consumer demand for ivory and rhino horn products has been driven by a rising middle class in Asia with larger disposable incomes, although further explanation is lacking. One publication states that since 2004 there has been a 50 per cent increase in ivory items for sale in Guangzhou, an important ivory center in China. There is a need for more empirical data to assess the rise in demand, and probably also for a wider literature review incorporating Chinese and Asian publications

The Chinese government previously only restricted the selling of ivory to specific registered shops, and the shop owner had to record how much is sold and to whom, labeling ivory items with ID cards (Esmond and Vigne, 2011). However, in 2013, IFAW found that '43 per cent of urban Chinese are not aware of the government license system under which a consumer can buy ivory legally but only



in certain outlets', and that among past buyers, '18 per cent ivory was bought without receiving an ID card' (IFAW, 2013). Illegal ivory hotspots (which often overlap with the legal trade) where seizures have been made in Asia include Ho Chi Minh City in Vietnam, where 7.28 kg of rhino horns were seized at HCMC airport in June 2013, and Hong Kong, where ivory worth \$1.5 million was confiscated in October 2013. According to Rosen and Smith (2010), most seizures reported by TRAFFIC of illegal wildlife products from 1996 to 2008 originated in Southeast Asia, (Rosen and Smith, 2010) and are trafficking from the ports of Kenya and Tanzania (UNODC, 2013).

Globally the wildlife trade is believed to be surpassed only by the illegal weapons and drugs markets as an important source of financing for organizations seeking to sustain or ignite conflict in many of the most conflictprone areas of the world, from Chad to Afghanistan (South and Wyatt, 2011, Warchol, 2004 and Wyler & Sheikh, 2008). Indeed some argue that this now ubiquitous trade is simultaneously one of the most profitable and attractive of all the illicit trades (Warchol, 2004). The trade's attractiveness is largely due to its relative lack of social stigma, small risk of prosecution for wildlife crimes, and the light penalties given to those few brought to justice (Warchol, 2004 and Wyler & Sheikh, 2008).

The international trade in wildlife is worth an estimated \$332 billion, based on import declarations for wildlife, fisheries and wild-sourced timber (Engler, 2008). It is estimated that a proportion of this trade in animals, worth some \$10–20 billion annually, is illegal (Bliss, 2009 and Wyler & Sheikh, 2008). Precise figures have, however, been challenging to obtain in large part because of the clandestine nature of the trade (Barber-Meyer, 2010). This illegal component includes the trade in locally common live exotic, rare and endangered animals, meats, eggs, and various animal body parts and organs, including bones, horns, tusks, genitals, gallbladders, pelts, paws, and fins. Global interest and demand has risen for both live animals and their products. The ease of international travel, internet marketing and sale, and rising affluence in regions such as the Middle Eastern Gulf states, India, China and Eastern Europe has facilitated this rise (Cooper, 2013, Naylor, 2005 and Sheffer, 2013).

The UN Conference on Sustainable Development has explicitly recognized the economic, social and environmental impacts of illicit trafficking in wildlife, where firm and strengthened action needs to be taken on both the supply and demand sides and has emphasized the importance of effective international cooperation among relevant multilateral environmental agreements and international organizations.

A United Nations Office on Drugs and Crime Regional Office (UNODC) for Southern Africa (2012) report notes that the street value of rhino horn can exceed the per kilogram price of gold. In general the whole or parts of several species can fetch astounding prices on the black market (see Table 2.1 below).

**Table 2.1:- .International crime threat assessment, US Government.**

Species or animal part	Uses	Reported retail price: range or max in US\$	References
<i>Mammals</i>			
Lion	Trophy	\$10,000–\$50,000 ea.	<a href="#">Warchol (2004)</a>
Lion: bones	Tiger bone substitute	\$165 per kilo	<a href="#">Hervieu (2013)</a>
Orangutans	Exotic pet/Tourism entertainment/Disreputable zoo exhibit animals	\$1000 ea.	<a href="#">Stiles et al. (2013)</a>
Rhino: horn	Traditional medicine	\$30,000–\$65,000 per kilo. One horn sells for up to \$250,000	<a href="#">UNODC (2012)</a> <a href="#">Humphreys and Smith (2011)</a>
Tiger: skin/pelt	Decorative/Clothing	Up to US\$20,000 ea.	<a href="#">Humphreys and Smith (2011)</a>
Snow Leopard: pelt	Decorative/Clothing	Up to US\$20,000 ea.	<a href="#">Humphreys and Smith (2011)</a>
Elephant: raw ivory	Decorative/Various	\$6500 per kilo	<a href="#">Wasser et al. (2009)</a>
Polar Bears ( <i>Ursus maritimus</i> )	Trophy	\$20,000 ea.	<a href="#">Cooper (2013)</a>
Cubs of Lions, Hyenas and Leopards	Exotic pet for wealth elite of the Gulf states of Yemen, Saudi Arabia and the United Arab Emirates	Up to \$12,700 ea.	<a href="#">Sheffer (2013)</a> <a href="#">Warchol (2004)</a>
<b>Reported retail price: range</b>			
Species or animal part	Uses	or max in US\$	References
Pangolins	Luxury food item/Traditional medicine	Up to \$7000 ea.	<a href="#">Challender and Hywood (2012)</a>
<i>Amphibians</i>			
Tokay Gecko ( <i>Gekko gecko</i> )	Exotic pet/Traditional medicine	Up to \$2330 ea.	<a href="#">Lim et al. (2012)</a>
<i>Reptiles</i>			
Madagascan Plowshare Tortoise ( <i>Astrochelys yniphora</i> )	Exotic pet	\$30,000 ea.	<a href="#">Lim et al. (2012)</a>
Angolan Python ( <i>Python anchietae</i> )	Exotic pet	\$65,000 ea.	<a href="#">Lim et al. (2012)</a>
Komodo Dragon ( <i>Varanus komodoensis</i> )	Exotic pet	\$30,000 ea.	<a href="#">Lim et al. (2012)</a>
<i>Birds</i>			
Lear's Macaw ( <i>Anodorhynchus leari</i> )	Exotic pet	\$90,000 ea.	<a href="#">Lim et al. (2012)</a>
Pakistani falcons	Sports hunting	\$10,000 to \$100,000 ea.	<a href="#">Yusufzai (2013)</a>
<i>Insect</i>			
Colophon beetles	Decorative display	\$15,000 ea.	<a href="#">Yusufzai (2013)</a>

US Government Interagency Working Group, 2000. International crime threat assessment. US Government.

### Status of the source market, both local and transnational.

It is important to look at the source markets holistically as there are emerging poaching trends utilized by the new entrants in the armed non-state actor's category, namely the international crime syndicates. Secondly, each nation may have different status driving wildlife crime as a source markets, like conflict, being the commercial hub of the region, ineffective law enforcement, corruption, easy access to the parks and wildlife and commonly to all, and poverty. Poverty was once considered as a leading cause for wildlife crime in east and central Africa.

But the field has now changed and the players in it are organized gangs in there for the 'big money' and ruthless enough not to entertain any competition from any other source no matter the reason. Local poachers are increasingly being pushed out by well-equipped international crime syndicates using modern technology and helicopters to track the elephants and fly in, gun down the wildlife species they want and fly out and out the park. That means that they do not need to have knowledge of the terrain, a key advantage for the local poachers. Transnational trafficking has no hindrance with such equipment at their disposal.

The illegal trade in ivory and rhino horn originates in Central and Eastern Africa and Southern Africa. A surge in demand for ivory in Asia has fueled the illicit trade in elephant tusks and created a lucrative black market. During the eight years from 2002 to 2010, the price of ivory increased about eighteen-fold from about \$100 per kilogram to \$1,800 per kilogram (Straziuso, et al 2010). Some African countries already face the reality of elephants disappearing from their territories. Sierra Leone lost its last elephant in December 2009, and in Senegal there are fewer than ten left (Straziuso, et al., 2010).

In Kenya, determined efforts have been undertaken by the Kenya Wildlife Service (KWS) to protect wildlife and to counter poaching in national parks. These initiatives appear to have produced some positive results, at least in the Tsavo National Park. The preliminary result of an aerial census of the elephant population, undertaken in early 2011 shows that the elephant population in the park has increased by 2 percent from the previous census in 2007 (IFAW, 2011). The census took place against the background of a dramatic decrease in the elephant population over the past few decades. In the 1960s the park had a population of about 50,000 elephants, a population that has now dwindled to about 11,000 (Straziuso et al., 2010). An increase of 2 percent is indeed good news, but 2% of an already depleted population may not be good enough to call for celebrations. Elephants killed through poaching between 2006 and 2009 increased sevenfold in Kenya, with a total of 271 killed in 2009. The regional director of Traffic East and Southern Africa commented as follows:

*“What we found is that the illicit trade in ivory continues to increase and that it is increasing at a much more rapid rate than previously was the case”* (Straziuso, et al., 2010).

The Economic status and implication of wildlife trade at an international scale is extensively covered under Case Study No 3 in the Appendices of this Thesis.

### **Status of Illegal Global Consumer Markets**

To understand the wildlife trade consumer markets one must understand the reason why there is a demand for wildlife products. The most lucrative products in illegal wildlife trade are ivory, tiger bones and rhino horns. Demand for these products falls into three categories, the traditional East Asian medicine (TEAM), the commercial products and the exotic pets (Haken, 2011; Naresh, 2013; Sas-Rolfes, 2014, CITES). Without the high market value for ivory, tiger bones, rhino horns, fangs and fur from the big cats, these animals would not be under any threat. But this can change

Currently China is the leading consumer of ivory products globally including also in the use of rhino horn for traditional medicine for many of years (Ruble 2014) including trophies from the tiger and the big cats in Africa. In South Korea use of rhino horn and tiger parts as well as other big cat parts for traditional medicinal purposes has decreased substantially since they were banned. Traditional medicinal practitioners in Korea have adopted alternative medicinal products like herbal (Sue and Phipps, 2003). Available literature on consumer demand for these wildlife trophies products in Asia associates the rise to being driven by a growing middle class in Asia, but lacks further explanation. The Chinese government has restricted the selling of ivory to specific registered shops which maintain records for the sale and issue an id cards for each sale. (Esmond and Vigne, 2011). However there is evidence that illegal ivory is also sold as legal in some of those shops. In a research conducted by IFAW in 2013, it found that 43 per cent of Chinese living in urban areas were not aware of this licensing system for legal sale of ivory legally while 18 per cent admitted to having bought ivory without being issued with an id card (IFAW, 2013).

### **ILLEGAL TRADE ROUTES**

The process of trafficking raw wildlife trophies from source countries along the transit intercontinental routes to the artisans and consumers markets depends on the size of the consignment. Large consignments are normally trafficked by international organized crime syndicates either concealed in ocean freight containers or as air freight cargo. (McLellan et al., 2014). C2ADS (2014) in its report did find that corruption was rampant between government officials and wildlife traffickers especially at the ports. Traffickers for the exporting illegal wildlife trophies from

Kenya still require the cooperation of a government official at the port of exit to succeed. Considering the level of security checks carried out in the airport including by sniffer dogs a conniving security official at the airport is a necessity. They obtain such cooperation through corruption.

Consequently, the international trafficker will make a big profit that will keep him coming back for more. Therefore, the international traffickers have vested interest in preventing source countries from developing economically and structurally in order to keep the illegal wildlife product supply chain cheap and easy to maneuver through. Similarly by fueling conflict within the region, this ensures their suppliers live in poverty in order to keep the supply chain operating cheaply and ensuring sizable profits for the international middlemen involved in the trade, (UNODC, 2013; Mizutani, 1999; Mizutani,1997; Western,1994b) who include Chinese and Vietnamese nationals living in Africa with links to Chinese and European nationals living in the EU (Chatam House, Lawson and Vines, 2014; Wei, 1997; Mills,1994).

The ivory that is smuggled ivory from Africa to China is processed registered ivory traders for the local Asian or European or USA market. (IFAW, 2006 Wetton, et al.2002). The EU also a major transit route besides also being a market for illegal ivory and other wildlife products. This is confirmed by data on seizures in the EUTWIX database.

### **Inter-Continental Process of Transiting Wildlife Products from Source to Consumer Countries**

Kenya Wildlife Society (KWS) have pointed out that the illegal wildlife trade in Kenya involves an organized network of dealers, financiers, suppliers the illicit trade involves networks of organized dealers, financiers, suppliers( poachers or armed non state actors), local and international brokers, couriers and merchants. (KWS, Ombati, 2011). In Kenya, there appears to be two types of networks involved in ivory smuggling. The first are those networks led by an international dealers who live in China, Korea, or Bangkok but have agents and contacts in Kenya as well as in other source and transit countries. The second network is the one led by the local organized crime groups involved in poaching and cross border smuggling of wildlife trophies within the region mainly to supply the first network

There is now growing evidence some of the kingpins in the first network group have moved base from their foreign capitals that they have operated from into Kenya to cover their operations. They disguise their operations as legal businesses or NGO's. Recent arrests have been made in Kenya and Tanzania of a German director of a Mombasa based Ostrich farm and a prominent Chinese

business lady owning several casinos in the region but both were illegal wildlife traders and traffickers.

### **Drivers of the illegal Global markets**

A report by the UNEP titled, *Elephants in the Dust*, shows that poaching within the local actors, armed and unarmed, state and non-state actors, is exacerbated by poverty, food insecurity and low wages to law enforcement agents leading to their recruitment into wildlife crime as accomplices. Poachers are recruited and exploited by organized crime syndicates due to poverty. Poverty and inadequate bureaucracy enable criminal groups to corrupt poorly paid enforcement agents (UNEP 2013; Kiss, 1990). Poverty is not always a driver for participation in poaching. TRAFFIC's 2008 report on economic and social drivers of the wildlife trade in East Asia asserts that wealth is a stronger driver of illegal and unsustainable wildlife trade in Southeast Asia than poverty. This is owing to the dynamics of increasing affluence and wider processes of economic growth in the region. (TRAFFIC, 2008; Firstpost, 2013). Greed can also lure poachers to a trade that is supposedly low-risk and high-profit. (Haken 2011). 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. (Knight 2006, Meguro, 2008)

Traffickers exploit poverty and inequality to entice poachers, operating in territories with little government presence. They have a vested interest in preventing source countries from developing economically and structurally (Haken, 2011. Rosen and Smith 2010 Robinson, 2006) also note that illegal wildlife trade undermines the efforts of developing nations to manage their natural resources. This results in the loss of future profits that could be available through development and tourism. Here it is important to recognize the correlation between insurgency groups and remote, almost stateless wildlife reserves which provide ideal cover and sustenance for rebels fleeing state authority. This 'loss of earnings' would be on top of the conservative estimate that the illegal trade in wildlife excluding timber and fisheries are worth \$10 billion per year (Rosen and Smith, 2010). The tourism industry is the leading foreign exchange earner for Kenya. In 2007, the year before the post-election violence erupted, tourist earnings were Kshs 65.2 billion (\$932 million) but this dropped to Kshs 52.7 billion (\$818 million) in the following year (Kenya National Bureau of Standards, (2010).

A relatively new factor in ivory smuggling is the widespread involvement of East Asian nationals within Kenya, particularly Chinese. Their extensive presence across the African continent has brought them into closer contact with local populations and improved their knowledge of the terrain.

The majority of ivory smugglers arrested at Nairobi's Jomo Kenyatta International Airport are now Chinese nationals.

In Kenya in May 2011, the then Director of the Kenya Wildlife Service, Julius Kipnegetich, declared in an interview that poaching had increased in areas where Chinese firms were conducting infrastructure projects with large numbers of Chinese construction workers working on the projects.. This open criticism of Chinese business interests broke a taboo and provoked sharp rebukes from the Chinese government and Kenya's as well. But his statement did contribute to a slow turnaround. China began to respond to accusations that it was promoting ivory smuggling and started aiding Kenya Wildlife Service to combat poaching and wildlife crime.

Traffic, the international agency that monitors the illicit trade in ivory, points to China as the main destination for trafficked ivory. Its 2009 report states that:

*Chinese nationals have been arrested within or coming from Africa in at least 134 ivory seizure cases, totalling over 60 tonnes of ivory; and another 487 cases representing almost 25 tonnes of ivory originating from Africa was seized en route to China. ... As ever, more than any other country, China seemingly holds the key for reversing the upward trend in illicit trade in ivory (Gastrow, 2011).*

In a statement from their Nairobi Embassy, Chinese authorities defended their track record and refuted the association of Chinese nationals with the illegal ivory trade in Kenya (Gastrow, 2011).

While ivory is probably the most high-profile wildlife product that is smuggled by international criminal groups, other wildlife products are equally in demand. Rhino horn and leopard, cheetah and lion skins, claws, and fangs are frequently among the items traded internationally by these networks. Crime syndicates made up of Kenyans and foreigners have established commercial reptile parks disguised as conservation or tourist attraction centers. A KWS official commented: "But we do not see any tourists visiting the places. I think they are just used for the purposes smuggling as well as trafficking" (Gastrow, 2011). In most of these cases, the networks involved collude with customs officials and clearing agents (Gastrow, 2011)

We must admit that in economies of trade especially in sales of a product, where there is a mix of legality and illegality in the trade movement of same product, brought about by international treaties sending mixed signals, there will be price fluctuation and scarcity including scarcity created by traffickers to drive up the price or in anticipation of an international treaty being passed that will

authorize the sale of the illegal product that they are hoarding. The effect of this in the source market especially on the CJS when combating wildlife crime has not been determined. This study has sought to determine this through this variable in its research tool.

#### **(4) LEGAL: The process of policing & enforcement by the Criminal Justice System and other Law Enforcement Agencies**

The Kenya Wildlife Service (KWS) has the mandate to protect wildlife and is responsible for investigations and arrests in all cases involving wildlife crime. But this is often done in collaboration with the National Police Service due to jurisdiction, inadequate capacity at KWS and the nature and location of offences. Sometimes KWS game wardens may engage poachers in hot pursuit outside the park and obviously the Police then have to be involved. KWS game wardens bring offenders to police stations to hold them there as in some parks they do not have cells or facilities that are necessary to carry out criminal investigations. After carrying out the investigations, they charge the suspect if they have sufficient evidence at the end of the investigations. Prosecutions are now handled by the office of the director of public prosecutions. However, in some instances where opportunistic arrest of persons involved in wildlife crime have been made, either at the ports or airports or any other place where the police have jurisdiction and the KWS game wardens are not present, the police handle charge sheets and the prosecution process. The Customs Service Department and Enforcement Department of the Kenya Revenue Authority (KRA) are responsible for the protection of society from illegal entry of prohibited goods and also illegal exit of prohibited goods in Kenya. They play a key role in seizing illegal trophies and conducting arrests at ports, airports and even in private homes.

However, they have been seriously challenged in combating wildlife crime and there exists serious gaps in protection of wildlife. This can arguably be blamed on corruption, toothless laws, weak judicial systems and light sentences allow criminal networks to keep plundering wildlife with little regard to consequences. These factors make illegal wildlife trade a low risk business with high returns. The poachers often poor locals are the usually the only ones caught, leaving the real masterminds and their network safe and operational with the ability to strike again (WWF, 2012).

In combating crime the most important stages in that process are detection, investigation, arrest, charging, prosecution and subsequently the judgment and sentencing. The initial three, detection, investigation arrest are not limited to following that process in that order because there are instances where KWS game wardens or police may stumble on a suspect and arrest him. In such instances, investigations are carried out after the arrest. Moreover the period under which police can hold a



suspect in the cells without bail is limited to 48 hours. They thereafter must either take the person to court or release him either with or without bail. It is therefore a common practice for police to charge the person and continue with the investigations, thereafter.

### ***Detection***

This can come in two forms, either before or after committing the offence. Detection before is also known as intelligence gathering. Obviously in wildlife crime, detection before committing the offence or intelligence is the best and ideal situation because wildlife crime like poaching involves killing of wildlife. Like murder, the loss is permanent and cannot be reversed. Detection before a crime is committed is therefore the most ideal way of tackling wildlife crime. Legislation to assist in this form of detection is in place, like prohibition against loitering or unauthorized access or trespass in to the game park where the animal are. Also being found in possession of equipment used for poaching is an offence which is another example of legislation assisting in early detection. Members of the public are also required to report any suspicious activities in or outside the parks that they suspect are being done in preparation for committing a wildlife crime. In Scotland modern technology is being employed for this purpose. Modern technology like Drones can also assist in early detection before an offence takes place. It can detect whether at night or day, unauthorized human presence near where the animals are.

Equally detection after an offence is committed is important. The knowledge that an offence has been committed is a measure of strength for law enforcement agencies as they are expected to be alert and be aware of whatever is going on within their area of jurisdiction. Although most reports of crime having taken place come from members of the public, in wildlife crime NGO's and other Conservation groups also make reports. Indeed in the UK, much wildlife crime is still reported directly to NGOs by members of the public, and some NGO's do enjoy arrest and prosecutorial powers especially those dealing with cruelty to domestic animals.

Where wildlife crime is committed in the parks, the vulture is the bird that alerts the KWS that there is a carcass. Since they are the natural scavengers of the wild, their presence in large numbers flying around a particular place alerts the KWS game wardens that there is a carcass in that area and they then go to investigate on which animal it is and whether it died naturally or through wildlife crime. If it is through wildlife crime, the game wardens are trained to examine the area for foot tracks or use tracking dogs to catch the culprits.

In an embarrassing event for KWS, a herd of elephants totalling to 17 were slaughtered in one day at Tsavo National Park in January 2013. A conservationist flying a small aircraft from Malindi to Nairobi noticed the large number of vultures flying around one spot and flew over to investigate where he saw a herd of elephants which included calves all dead. He called the media who published the story. What followed was a rather comical handling of the situation by KWS. Although the animal had been dead for a number of days by then, KWS first denied any knowledge of the incidents only for tyre marks of their cars around the scene to be pointed out to them. Then they admitted knowledge and said they were investigating. Although there was suspicion of some game wardens were involved in the slaughter it was later discovered to be the work of a Chinese Organized Crime gang using a helicopter, GPS tracking devices and powerful machine guns. Although the game wardens discovered this slaughter the following day, they decided not to report it in order not to draw media attention to the slaughter and on themselves as the slaughter would have (and indeed did) caused a national outrage since it happened in a supposedly well-guarded park. The wardens were afraid of losing their jobs due to incompetence. That was also not fast the time KWS game wardens and officials have been caught lying and concealing wildlife crime scenes in order to protect their jobs.

The Task force on wildlife security in its report entitled report of Lifting the siege: Securing Kenya's wildlife; report prepared for Ministry of Environment, Water and Natural resources in 2014 observed that intelligence gathering capability of the KWS was weak and the chain of reporting was wrong as instead of reporting to the head of security, the intelligence head reported to the CEO of KWS. It also observed that KWS game wardens were at logger heads with the communities neighbouring the parks and could not get necessary cooperation from those communities for proper intelligence gathering (GOK Report, 2014). While KWS certainly has management problems to resolve and is not perfect, it is important to note that poaching trends have changed with the introduction of new armed non-state actors like the international organized crime syndicates. These groups are very well resourced with helicopters and GPS tracking systems and poaching plans can now be planned hundreds of miles away, even in hotel rooms and executed in hours. Therefore intelligence gathering of wildlife crime should also be national police undertaking as the trophies are trafficked through national airports and ports where the purview of intelligence and detection squarely lies with the Criminal Investigations Department of Kenya It is important to take into cognizance the necessity of a regional approach to detection and intelligence gathering as well as incorporating the assistance of the INTERPOL.

However the report (GOK Report 2014) also highlighted lapse of security within the parks some as simple as checking cars entering or leaving the park which have been severally cited by conservation and civil society organizations.

### ***Investigation***

After a crime has been committed and reported or detected by the police on their own, they are required to carry out an investigation and nap the suspect. In case of wildlife crime it is the KWS game wardens who are expected to carry out the investigation. Investigations of any crime in Kenya commences with the recording of the offence in the stations or parks ‘occurrence Book’ All offence must be investigated and it is only after investigations can police determine whether to charge or release a suspect. Torture or any form of coercion or inducement are barred and cannot be used by the police or KWSgame wardensduring interrogation or investigations.

Investigations involve recording of statements, interrogating the suspects and possible witness, examining the exhibits and finally tying everything together in to a case that has determined the accused did commit the offence and there is sufficient evidence to charge him with the offence and sustain a conviction. It is important to note the difference between determining that a person has committed an offence and having sufficient evidence to charge the person in court with committing the offence. A good investigation must clear that difference. A good investigator and prosecutor must ensure that the evidence before them meets the threshold required and is sufficient to sustain a conviction before charging and submitting a suspect to a court of law for the due process of the law to commence.

### ***Arrest***

This means to place a person under lawful custody by an authority legally authorized to do so like the police and KWS game wardens. It also means the lawful denial by the lawful authority of the person’s right of movement or to be in a place of their choice for a stipulated period of time. Before the lapse of that time, the person must either be charged in a court of law or freed. A person can be arrested on suspicion of committing an offence. Most arrest in wildlife crime involves possession of wildlife trophies or trespass into parks.

Arrests can also be made after investigations. The police after examining the information can decide that a person has information that can assist it with further investigation or participated in the commissioning of the offence.

### ***Prosecution***

The process of prosecution of a suspected offender commences with the charging of the person in a criminal court. Once a person has been charged in a court of law he/she is referred to as an accused person. The process of charging an accused person in Kenya commences with the drafting of the charge sheet which details the offence the person is being charged with and the provision of the law that the person is charged under. It also gives a summary of the reasons why the person has been charged also referred to as particulars of the offence. Under the new Constitution, prosecution of criminal cases in Kenya have been placed under the office of the director of public prosecution.

Recently, special prosecutors were trained on prosecuting wildlife crime cases. Various wildlife conservation and welfare organizations have come forward to train judicial and prosecutorial officials on effectively prosecuting and adjudicating wildlife crime case. One of these organization is the African Wildlife Foundation (AWF) which with the support of the USA government, has embarked on a judicial and prosecutorial training program dubbed ARREST an abbreviation for Africa regional response to endangered species trafficking. (AWF 2016) However KWS and the police still retain powers to prosecute.

As earlier noted most common offences on wildlife crime prosecuted in court are illegal possession of trophies. The amount of trophies and the type whether it is an endangered species or not determines the seriousness with which a case will be treated. Unfortunately a case involving a foreign national from western or far eastern countries caught attempting to traffic elephant tusks and another involving a local peasant who is also a poacher caught with one or two tusks will not receive the same attention. The case of the foreign national will receive wide press coverage while the local peasant will not be mentioned. Yet it may be the same local peasant poacher who previously poached the tusks and sold them to the foreigner.

### ***Judicial/Due Process***

Wildlife crimes are criminal offences and are heard in magistrate courts. Magistrates are the ones with the jurisdiction to hear and determine all such cases. The area jurisdiction of a court is determined by a geographical area. In the case of wildlife crime, most cases involving wildlife crime will end up in the courts with geographical jurisdiction around where the parks are situated or in some cases, in local cities where international airports or Ports are located like Nairobi or Mombasa. Once a suspect is charged and the charge is read out to him/her in open court he can either plead guilty or admit to what he is charged with and be procedurally sentenced. If he pleads not guilty, he is given bail and the case set out for hearing on a particular day. Bail is not automatically granted especially for foreign nationals who are considered a flight risk.

The standard of proof in a criminal trial in Kenya is the prosecution must prove the case against an accused person beyond reasonable doubt through the evidence presented in open court in order to obtain a conviction.

## **THE INTERPOL**

Historically the genesis of the INTERPOL began in 1914 during the first International Criminal Police Congress, held in Monaco where police officers, magistrates and lawyers from 24 countries meet to discuss the arrest procedures, identification techniques, centralized international criminal records and extradition proceedings. It was however officially created in 1923 as the International Criminal Police Commission (ICPC) with headquarters in Vienna, Austria, on the initiative of Dr Johannes Schober, President of the Vienna Police, It became known as INTERPOL in 1956 and adopted a modernized constitution becoming an autonomous organization collecting dues from member countries. The INTERPOL held its first regional conference in Monrovia, Liberia in 1963. In 1971 the United Nations recognizes INTERPOL as an intergovernmental organization and in 2004, INTERPOL liaison office was inaugurated at the United Nations in New York and the first Special Representative was appointed. In 2005 the first INTERPOL United Nations Special Notices was issued for individuals subject to UN sanctions for being Al Qaeda and the Taliban members and were placed on the INTERPOL most wanted global list. The INTERPOL has its General Secretariat to Lyon, France and currently operates on 24 hours, 365 days a year basis. Each member countries maintains a National Central Bureau staffed by its own highly trained law enforcement officials (INTERPOL, 2017).

The INTERPOL is the world's largest international police organization, with 190 member countries. Its role is to enable police around the world to work together to make the world a safer place by offering high-tech infrastructure of technical and operational support and ensuring that the police around the world have access to the tools and services necessary to do their jobs effectively. The INTERPOL facilitates international police cooperation even where diplomatic relations do not exist between particular countries. Action is taken within the limits of existing laws in different countries and in the spirit of the Universal Declaration of Human Rights. However it's Constitution prohibits it from any intervention or activities of a political, military, religious or racial character (Interpol, 2017).

## **The INTERPOL and Wildlife Crime**

The INTERPOL has established a working group called the INTERPOL Wildlife Crime Working Group that initiates and leads a number of projects to combat the poaching, trafficking or possession

of legally protected flora and fauna. It brings together specialized criminal investigators from around the world to work on project based activities on an international level.

The INTERPOL has engaged in several projects and made several arrests of wildlife crime kingpins in East Africa. Currently it is currently engaged in a project to identify and dismantle organized crime networks operating between Africa and Asia (Interpol 2017). In December 2014 Interpol agents arrested a wildlife crime kingpin in Tanzania called Feisal Mohammed Ali following his publication on the INTERPOL most wanted list criminals for crimes against the environment. (The guardian 2014).

### **(5) POACHING: Methods and Patterns**

In most cases wildlife crime starts with poaching and escalates to trafficking. Understanding poaching methods and patterns is important for the CJS when combating wildlife crime as it determines the extent of the threat and elucidates on who the poachers are, what are their intentions and the extent of their voraciousness. Poaching methods used by local poachers using rudimentary weapons has been there since colonization and introduction of monetary economy in Africa. It had its limitations and was not a serious threat as to drive wildlife species to extinction. However modern poaching methods and patterns and other emerging trends in the illegal wildlife trophies markets are accelerating the slaughter of wildlife species in large numbers and in a short time. (WWF,2013). The slaughter of a family of 17 elephants in one night required sophisticated equipment like high caliber guns, choppers, GPS, and night goggles which even local organized wildlife crime syndicates don't have. Therefore poaching methods have an effect on combating wildlife crime as a challenge as they demonstrate what the CJS is up against in combating wildlife crime. The methods and equipment used can determine the effectiveness of the CJS in combating wildlife crime as they may not have the equipment or expertise to counter those being used by the international crime syndicates. An introduction to poachers as armed and unarmed non state actors was extensively covered under the Social variable in this thesis. What will now be considered here is poaching as a variable for this research study.

#### **Methods and Patterns**

Poachers can be identified by their poaching methods. From the Stone Age spears to the modern day improved hunting gadgets, animals globally, whether on land or in the seas, are finding it tougher to survive than ever before Some of these gadgets and methods used by poachers are as follows:-

## **Types of Methods and traps used by poachers**

### ***Snare wire***

These are cable wires which are tied on trees to trap animals. The snare is put in such a position that it traps the animal around the neck. The wire strangles the animal as it struggles to free itself. Snares are commonly used by poachers in national parks in Kenya and Tanzania.

### ***Spears and dog***

This is a traditional method of hunting which involves chasing and spearing animals with the assistance of dogs. The dogs, some with bells tied around their necks track and disorient the animal and in some cases actually even attack it or keep it trapped in one spot. The hunter or poachers thereafter follow the dogs and kill the subdued animal.

### ***Trap nets***

The net is spread at one end of an area, and the poachers, sometimes with the assistance of dogs, chase the animals towards it. The animal gets trapped in the net where the poacher finds it and spears it.

### ***Pitfalls***

Pits are dug to trap large animals such as elephants, big cats, buffaloes and zebras. The pits are dug across a path that the animals use. The pits are normally covered with grass and trees to disguise them. Sometimes the animals are chased by the poachers towards the pit where the animal falls in from where the poacher can easily kill it. Hunters using this type of poaching method target large mammals or the big cats for trophies or meat consumption. These hunters are usually local poachers who have the time and knowledge of the wildlife paths to know where to dig the pit.

### ***Arrows and bows***

These are rudimentary tools for hunting and warfare used in primitive times the world over before the introduction of the guns. They are however still used in parts of Africa and Asia especially by those poachers who fear gunshot sound will be heard and attract the attention of game wardens. Some hunters such as the Mbuti pygmies of Congo are said to put deadly poison on their arrow tips and use blow pipes instead of bows to hurl the tiny but highly venomous arrows striking the animal. They will then follow it to the spot where the animal falls and dies due to the poison or injury.

### ***Noise***

This is meant to cause a stampede where some animals are trampled on by others. In this method, the poacher causes some frightening noise to startle the animals which may before then be peacefully

grazing, to start running in all directions in confusion. That causes a stampede and at the end of it, the poacher can come and pick the carcasses of animals trampled on. This method was commonly used by the early settlers in North America on the Bison. With the shortage of bullets and the demand for Bison hides as blankets, the settlers would fire a bullet in the air and the Bison's would stampede at the end of which there would large picking from the dead or injured Bison. The Bisons were driven to near extinction and to this day the few remaining are in state owned ranches. Amazingly, some carnivorous animals like the lions also use this type for hunting method on the herbivores.

### ***Horseshoe-like Trap***

This is probably the cruelest of all the traps. It is commonly used by the small commercial poacher. The trap is made from either iron or wire. The trap is placed on the ground and the animal gets trapped when it steps on it.

The iron Trap has jagged edges around the clamp which clamps shut with such force that it either breaks the animal's leg or cuts it off all together. The animal dies a slow agonizing death. In the wire kind of trap, this is like the snare trap only that this one wraps around the animals foot once it steps on it and keeps tightening as the animal struggles to free itself eventually cutting of the foot. The animal will eventually die a slow agonizing death due to excessive bleeding and infection. These types of traps are commonly used to trap the Big Cats because of their ability to hide in thickets and to also attack the poachers. The poachers therefore prefer to find the big cats dead and take away their fur, fang and claws. This type of trap has also been known to seriously injure and even maim human beings as well and sometimes leading to death. That is because these types of traps are hidden or covered in a stack of vegetation on a foot path.

### ***Guns***

Guns replaced the bow and arrows. Guns are identified by their caliber and firing range capacity. In case of hunting, using high powered caliber guns is an essential especially for large mammals or big cats which have been known to attack the shooter if not felled instantly.

### ***Dynamites***

These are planted at waterholes, and when detonated will blast many animals into bits or cause a stampede. This type of method is used by large commercial organized criminal gang who are well protected and oblivious of the noise the dynamite causes. It is meant to erase evidence through enabling the gangs to easily dispose the large carcasses or transport the game meat.



### ***Modern Poaching Equipment:***

With the entry of the international criminal syndicates are responsible for introducing modern equipment like GPS trackers, night goggles, helicopters and weaponry that makes slaughter of wildlife in large numbers easy and faster.

### ***Other traps***

Poachers use many other traps most of which are made with local material like the simple cage and bait traps. Many people have been inadvertently injured by such traps. The majority of the casualties are women and children who normally go into the forests to collect firewood, fruits, and other forest products.

Many sport hunters keep the animals as trophies. That today is considered a show of cruelty to animals and is therefore shunned and impresses no one. No matter the reason why an animal is killed, all types of hunting or poaching have led to extinction of species, and if uncontrolled many more animals will become extinct with disastrous consequences on our environment and also a threat to our very own existence on this planet.

According to the Wildlife and Environment Society of South Africa (WESSA), poaching is now ‘methodical and calculated’, and poachers are enabled by the financial backing provided by those higher up in the chain. Poaching is no longer proximity crime but one requiring both local and international networks moving across continents. Obviously this affects CJS ability to combat crime. This dilemma is further compounded by the fact that while understanding poaching methods and patterns can effectively assist CJS in Kenya in combating wildlife crime, where the poaching is taking place in another country within the region and trophies transported into Kenya, it may cause confusion and give wrong data. The CJS must have the ability to determine where the illegally trafficked wildlife trophies are coming from if it is to effectively combat poaching together with trafficking. This study will seek to determine this through testing this variable.

## **(6) CORRUPTION AND GOVERNANCE**

Set in the more general context of how corruption can affect wildlife conservation through facilitating depletion and wanton destruction of important and endangered wildlife species leading to environmental degradation and enhancing regional and national insecurity within those countries where it has taken root. Corruption, which is defined as ‘the unlawful use of public office for private gain’ (Transparency International, 2003), is an ancient and widespread affliction and a systemic feature of many economies (Azfareet *al.*, 2001 Wei, Shang-Jin 1997). It manifests itself in a variety

of ways, including the embezzlement of funds, the demanding of bribes for compliance, patronage or political influence, and the acceptance of bribes to overlook illegal activities (Davis, 2004). The added costs that corruption places on society, and its impact on investor and donor confidence, generally limits economic growth and productivity (Mauro, 1995; Kauffman, 1997; Campos *et al.*, 1999; Dohet *al.*, 2003; Lambsdorff, 2003; Rock & Bonnett, 2004). This is particularly so in developing countries and those with weak or transitional governments (Gastrow 2011).

The detrimental impact of corruption on social and economic development is widely recognized. The World Bank (2000) has strategies to assist recipient countries tackle corruption, whilst Transparency International works to monitor and highlight the problem. Transparency International has developed the Corruption Perception Index, which gives a score for each country based on interviews with local and expatriate business people and country analysts Transparency International, (2003) In 2003 this system produced an Index score for 133 countries to identify where anti-corruption measures should be focused, and Transparency International and others have developed toolkits to fight corruption (Kiltgaard, 1998; Gupta & Siebert, 2004; Owoye et al. 2012 ). In the same year, 95 countries signed the *UN Convention against Corruption* (UN, 2003), which promotes greater transparency across all sectors of government and society.

Corruption is known to limit economic development and fuel poverty, but it may also hinder conservation efforts and contribute to biodiversity loss Smith and Walpole et al (2006). Weak governance and corruption have exacerbated the poaching crisis. Endemic poverty has helped organized criminal elements recruit, bribe, and threaten locals, under paid police, military personnel, and wildlife rangers to participate in wildlife crime. This crisis, if left unchecked, will have a profound effect on regional biodiversity and the economy of the nation concerned.

Transnational criminal networks are corrupting and undermining state institutions in some countries to such an extent that they pose a threat to the state itself, according to two new reports from the International Peace Institute (Gastrow, 2011). Ways of combating corruption and improving governance can be through establishment of economic, administrative and market reforms, updating of mandatory accounting, audit, procurement regulations; involvement of civil society groups; strengthening capacities for decision-making, ensure delivery of basic services and implementation of developmental initiatives. The use of modern technology like closed circuit television in all government offices and facilities, open procurement processes and promotion of online requests for government services that maintains a record that can be tracked for follow up purpose and also

setting up organizations to follow up delivery of services to the public is one way of combating corruption

Corruption and governance have come to the fore in contemporary discussions of reform in developing countries. Many of the problems to which corruption and governance refer to are significant and longstanding. Yet, the way in which mainstream economics has analyzed them simply provides support for a programme of market enhancing reforms. These seek to reduce the role of the state to the delivery of a small range of core services that cannot be delivered by the private sector. The mainstream analysis is not only misleading in failing to identify many of the most important determinants of corruption and of apparent governance failures in developing countries. By offering wrong diagnoses and solutions, these mainstream approaches waste time and resources in programmes that are unlikely to provide reductions in corruption and improvements in governance. Even worse, by proposing and promoting reforms that lessen the ability of the state to accelerate development, they may paradoxically reduce the prospects of substantial and lasting improvements in corruption and other desirable features of good governance such as democracy (Jomo and Fine, 2004).

The impact of poor governance and corruption is not limited to the corporate sector. In many countries, corruption represents a regressive tax on the household sector. When compared with higher-income groups, lower-income families pay a disproportionate share of their incomes in bribes to have access to public services, and end up with less access to such services because of corruption. Related, there is also the finding through research that corruption increases income inequality. (Kaufmann D 2005; Gupta et al 2006). Moreover, governance matters significantly for the effectiveness of development partners' assistance programmes and funding. While some have challenged their findings, the widely known Burnside and Dollar (Burnside, and Dollar, 1999) work on assessing aid effectiveness shows, on the basis of cross-country aggregate data, that the quality of policies and institutions of the aid recipient country is critical. It is at least as revealing, however, to explore these links at the microeconomic level, focusing, for instance, on the effectiveness of investment projects, which show that institutions matter for project effectiveness. Also, the calculations of World Bank– funded projects suggests that if there is high corruption in an aid-recipient country, the probability of project success, of institutional development impact, and of long- term sustainability of the investment, is much lower than in countries with better governance (Kaufmann, 2005).

These results are of particular relevance in the context of a corollary myth, the contention that donor agencies can ring fence projects in highly corrupt countries and sectors, and thus ensure that it is efficiently implemented, and that objectives are attained, even where other projects fail. This is unrealistic. With the possible exception of some humanitarian aid projects, the notion that the aid community can fully insulate projects from a country's overall corrupt environment is not borne out by any evidence. The data suggest that when a systemic approach to governance, civil liberties, rule of law, and control of corruption is absent, the likelihood of an aid-funded project being successful is greatly reduced (Kaufmann, 2005).

Clearly, governance and corruption matter. Space constraints preclude an exhaustive presentation in this chapter of the literature on this topic, or a presentation of all the complex links between governance and other important factors and outcomes. For instance, the extent to which corruption and the absence of rule of law may undermine fledgling democracies is of critical importance, and worthy of deeper treatment elsewhere. Similarly, the links between bad governance, corruption, and money laundering with such security threats as organized crime and terrorism require deeper analytical and empirical treatment (Kaufmann, 2004; Ferraro. (2005; Gastrow 2011,). The answer to the myth that the importance of governance and anti-corruption is overrated would be incomplete without pointing out the obvious: governance is not the only important driver of development. Macroeconomic, trade, and sectorial policies are also important. But when governance is poor, policymaking in other areas is also, and often, compromised (Kaufmann, 2005).

### **Effect of corruption on Wildlife Crime**

On the 29<sup>th</sup> April 2016 His Excellency President Uhuru Kenyatta , President of the Republic of Kenya lead the world in burning of over a hundred tons of ivory and other wildlife trophies stockpile that had been stored in Kenya including others willingly surrendered by licensed wildlife trophy keepers. He told the world that he wanted to convey a global message that wildlife trophies were only valuable to the world when on the wildlife animal and if not then they should be destroyed. That was a very powerful message sent to all nations globally still holding on to wildlife stockpiles. The President further stated: “Poaching and trafficking wildlife is now a branch of international crime. The fight against it will be won by alliances across nations and continents. The first step must be closer cooperation, especially among the states that hold Africa's remaining elephant herds There is convincing evidence that poaching is aided by international criminal syndicates. It fuels corruption. This directly threatens the capacity of our nations to achieve sustainable and meaningful social economic development”.(His Excellency President Uhuru Kenyatta, 2016)

Wildlife crime is often cited as a low-risk crime with a high payoff. Ironically, on paper, laws are often dissuasive and significant prison time and high pecuniary penalties are provided for. Anti-poaching brigades in source countries are often not only present, but also armed, and have the power to arrest; national policies in source countries and their international commitments may even be in favor of conservation. So how, in these circumstances, has illegal wildlife trade gotten so out of hand? A major part of the answer lies in the corruption that nurtures wildlife crime.

Corruption, takes what should be a high-risk scenario and reduces it to a matter of simply satisfying a few corrupt individuals in order to remove the consequences from the equation. Corruption puts pressure on the men and women who work to fight poaching and trafficking, such that they ultimately have to choose between performing their duties at great personal risk or participating in corrupt activities. The morally sound route can become a very costly path to take. A vicious cycle ensues where leaders in charge are few and far between and a culture of impunity prevails.

In this low-risk environment where the demand for illegal wildlife products has risen sharply, making it an increasingly lucrative endeavor, corruption enables, and often encourages, the selective extraction of prized species, like the charismatic 5. At little to no benefit to the societies who traditionally inhabit the habitats with these endangered species, the ecosystem services, economic potential and sheer beauty of the flora and fauna are pried away to satisfy the greed of other financially wealthier societies. Furthermore, corruption nurtures not only illegal wildlife trade, but virtually every type of illegal trade like arms, drugs, and even human traffic. Those who benefit from corruption will not sway without significant pressure, and powerful interests mean that a very specific methodology is necessary to fight corruption. One such methodology, put forward by EAGLE (Eco Activists for Governance and Law Enforcement), a network of NGO/government collaborative projects operating in West and Central Africa, has been able to push for higher numbers of arrests and prosecutions throughout the African continent and is working to help other NGOs strengthen the judicial system in other nations as well by replicating this model. Indeed, without a concerted attack on corruption, then one of the most important factors contributing to wildlife crime remains ignored. It cannot be ignored any longer.

## **(7) MACRO ENVIRONMENTAL FACTORS**

In this research, what is meant by the macro environmental factors are those external elements or forces that are beyond the control and influence of the organizations combating wildlife crime but yet greatly impacts and affects the performance of all organizations when combating wildlife crime

These have been identified for the purposes of this research as Conflict in neighboring state, international crime syndicates, and Political & Diplomatic implications.

### **Conflicts in neighboring countries**

By 2014, Africa had 16% of the world's population and 52% of the world's armed-conflict incidents, a hefty increase from just 40% the previous year (ISS, 2015). These armed conflicts are intrastate armed conflict meaning internal conflict as opposed to interstate which is between two nations and more. The consequences of these conflict affecting the neighboring states not party to the conflict is enormous because refugees stream into the peaceful states. Armed combatants from the state in conflict infiltrate the peace nation and plunder it off it resources like wildlife for food and arms. The peaceful nation has no control of the conflict in the neighboring state and yet it is being affected by it. Kenya is building a wall along its border with Somalia due to this reason.

**International Organized Crime Syndicates:** - According to a series of U.N. studies on the illicit trafficking of wildlife, wildlife experts claim that Chinese, Japanese, Italian, and Russian organized crime syndicates are heavily involved in illegal wildlife trade. Triad societies, such as the Wo Shing Wo group, the 14K and the Japanese Yakuza, the Russian mafia Solntevskaya Bratva, the Italian mafia Camorra, have reportedly smuggled ivory, rhino horn, tigers, shark fin, whale meat and abalone Moreover, the Neapolitan Mafia is said to be behind illegal trading in endangered parrots, and most of the caviar business is reportedly controlled by Russian organized crime (Daan 2012). The UN Convention against Transnational Organized Crime, has described organized crime as occurring when three or more persons who operate in a structured group or network, are repeatedly involved in the commission of serious crime for profit. Organized crime becomes transnational in nature if:-

- (1) It is committed in more than one state;
- (2) It is committed in one state, but a substantial part of its planning or perpetration takes place in another state;
- (3) It is committed in one state, but involves a criminal group that engages in criminal activities in more than one state;
- (4) It is committed in one state, but has substantial effects in another state.

(UN General Assembly Resolution 55/25 (November 15, 2000), UN Doc. A/RES/55/25, Annex I, art. 2.)

### **Political & Diplomatic implications**

On this variable what is to be considered are aspects like geo political factors, international and Africa based treaties that must be complied with, international organizations that Kenya is party to and sovereignty and foreign territories and governments. There has been reported cases of misuse of diplomatic immunities in contravention to wildlife regulations. For instance, members of the diplomatic corps have allegedly used diplomatic sacks or bags to transport wildlife parts from one region to another (Yeater, 2011). There are therefore many elements in this variable that will greatly impact on law enforcement in regulating wildlife crime for which because of political and diplomatic international conventions hinder the government to what extent that it can act in such situations.

In conclusion of this chapter, it is befitting to provide a quote from Her Excellency Hilary Rodham Clinton, the former U.S. Secretary of State and United States of America Democratic Party Presidential Nominee for the USA Presidential Elections 2016 in a speech to the Diplomatic community in Washington:

“We are increasingly seeing wildlife trafficking has serious implications for the security and prosperity of people around the world. Local populations that depend on wildlife, either for tourism or sustenance, are finding it harder and harder to maintain their livelihoods. Diseases are spreading to new corners of the globe through wildlife that is not properly inspected at border crossings. Park rangers are being killed. And we have good reason to believe that rebel militias are players in a worldwide ivory market worth millions and millions of dollars a year”.

### **Theoretical Framework: What the Problem represented to be?**

While formulating a theoretical framework for such a study, it may be noted that, rarely, have similar studies on wildlife crime, poaching, trafficking and other forms of wildlife crime including illegal wildlife-use, been discussed within a theoretical frameworks. Indeed in the case of poaching, Stephen L Ellason (2008) laments that despite poaching’s detrimental effect on wildlife population, social science researchers have devoted scant attention to the study of poachers and poaching and therefore terms this scenario a paucity of literature on this topic. Similarly Rubino and Pienaar (2017) point at the challenges conservation practitioners experience at designing and implementing conservation policies due to the combination of natural and human systems operating together. They also concede that it is not possible to study all concepts in wildlife crime through theories in forms of theoretical frame work and therefore recommend using a general framework outlined by Salafsky, Margolius, Redford and Robinson, (2002) that could be applied to conservation problems. The framework consists of identifying a conservation target, determining the threat affecting the target

and incorporating actions that maybe used to reach the targeted goal which is inclined towards a conceptual framework which has been applied to a range conservation challenges. (Rubin et al 2017). It is clear a general theory for wildlife crime would therefore be a huge demand as the topic touches on very many areas of study like law, criminology, psychology, anthrozoology. ethnobiology, conservation, environment and now even business and economics to mention but just a few those areas of study. Never the less a step towards it must begin somewhere and this research will accordingly formulate the following theoretical framework.

Trade in wildlife can be particularly profitable in poor nations. Gettleman (2012) indicates that the tusks of one adult elephant may be “worth more than ten times the average annual income in many African countries.” As a result, the populations of several affected species have declined significantly, and with their decline their demand and market value have soared. The ease of international travel, internet marketing and sale, and rising affluence in regions such as the Middle Eastern Gulf states, India, China and Eastern Europe has facilitated this rise (Cooper C, 2013; and Naylor R. T, 2005). Because global demand for some species exceeds biological capacity, local or total extinctions of some species or sub-species have resulted (Glew & Hudson, 2007 and Naylor, 2005).

Various reason have been advanced as to why law enforcement or the CJS in the supply countries like Kenya have been unable to curb the current upsurge in this wildlife crime which is it legally assigned mandate. Amongst the reasons advance is firstly corruption which is committed for monetary gains to facilitate wildlife crime as it is considered an economic crime and therefore not given serious attention. As a consequence this leads to the second reason which is lack of harsher laws that are capable of deterring offenders. However the WCMA (2013) has been enacted with more severe penal laws then in the previous wildlife laws. But since wildlife crime still continues to grow unabated, what is impeding compliance with the law and law enforcement when compliance is not being observed. Various theories have attempted to explain similar situation by examining the who; that is the criminal and the why- the theoretical reasons for non-compliance with the law.

The key concepts in this research study in relation to its hypothesis and research problem are impediments to law compliance and enforcement which this research study will seek to explain by examining the theories that relate to these key concepts within a theoretical framework. These will be considered under the Economic approach to crime theory, the Routine Approach theory and the Deterrence theory of crime in this theoretical frame.



## **Economic Approach to Crime Theory**

There are many studies which tried to explain why people commit crimes. Some criminologists believe that criminals are atavistic beings, mental disordered, hormonal imbalance or even individuals with a low Intelligence quotient. Some of them also argue that one can identify criminals on the basis of different physical characteristics, mental diseases or heritable components a school of thought attributed to Cesare Lombroso theory of anthropological criminology (Knepper, Paul and Ystehede, P. J; 2012). Becker (1968) work and model is one of theoretical studies analyzing the economic impact of crime. In his study, Becker models crime as based on assumption of decisions made by rational agents facing economic incentives. An individual will commit a crime if the gain through this crime exceeds its (opportunity) costs. In this view criminals are no creepy subjects but rather usual individuals maximizing their utility. Assuming that crime is an economic activity carried out by individuals who balance costs and benefits, offenders will refrain from entering the criminal business when these activities “do not pay off”, that is when the risk of high punishment or the cost respectively is too high (Becker, 1968).

Another more theoretical model of crime and law enforcement, building on Becker (1968), is provided by Goglio. (Krkoska and Robeck, 2006). Goglio defines crime as economic activity with negative repercussions on various factors influencing the functioning of an economic system, such as human and social capital, resource allocation and entrepreneurship. (Krkoska and Robeck, 2006)

Abbot (2009) provides another theoretical approach that gives very interesting and enlightening perspective with an indicative formula that she cites from Diver C S 1980 for analyzing how Becker’s deterrence model works. According to her, a potential offenders will respond to incentives created by the criminal justice system and will base their compliance decision on what is termed as the expected penalty. The expected penalty is the product of the probability of detection, prosecution and conviction ( $c$ ), and the sanction ( $D$ ) that would result from prosecution. The value of ( $D$ ) includes not only the payment of the penalty, but also the cost of defending any prosecution, loss of business due to adverse publicity and possible exposure to tortious actions.

The deterrence approach can therefore be represented as:

$$B < cD$$

So where the benefits ( $B$ ) to the actor accruing from the offence are less than the expected penalty ( $cD$ ), then the actor will be induced into compliance. Put in the current upward surge of wildlife crime in Kenya, probably, the benefits ( $B$ ) are greater than ( $cD$ ) and compliance cannot be expected.

The Deterrence approach is not working on wildlife crime in Kenya and the rest of Africa This research study objective is to find out why.

In the framework of the economics of crime literature predictions are often empirically tested by analyzing the decision-making of a potential criminal. The decision to commit crime is a result of expected utility maximization, comparing the rewards of committing crime with the costs associated with being the criminal (these include primarily costs of punishment). The maximization model has a single decision variable with values equal to 0 (the decision not to commit crime) and 1 (the decision to commit crime). This optimization problem was specified and empirically tested in numerous studies, focusing on the relationship between per capita reported crime rates and severity of punishments for different types of crime. (Krkoska et al, 2006)

The theoretical modelling framework presented in this study is based on the view that crime against wildlife is a type of economic activity that can be modelled using standard economic tools. The model, however, does not focus primarily on the relationship between crime on wildlife and punishment, but instead on the links between wildlife crime and the determinants of such crimes. The study employs the economic approach to crime which was introduced by Becker (1968) to examine the determinants of wildlife crimes. In its simplest form it argues that someone will commit a crime or violate some legal rule if the gain through this exceeds its costs in terms of expected punishment or the ability to get away with it even if apprehended.. A potential criminal is therefore seen as a rational individual maximizing its utility and adequately assessing the risk involved before engaging in the crime.

More formally, a risk neutral individual will commit a crime whenever the expected net benefits are large enough. (Fajnzylber, Lederman and Loayza, 1998). In general the conclusion derived from this approach are that crimes on wildlife will be committed whenever the benefits of committing crimes exceed the possible costs associated with being apprehended, convicted, and punished for such crimes, and thus policy prescriptions usually focus on increasing the cost associated with criminal activity.

### **Routine Activities Theory**

Routine activities theory is another contemporary form of the Classical School framework in the sense that it assumes a rational decision-making offender. The general model of routine activities theory was originally presented by Cohen and Felson in 1979. (Cohen and Felson,1979). This theory emphasized the presence of three factors that come together in time and place to create a high

likelihood for crime and victimization. These three factors are: motivated offender(s), suitable target(s), and lack of guardianship. (Cohen et al,1979). This theory is unique when compared to other criminology theories of criminality, because it views crime as an event and closely relates the crime to its environment and also emphasizes on its ecological process.

### **Application of Routine Activities Theory**

Routine Activities Theory contends that crime is opportunistic and dynamic in nature. (Cohen et al, 1979). It suggests that crime is more likely to occur, though not inevitable, when the three conditions are satisfied: (1) the presence of a motivated offender, (2) the presence of a suitable target, and (3) the absence of capable guardians (Felson, & Boba,2010). Once an offender is sufficiently motivated, they must find/encounter a suitable target. Suitable targets typically exhibit four qualities that structure an offender's choice in selecting it: (1) value, (2) inertia, (3) visibility, and (4) access (Felson et al, 2010).

Different types of offenders see value (or desirability) from different perspectives, which can be elucidated upon by using an archetypical crime example contrasted in each case with its conservation crime equivalent. Joy riders and carjackers, for instance, target cars that have a high symbolic value like Lamborghinis, whereas professional thieves go after vehicles that are easily converted to cash. By the same token in wildlife crime, bush meat poachers will target species that provide suitable sustenance while the more professional or organized crime syndicate poachers will target animals with a high value parts and a ready market like the Charismatic 5 Value is, therefore, dependent upon the person assessing the object and does not depend on the actual economic worth of that object

Inertia refers to the target's weight or size and how easily product can be carried away or disposed of. Animals poached for bush meat are easily and quickly dissected and disposed of while but horns and tusks are not so easily moved or disposed of as they require to be exported from the source market to illegal international wildlife trade market located in another nation. Visibility is the degree to which the target can be seen and clearly identified and/or whether or not the offender knows that the target is there. Quite obviously, a car is easily spotted while parked at the curb or at a parking facility, or while slowly cruising through an area. Wildlife can also be easily located because of habitats that have been designated for them such as game parks. Accessibility relates to an offender having access to the target, and if they can retreat or escape. Because the overwhelming majority of vehicles are stolen from an outdoor location, they can be easily accessed. Wildlife are also found in outside locations that can also be accessed in their designated natural habitat, which provides good cover for poaching and escape

The last segment of Routine Activities Theory is the absence of capable guardians. A capable guardian is anyone who can serve as a reminder that someone is watching who may be able to identify the offender, like a game warden or compliance seeking officials in the case of wildlife crime and the natural and man-made barriers in the conservation areas.

The Routine Activities Theory, it is submitted, may well provide a suitable and unique theoretical framework for examining poaching on conservation areas. Kenya's game parks are located in close proximity to human populations, often with high unemployment and crime rates providing a pool of motivated offenders.

### **Deterrence Theory:**

In considering lack of harsher laws in this framework, it is important to understand this must be studied under three aspects, namely certainty of arrest, sentencing and severity of punishment. According to Wright (2010) deterrence theory provides, people are most likely to be dissuaded from committing a crime if the punishment is certain, severe and swift.

According Eassey and Boman; (2015), Deterrence theory's central hypotheses are that crime can be prevented when punishment is certain, severe, and quick. Whether explicitly or implicitly, deterrence-centric philosophy serves as the foundation for many criminal justice systems. (Eassey et al; 2015) Within the criminal justice system, incapacitation is the response used when a person has committed a crime. By incapacitating the convicted offender, we prevent the individual from committing future crimes because he is removed from society and locked up or restrained somehow. (Eassey et al; 2015). Sentencing systems and incarceration traditionally have a variety of goals, which include incapacitation, punishment, deterrence and rehabilitation. In recent decades, sentencing policy initiatives have often been enacted with the goal of enhancing the deterrent effect of the criminal justice system. (Wright; 2010).

Deterrence theory does have its limitation like the means of understanding deterrence is more limited than often assumed as can be seen when considering the dynamics of the criminal justice system. (Wright; 2010). A weak, corrupt or poorly managed CJS will ineffective. Therefore just enacting harsher laws for wildlife crime may not serve any purpose if would be offenders do not believe that there is any likely hood of their being arrested and prosecuted and even if that happens they can corrupt their way out and not receive a harsh sentence but a light slap on the wrist punishment in form of a small fine.

Secondly in order for this theory to be effective on sanctions to deter wildlife crime, potential offenders must be aware of the sanctions or the law, risks or high likely hood of being arrested and consequences before they commit an offense or severity of punishment that they will endure for committing wildlife crime. (Wright; 2010)

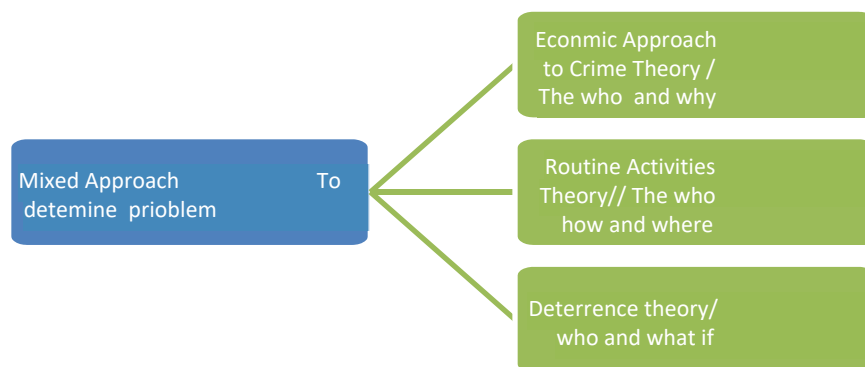
Economists often come to different conclusions than criminologists on the value of harsher sentences in reducing crime. (Wright; 2010) While criminologists tend to regard various legal threats as the result of a complex and unpredictable process, economists approach the issue along the lines of a rational choice perspective that considers the risk and benefits of engaging in crime; sanctions merely represent the expected price of engaging in criminal behavior.(Wright; 2010).

### **Conclusion for Theoretical Framework:**

The theoretical modelling framework presented in this research is a mixed approach theoretical framework where several theories are combined for examination on how they relate this study. This study theoretical framework was initially based on the view that crime against wildlife is a type of economic activity that can be modelled using standard economic tools. The model, however, does not focus primarily on the relationship between crime on wildlife and punishment, but instead on the links between wildlife crime and the determinants of such crimes. The Routine Activities Theory on the other hand explains the process and environment an offender of wildlife crime will proceed on but it does not explain the lack of law enforcement by capable guardian and punishment as a deterrent. The deterrence theory is the one which looks at compliance and enforcement or lack of it by providing that crime can be prevented where the punishment is certain severe and quick. This can be better explained in form of a diagram referred to as the theoretical framework structure

### **Mixed Theoretical Framework**

- 1) The Economic Approach shows economic gain against assessed risk or the who and why
- 2) The Routine Activities Theory explains the process of criminality or the who, how and where
- 3) The Deterrence theory explains the compliance and enforcement as a deterrence or the who and the what if.
- 4) The mixed approach of this research study combines all the theories presented in this theoretical framework and their models and examines them jointly with a view of considering and analyzing the who, why, how, where and what if of this approach .



**Fig 2.2: Mixed Theoretical Framework structure**

The theoretical modelling framework presented in this study also seeks to establish the links between the escalation of wildlife crime and the determinants of such crimes which are the challenges this research study seeks to empirically determine. Therefore when considering the research problem represented within the theoretical frame work of this research study, it is possible that enhancing the severity of punishment within the penal section of the WCMA (2013) had little impact and could not deter motivated offenders as the assessed risk was still much below the economic or monetary gain hence the up surge in wildlife crime. The offenders may not believe they will not be apprehended nor punished for committing the offences under the Act.

There are several theoretical approaches that have been considered in this study and therefore a mixed approach may be the best to explain whether it is the severity of the law that deters offenders, or it is the likelihood of getting caught and punished that would deter the offender after due calculation of the risk, based on the theories considered in this research study’s theoretical framework Therefore which theoretical approach should this study adopt as the presumed severity of the law may not deter criminals. Can Becker’s (1968) deterrence framework be used to calculate the deterrent effects of enforcement by viewing penalties as prices for violations? After all it is the enforcement process which puts the flesh on the bones of any regulatory system (Abbot 2009).

This research will assess the extent of lack of enforcement against the severity of the penal section of the WMCA (2013) to determine whether it is the severity of the law that deters offenders or the likely hood of getting caught and punished through determining the effectiveness of the WCMA (2013) and its penal sections in the research tool or questionnaire. This way, through empirical scientific research, this study will be able to determine which theory best explains the phenomenon this research is out to resolve. This research study’s theoretical framework model will be drawn at the conclusion of this research.

## **Summary**

The relationship between the independent and dependent variables has been discussed in depth in this chapter. An analysis of how the dependent variable (combating wildlife crime in Kenya) is affected by the independent variables was sought. It is evident that combating wildlife crime in Kenya is affected by the nature of actors; nature of wildlife legislation; illegal wildlife trade chain; poaching patterns; corruption; and illegal global consumer markets. From the foregoing literature review including the assessment of the theories under this topic in form of a theoretical frame work, it is evident that a gap in knowledge exists on the subject under research in this research study. There is need to urgently evaluate how the Kenyan government is combating wildlife crime and whether corruption is an impediment in this process within the CJS. No study per se has been undertaken on the challenges of combating wildlife crime in Kenya. This study will be the first to seek to investigate the challenges of combating wildlife crime in Kenya.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

This chapter is concerned with the various steps that facilitated execution of the study to satisfy the study objectives. These steps include: research design, population of interest, sample, data collection instruments and procedures and, data analysis. Therefore the goals of this chapter are:

- Provide a background of the philosophy of this research and the research paradigms on matters of ontology.
- Provide a description of the qualitative, quantitative and mixed methods research approaches
- Justify and explore qualitative, quantitative and mixed methods research methodology to be used in this Research study
- Provide a description and justification of the research design adopted for this Research study
- Justify the combination of both qualitative and quantitative methods (Mixed methods) within the research approach and to explore the strengths and limitations of both approaches
- Provide a description of the study population, sampling design and sample size.
- Provide a description and justification of the data collection and data collection instruments and procedures
- Provide a description and justification of the validity and reliability of the research instruments
- Provide a description and justification of data analysis and presentation procedures
- Propose the operationalization of Variables and to indicate the relationship and the direct impact of the challenges of combating wildlife crime among the hypothesized guidelines

### **PHILOSOPHY OF THE RESEARCH**

When undertaking research of this nature, it is important to consider different research paradigms on matters of ontology. Since these parameters describe perceptions, beliefs, assumptions and the nature of reality and truth (knowledge of that reality), they can influence the way in which the research is undertaken, from design through to conclusions. It is therefore important to understand and discuss these aspects in order that approaches congruent to the nature and aims of the particular inquiry are adopted and to ensure that researcher biases are understood, exposed, and minimized. Whilst James and Vinnicombe (2002) caution that we all have inherent preferences that are likely to shape our research designs (Blaikie, 2000) describes these aspects as part of a series of choices that the researcher must consider and he shows the alignment that must connect these choices back to the original Research Problem. If this is not achieved, methods incompatible with the researcher's



stance may be adopted, with the result that the final work will be undermined through lack of coherence.

Blaikie (1993) argues that these aspects are highly relevant to Social Science since the humanistic element introduces a component of 'free will' that adds a complexity beyond that seen in the natural sciences Hatch and Cunliffe (2006) draw attention to the fact that different paradigms 'encourage researchers to study phenomena in different ways', and goes to describe a number of organizational phenomena from three different perspectives, thus highlighting how different kinds of knowledge may be derived through observing the same phenomena from different philosophical perspectives. To stimulate the debate, Denzin and Lincoln (2003) Creswell (2011) and Kvale (1996) highlight how these different positions can result in much tension amongst academics.

The three key paradigms are identified as Positivist, Constructivist and Realist; and a simple classification is used to distinguish the key components. These paradigms are chosen not only for their prevalence in management research, but because they effectively form the 'poles' from which other paradigms are developed or derived. Often, different names are used to describe apparently similar paradigms. In part this is as a result of similar approaches being developed in parallel across different branches of the social sciences. The three research paradigms are explained, below:

### **1. Positivist**

The positivist position is derived from that of natural science and is characterized by the testing of hypothesis developed from existing theory (hence deductive or theory testing) through measurement of observable social realities. This position presumes the social world exists objectively and externally and that knowledge is valid only if it is based on observations of this external reality. It also presumes that universal or general laws exist and that theoretical models can be developed that can be generalized and can explain the cause and effect relationships which lend themselves to predicting outcomes. Positivism is based upon values of reason, truth and validity and there is a focus purely on facts, gathered through direct observation and experience and measured empirically using quantitative methods –surveys and experiments - and statistical analysis (Blaikie, 1993; Saunders, Lewis and Thornhill, 2007; and, Hatch and Cunliffe, 2006). Hatch and Cunliffe (2006) relate this to the organizational context, stating that positivists assume that what truly happens in organizations can only be discovered through categorization and scientific measurement of the behaviour of people and systems and that language is truly representative of the reality.

With regard to empirical research in operations management, the approach that falls under this category is that of survey research. Survey research often involves large samples, statistical generalizations and the researcher and respondent are considered independent. In many instances surveys are oriented towards hypothesis testing through statistical correlations. Using surveys for descriptive statistics purposes is also possible. The positivist approach can also be viewed as nomothetic i.e. it emphasizes quantitative analysis of a few aspects across large samples in order to test hypotheses and make statistical generalizations.

## **2. Interpretivist / Constructivist**

This position is described by Hatch and Cunliffe (2006) as anti-positivist and by Blaikie (1993) as post-positivist since it contended that there is a fundamental difference between the subject matters of natural and that of social sciences. In the social world, it is argued that individuals and groups make sense of situations based upon their individual experience, memories and expectations. This therefore means that it is constructed and constantly re-constructed through experience resulting in many differing interpretations. It is these multiple interpretations that create a social reality in which people act. Under this paradigm, therefore, it is seen as important to discover and understand these meanings and the contextual factors that influence, determine and affect the interpretations reached by different individuals. Interpretivists consider that there are multiple realities (Denzin and Lincoln, 2003). Since 'all knowledge is relative to the knower' interpretivists aim to work alongside others as they make sense of, draw meaning from and create their realities in order to understand their points of view, and to interpret these experiences in the context of the researchers academic experience (Hatch and Cunliffe, 2006), and hence it is inductive or theory building. The focus of the researcher is on understanding the meanings and interpretations of 'social actors' and to understand their world from their point of view, is highly contextual and hence is not widely generalizable (Saunders, Lewis and Thornhill, 2007). Understanding what people are thinking and feeling, as well as how they communicate, verbally and non-verbally are considered important (Easterby-Smith, Thorpe and Jackson, 2008), and given the subjective nature of this paradigm, and the emphasis on language, it is associated with qualitative approaches to data gathering (Eriksson and Kovalainen, 2008). The close nature of the researcher and the researched in this paradigm, and the risk that any interpretation is framed within the mind of the researcher means that steps must be introduced to avoid bias. The use of self-reflection is advised.

## **3. Realist**

Born from a frustration that positivism was over-deterministic (in that there is little room for choice due to the causal nature of universal laws) and that constructionism was so totally relativist (and

hence highly contextual), realism takes aspects from both positivist and interpretivist positions. It holds that real structures exist independent of human consciousness, but that knowledge is socially created, with Saunders, Lewis and Thornhill (2007) contending that our knowledge of reality is a result of social conditioning. According to Blaikie (1993), whilst realism is concerned with what kinds of things there are, and how these things behave, it accepts that reality may exist in spite of science or observation, and so there is validity in recognizing realities that are simply claimed to exist or act, whether proven or not. In common with interpretivist positions, realism recognizes that natural and social sciences are different, and that social reality is pre-interpreted, however realists, in line with the positivist position also hold that science must be empirically-based, rational and objective and so it argues that social objects may be studied 'scientifically' as social objects, not simply through language and discourse.

Whereas positivists hold that direct causal relationships exist, that these relationships apply universally (leading to prediction) and that the underlying mechanisms can be understood through observation, realists take the view that the underlying mechanisms are simply the powers or tendencies that things have to act in a certain way, and that other factors may moderate these tendencies depending upon circumstances, and hence the focus is more on understanding and explanation than prediction. Although Blaikie describes realism as 'ultimately a search for generative mechanisms' he points out that realists recognise that the underlying mechanisms can act independently or 'out of phase' with the observable events, and that events can occur independently of them being experienced, a view that Hatch and Cunliffe (2006) describe as a 'stratified' form of reality whereby surface events are shaped by underlying structures and mechanisms, but that what we see is only part of the picture. From an organizational perspective, Hatch and Cunliffe (2006) describe the realist researcher as enquiring into the mechanisms and structures that underlie institutional forms and practices, how these emerge over time, how they might empower and constrain social actors, and how such forms may be critiqued and changed. Realists take the view that researching from different angles and at multiple levels will all contribute to that understanding since reality can exist on multiple levels (Chia, 2002) and hence realism may be seen as inductive or theory building.

The study will use positivist or the Empirical Research Methods to conduct the research and to answer the research questions. Qualitative and quantitative research techniques will be employed. Stratified sampling technique will be used to determine a suitable sample from the three arms of the Criminal Justice System in Kenya.

## **TYPES OF RESEARCH DESIGN APPROACHES**

### **Quantitative Research Approach**

A quantitative approach is one in which the investigator primarily uses post-positivist claims for developing knowledge (i.e., cause and effect thinking, reduction to specific variables and hypotheses and questions, use of measurement and observation, and the test of theories), employs strategies of inquiry such as experiments and surveys, and collects data on predetermined instruments that yield statistical data.

The main strategies include experiments and surveys:

1. **Experiments** include true experiments, with the random assignment of subjects to treatment conditions, as well as quasi-experiments that use nonrandomized designs (Keppel, 1991; O'Connell, et al 2010). Included within quasi-experiments are single-subject designs.
2. **Surveys** include cross-sectional and longitudinal studies using questionnaires or structured interviews for data collection, with the intent of generalizing from a sample to a population (Babbie, 1990).

### **Qualitative Research Approach**

A qualitative approach is one in which the inquirer often makes knowledge claims based primarily on constructivist perspectives (i.e., the multiple meanings of individual experiences, meanings socially and historically constructed. with an intent of developing a theory or pattern) or advocacy/participatory perspectives such as political, issue-oriented, collaborative or change oriented, or both. It also uses strategies of inquiry such as narratives, phenomenology, ethnographies, grounded theory studies, or case studies. The researcher collects open-ended, emerging data with the primary intent of developing themes from the data.

### **Mixed Methods Approach**

A mixed methods approach is one in which the researcher tends to base knowledge claims on pragmatic grounds (consequence-oriented, problem-centered, and pluralistic). It employs strategies of inquiry that involve collecting data either simultaneously or sequentially to best understand research problems. The data collection also involves gathering both numeric information (e.g., on instruments) as well as text information (e.g., on interviews) so that the final database represents both quantitative and qualitative information. Many definitions of mixed methods are available in the literature (Johnson, et al 2007; Teddlie, et al 2007).

In conclusion, after analyzing the quantitative and qualitative approaches, this study preferred to use the mixed methods approach. This is due to the fact that the mixed methods approach develops multiple perspectives and a complete understanding about the research problem and question. The research approach adopted in this study focused on research questions and evaluated contextual understanding at multi-level perspectives, as well as recognizing cultural influences. It employed rigorous quantitative research, assessing magnitude and frequency of constructs and also adopted rigorous qualitative research thus exploring the meaning and understanding of the antecedents of this research study. This made it possible to utilize multiple methods (intervention trials, focus groups and in-depth interviews) to enable gathering of both numeric information (on questionnaire) as well as text information (on interviews, focus groups). This ‘mixed methods’ approach involved intentionally integrating or combining both *quantitative* and *qualitative* approaches and drawing from the strengths of each; and then framing the investigation within philosophical and theoretical propositions that lead to finally successfully achieving the ultimate goals and objectives of this research thesis. An examination of the research methods and research designs employed suggests that on the quantitative side structured interview and questionnaire research within a cross-sectional design tends to predominate, while on the qualitative side the semi-structured interview within a cross-sectional design tends to predominate (Bryman, A.2006; Morse et al 2009)

## **Research Design**

This research thesis adopted the mixed methods design which was useful to capture the best of both quantitative and qualitative approaches. Mixed methods research involved conducting research involving collecting, analyzing, and integrating (or mixing) quantitative and qualitative research (and data) in this study which was a longitudinal program of inquiry. The purpose of using mixed methods research was that both qualitative and quantitative research, in combination, will provide a better understanding of the research problem than either research approach alone.

For purposes of this research, by referring to research approach or methodology in this study, the methods applied were the mixed methods approach. Therefore, the research approach for this study was:

- It focused on research questions that called for real-life contextual understandings, multi-level perspectives, and cultural influences;
- employed rigorous quantitative research assessing magnitude and frequency of constructs and rigorous qualitative research exploring the meaning and understanding of constructs;
- utilized multiple methods (e.g., intervention trials and in-depth interviews);
- Intentionally integrated or combined these methods to draw on the strengths of each; and

- Framed the investigation within philosophical and theoretical positions.

The study enabled the researcher to both generalize the findings to a population and develop a detailed view of the meaning of the phenomenon or concept of the challenges of combating wildlife crime in Kenya. In this research, the study explored generally all available knowledge on the variables of the challenges of combating wildlife crime in Kenya. This research then critically evaluated these variables and tested them within a large sample of respondents. The researcher in addition to first surveying a large number of individuals also followed up a few with interviews to obtain their specific voices/opinions and passions on the topic. In this situation, the advantages of collecting both closed ended quantitative data and open-ended qualitative data proved advantageous to best understanding the research problem.

This method enabled the researcher to establish priorities in the specific areas under study. In addition, this approach helped the researcher to evaluate the challenges of combating wildlife crime in Kenya. In order to reduce biases associated with qualitative research aspects within our mixed method approach, this study applied a structured methodology to in order to collect, measure and analyze the data collected.

In this regard, the research study adopted a descriptive survey research design which is holistic rather than dealing with isolated factors. A descriptive survey research design specifically identifies a cause and solutions for the case. Therefore, the use of survey procedures helped to identify interrelationships among variables being studied. Furthermore, this was necessitated by the fact that cross sectorial surveys research was used to obtain a considerable amount of information, which can be generalized, to an entire population. This design was appropriate because it gave conclusive results between the variables and enable generalization of the findings. It is fair to mention here that after fully assessing the proposed research design and having adopted the mixed methods approach, this study took extra time because of the need to collect and analyse both quantitative and qualitative data. Both methods were a good match for this research as they ensured it adopted the structure of quantitative research and the flexibility of qualitative inquiry.

## **Justification**

The mixed methods design was chosen for this study because it fitted the research problem and research questions. The research problem was suitably approached and resolvable through the mixed methods approach for this research study, since neither the quantitative approach nor the qualitative

approach, singularly, were inadequate to develop multiple perspectives and a complete understanding about a research problem or question.

Although Hesse-Biber (2010) argues that there is a “methodological orthodoxy” in how mixed methods is practiced that currently favors quantitative methodologies, that may be debatable as it all depends on the Researchers intention in using the mixed methods approach and one can therefore not generalize how it is applied in a research. The quantitative outcome measures may be comprehensible using qualitative data and alternatively, qualitative exploration may usefully occur prior to development of an adequate instrument for measurement. By including qualitative research within our mixed methods approach, this study explored new questions and initiatives, addressed complex phenomena’s in the challenges of combating wildlife crime in Kenya, assessed hard-to-measure constructs in behavioral characteristics during interview, and adopted interactions in specific, everyday settings, in addition to experimental settings.

One reason commonly used by researchers for merging quantitative and qualitative data is to develop a more complete understanding of a problem; to develop a complementary picture; to compare, validate, or triangulate results; to provide illustrations of context for trends, or to examine processes/experiences along with outcomes (Plano Clark, 2010). This study aimed to view problems from multiple perspectives so as to enhance and enrich the meaning of the challenges of combating wildlife crime within the Kenyan perspective. It also aimed at contextualizing the information obtained by taking a macro picture of the criminal justice system in Kenya. The study was a tremendous success in achieving all these set out goals as demonstrated in the data analysis and research findings which are well described in the other chapters of this thesis report.

Another expectation for utilizing the mixed method approach was to have one database built on another. When a quantitative phase follows a qualitative phase, the intent of the investigator may be to develop a survey instrument, an intervention, or a program informed by qualitative findings. When the quantitative phase is followed by the qualitative phase, the intent may be to help determine the best participants with which to follow up or to explain the mechanism behind the quantitative results (Plano Clark, 2010; Morgan, 2007). Therefore it was within the precise outcome and rewarding satisfaction to find that the expectations were met and goals for utilizing mixed research methodology and descriptive research design were met.

The mixed methods approach enabled the researcher to build on and immensely contribute to other related research studies involving wildlife crime and challenges in criminal justice systems globally.

This thesis will now also form a research base for initiating further research where none exists, using its now tested research methodology and thereby making the research process easier, in those other parts of the world where wildlife is under threat due to weakness in law enforcement. The quantitative and qualitative phases enabled the researcher to develop an appropriate survey instrument and in addition, guided this research study on the best respondents or participants for the study.

### Sample Population

According to Cooper and Schindler (2005), a population is the total collection of elements about which we wish to make inferences. The population of this study comprised of all game wardens in the chosen national parks in Kenya where the charismatic 5 animals are found; Also included were Judicial staff (magistrates) and the prosecutors of those courts within which jurisdiction, the parks fall under. The study population will be as indicated in table 3.1 below.

**Table 3.1:** Target population

Category			Target Population
KWS Wardens	Tsavo National Park	150	500
	Masai Mara National Park	150	
	Amboseli National Park	100	
	Meru National Park	100	
Prosecutors	Prosecutions	4	
Magistrates	Judiciary	4	
<b>Total</b>		<b>508</b>	<b>508</b>

### Sample Frame, Size and Sample Selection

Sampling frame is an objective list of the population from which the researcher can make a selection asserts Cooper and Schindler, (2006). They add that a sampling frame should be a complete and correct list of population members only. A sample is a sub-set of the population that can be analysed at reasonable cost and used to make generalizations about the population parameters with ease. According to Orodho (2004), a researcher selects a sample due to various limitations that may not allow research on the whole population. Mugenda and Mugenda (2009) note that resources and time tend to be the major constraints in deciding on the sample size to use. They argue that the proximity between the researcher's place of residence and study sample is a factor of consideration in research. Thus reducing the impediments associated with distance coverage while increasing the interaction



rates between the researcher and respondents at personal levels, both formally and informally. Mugenda and Mugenda (2003) propose that a size of 30 to 500 is appropriate for most academic researches.

In this study, the sampling frame comprised of KWS wardens, prosecutors and Judiciary staff who serve this area totalling 508. Simple random, cluster and purposive sampling techniques was used to select the study sample. The clusters were representative of the divisions as described in the Sampling Frame. The study selected the sample randomly from the clusters such that each respondent from the population of interest had an equal probability of being selected to participate in the study. This ensured reduction of bias in the study.

The study ultimately selected a sample size of 30% representation from KWS cluster and 75% from Prosecution and Judiciary due to their small number of respondents available. A total sample size 156 respondents were selected and achieved for the study from the targeted population of 508 respondents as indicated in Table 3.2 below.

**Table 3.2: Sample Size**

Category		Target Population	Sample Size
KWS Wardens	Tsavo National Park	500	50
	Masai Mara National Park		50
	Amboseli National Park		30
	Meru National Park		20
Prosecutors	Prosecutions	4	4
Magistrates	Judiciary	4	2
<b>Total</b>		<b>508</b>	<b>156</b>

The sample size of 156 respondents which also represents the number of questionnaires issued was arrived from the number of respondents available at the parks gates and the prosecutors and magistrates available on the days the survey took place in the different areas. This figure represents the cumulative number. The respondents were selected from an approximate figure of 150 wardens in the big parks and 100 wardens in the smaller parks which was considered sufficient for this study. Furthermore majority of the respondents were para military disciplined forces. The magistrates and prosecutors were those who were on duty on the days the survey took place. There are 5 courts in Kenya that serve within the jurisdictions where the parks selected for this research are located and handle bulk of the wildlife crime cases. These Courts are served by one or two magistrates with a

prosecutor assigned to each magistrates court. Although this research achieved 75% participation from the targeted Respondents in these two clusters of the Prosecution and Judiciary, the names of the courts the data was collected from will not be disclosed due to ethical consideration and the assurance of confidentiality of the identity respondents as the number of participating respondents was small and disclosing the name of the court will be tantamount to disclosing the identity of the respondent.

## **Data Collection**

This study collected both quantitative and qualitative data. Both questionnaire and interview process were used to collect data. Quantitative research questions or hypotheses addressed the quantitative aspects of the research questions and antecedents of wildlife crime in Kenya. Information from the first phase was explored further in the second phase which was the qualitative phase. Qualitative data collected was used to explore important quantitative results with a few participants. The qualitative data is in form of statements from respondents and the researcher utilized figures in quantitative results to explain the statements. The reason for following up with qualitative research in the second phase was to better understand and in fact explained all of the quantitative results collected.

Both primary and secondary data was collected and used for this research. Primary data was obtained through a structured questionnaire. The questionnaires were structured to contain both closed and open-ended questions. The closed ended questions enabled the researcher to collect quantitative data while the open-ended questions enabled the researcher to collect qualitative data. Five point Likert scale type of questions was used to determine the challenges of combating wildlife crime in Kenya.

Secondary data was collected by use of desk search techniques from published reports, cinematography documentaries and recorded interviews of persons working for international agencies and other organizations involved in combating international crime and in particular wildlife crime and of experts on issues of conflict in East and Central Africa, published journals and all other relevant literature on the topic.

Before handing over the questionnaires the researcher sought and obtained permission from the relevant authority to be allowed to collect data. The questionnaires were administered through handing over to complete to each respondent and none of the respondents expressed inability to understand or to complete the questionnaire at any place or stage. They all preferred to take the questionnaire and privately complete it on their desks and return the same to the researcher the same

morning. Two respondents were randomly selected from each park for the interview process bringing a total 8 respondents though it must still be observed that they still preferred to complete the questionnaire privately.

### **Validity and Reliability of the Research Instruments**

According to Orodho (2005) piloting is a necessary process as it ensures that measurements are of acceptable validity and reliability. Validity is the extent to which an instrument measures what is supposed to be measured. According to Orodho (2005), a test of research instrument is said to be valid if it measures what it is supposed to measure.

Reliability is the ability of a research instrument to consistently measure the characteristics of interest over time. According to Orodho (2005), a reliability test of research instruments is one that consistently produces the expected results while the instrument reliability refers to the level of internal consistency or the stability of the measuring devices. According to Kothari (2004) because of economy in time and labour, the procedure for extracting an estimate of reliability should be obtained from the administration of a single test. There were four criteria that were considered and had to be met by this research study, in pursuit of its reliability and validity, namely:

- 1) **Internal Validity:** Internal validity was sought to ensure the credibility of data collection leading to accurate conclusions, that is, there was a causal relationship between the independent and dependent variables.
- 2) **External Validity:** This addressed the need for generalization of the research findings of this study to ensure they were transferable and could be applied to other situations.
- 3) **Reliability:** This reliability criteria examined and ensured the replicability of this study's research findings which is to state conclusively, that the research findings that were obtained in this study are so reliable that if the study was to be repeated a second time, similar results would be obtained.
- 4) **Objectivity:** The research design in this research study addressed the issue of objectivity which requires avoidance of bias and subjectivity. To minimize bias, this research study obtained data through the use of multiple data collection techniques. The research tool or questionnaire was first put through a peer test which evaluate and confirmed its credibility and reliability. Also a pilot study was carried out before the main study to ensure conformity.

## **Data Analysis Techniques**

The explanatory model was adopted in data analysis as it seeks to explain the initial phase of quantitative findings in more depth. The findings from the second qualitative phase explained (informed) in greater depth the results from the initial quantitative phase of the study.

In order to make sense of the data collected, analysis of the information gathered through questionnaires was undertaken. The questionnaires were checked for completeness and then the data collected was summarized, coded and tabulated. It was coded and entered into the Statistical Package for Social Sciences for analysis (SPSS). SPSS+ helped in organizing and summarizing the data by the use of descriptive statistics such as measures of central tendency (i.e. mean, mode and median) and measures of dispersion.

Descriptive statistics such as mean, standard deviation and frequency distribution was used to analyze the quantitative data while case summaries were used to analyze the qualitative data. Data presentation was done by the use of charts, graphs, percentages and frequency tables. Inferential statistics was used in drawing conclusions.

Data in proposed 'Part A' on personal matters of the questionnaire or research tool, was analyzed using frequency distributions and percentages to determine the profile of respondents. Data in 'Part B' was analyzed using mean scores and standard deviations to determine the influence of corruption on Wildlife Conservation Kenya.

## **Operationalization of Variables**

Operationalization of variables refers or depicts the operational relationship between the parameters of the study. In this research study, it depicts the relationship between independent variables which are the antecedents of wildlife crime and the dependent variable, combating wildlife crime in Kenya. It also indicates how the specific variable was to be measured, the scale of measurement and the tool of analysis.

**Table 3,3 : The operational relationship between the parameters**

Type Of Variable	Variable	Indicators	Meaure	Scale Of Measurement	Tools Of Analysis
Independent	<b>POLITICAL: Combating Wildlife Crime in Kenya</b>	3. Successful prosecutions 4. Reduction in wildlife crime figures	5. Number of arrests 6. Number Prosecutions	Nominal	<b>Descriptive</b> 7. Mean 8. Standard Deviation 9. Percentages
Independent	<b>Corruption and Governance</b>	10. Nature of corruption 11. Effect of corruption and governance on wildlife crime	12. Number of occurrences 13. Reported corruption cases 14. Percentage of population affected	Nominal	<b>Descriptive</b> 15. Mean 16. Standard Deviation 17. Percentages
Independent	<b>LEGAL: Wildlife Legislation and Prosecutions</b>	18. Effectiveness of legislation on illegal wildlife trade and trafficking 19. Long-term political implications of the	22. Number of occurrences 23. Number arrests 24. Percentage of successful prosecutions	Nominal	<b>Descriptive</b> 25. Mean 26. Standard Deviation 27. Percentages
		legislation on illegal wildlife trade 20. Security responses in tackling the illegal wildlife trade 21. Nature of prosecutions			
Independent	<b>ECONOMIC Illegal Wildlife Trade Chain</b>	28. What are the transit routes Why transit routes have not been examined in more detail 30. Political implications into connections in the trade	31. Country 32. Households 33. Firms 34. Number of occurrences	Nominal	<b>Descriptive</b> 35. Mean 36. Standard Deviation 37. Percentages
Independent	<b>ECONOMIC Illegal Global Consumer Markets</b>	38. Status of the illegal global markets 39. process of transiting wildlife goods from source countries 40. Drivers of the illegal global markets	41. Number of occurrences 42. Number Of Seizures 43. Households 44. Firms 45. Country	Nominal	<b>Descriptive</b> 46. Mean 47. Standard Deviation 48. Percentages
Independent	<b>SOCIAL Actors</b>	49. Who are the actors 50. Why the actors have turned to wildlife poaching What is their Reliance of these actors on illegal wildlife trade	52. Education 53. Age 54. Income 55. Employment 56. Status Actors 57. Reasons For Poaching 58. Personal experience	Nominal	<b>Descriptive</b> 59. Mean 60. Standard Deviation 61. Percentages
Intervening	<b>MACRO ENVIRONMENTAL FACTORS</b>	- Which are the on-going Conflicts in neighbouring countries through which actors are poaching wildlife in order to arm themselves. What is the available data on International Organized Crime Syndicates What are Political & Diplomatic implications 62.	Secondary	Secondary	Secondary

**Limitations and Justification of the survey:**

The survey sample is 100 % members of the Criminal Justice System. Of these 96% are from policing. This was advantageous because we were dealing with the people directly involved in combating wildlife crime on the ground. It must be noted that the survey was conducted in game parks which are gazetted high protection areas guarded by armed KWS wardens. Therefore other than KWS wardens, the only other persons allowed in the parks are visitors such as tourists with special passes. Visitors are therefore there for a short duration and cannot be expected to know the challenges the CJS and in particular KWS wardens faces when combating wildlife crime other than hearsay and what they read in the media. For avoidance of bias the researcher relied on the validity and reliability the research instrument and design. The research instrument had already been tested in peer review and pilot research survey undertaken before the main survey and found to be valid and reliable.

**Summary**

This chapter dealt with research methodologies which were applied in gathering and analyzing data in respect of the research problems and questions highlighted in the first chapter. The methodologies which were applied have facilitated the presentation of research findings for easier understanding and use.

## **CHAPTER FOUR**

### **RESEARCH FINDINGS :**

This chapter provides a presentation and interpretation of the research findings. The objective of this study was to evaluate and investigate the challenges of combating wildlife crime in Kenya. The results of the research survey from primary data collected are as follows:

#### **Questionnaire Return Rate**

The sample of the study comprised of comprised of KWS wardens, prosecution and Judiciary Staff. Out of the 156 questionnaires distributed, 152 were completed and returned, representing a 97.43% response rate. This represented an adequate response rate as Richardson (2005) stated that 50% return rate is an acceptable response rate in social research surveys.

#### **The Respondents**

The study sought to find out the demographic characteristics and description of the respondents which together with other information sought through the research questionnaire were all captured in the survey. These findings from the survey are as follows:

##### **1. Organization Respondents Work's for:**

The study sought to establish which organization within the CJS in Kenya the respondents worked for. This is captured in Table 4.1 below:

**Table 4.1: Organization the Respondents Works For:**

<b>Organization</b>	<b>Frequency</b>	<b>Percent</b>
Policing KWS	147	96.72
Prosecutors	3	1.97
Judiciary Magistrate	2	1.31
<b>Total</b>	<b>152</b>	<b>100.00</b>

Table 4.1 shows that 147 (96.72%) of the respondents interviewed were in Policing (KWS wardens), while 3(1.97%) of the respondents were in Prosecutions and 2 (1.31%) were in Judiciary. These findings indicate that the study was able to collect information from all the targeted respondents.

## 2. Role of Respondents

The study sought to establish what the position or roles the respondents in the organizations that they worked for within the CJS in Kenya when combating wildlife crime. This is captured in Table 4.2, below

**Table 4.2 Role of Respondents**

	Frequency	Percent
KWS Wardens	147	96.72
Prosecutor	3	1.97
Magistrate	2	1.31
<b>Total</b>	<b>152</b>	<b>100.00</b>

Table 4.2 shows that majority of the respondents 147 (96.72%) were KWS game wardens involved in policing the selected game parks while 3 (1.97%) were prosecutors and 2 (1.31%) were magistrates.

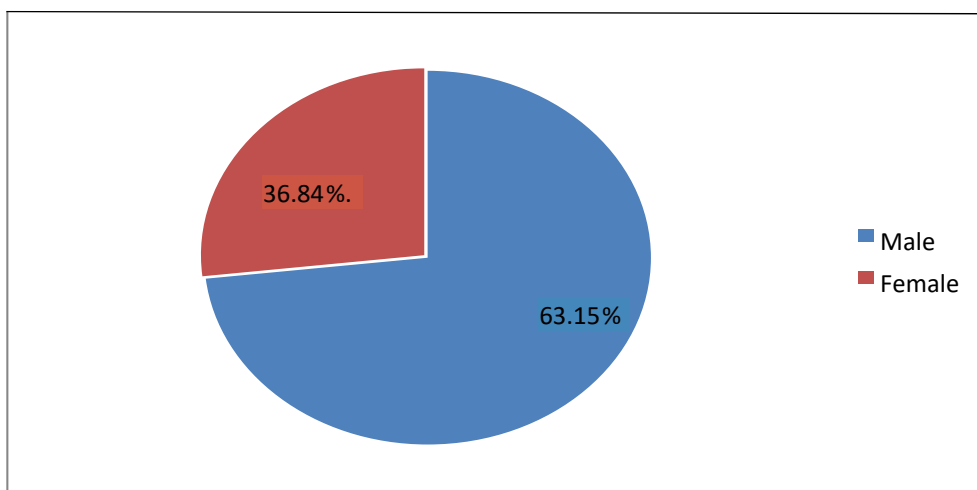
## 3. Gender

The study sought to find out the gender of the respondents. Their responses are captured and explained in Table 4.3 and Figure 4.1 below:

**Table 4.3: In Terms of Gender**

Gender	Frequency	Percent
Male	96	63.15
Female	56	36.84
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.1: Gender**





These findings indicate that there were more male respondents, 96 (63.15%) as compared to female respondents who were 56 (36.84%). Gender is an important variable which greatly influences Kenya social situation in many ways and this study is not an exception.

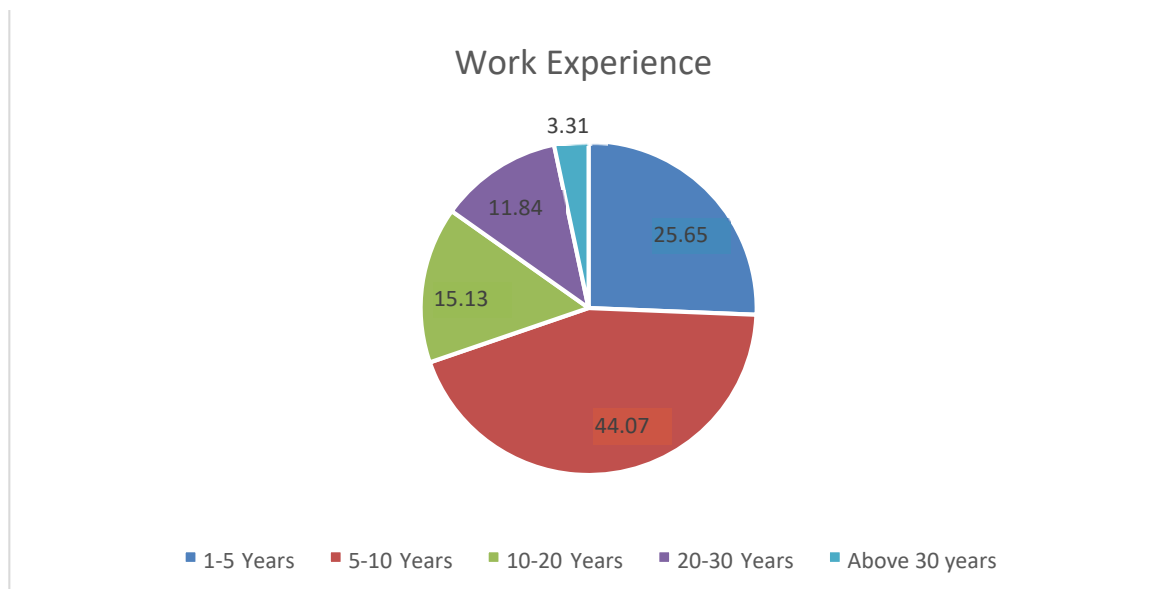
#### 4. Work Experience

This study sought to find out the work experience of each respondent, which was the duration that the respondent had worked in their respective organization within the CJS that they had indicated in question 1 of this research’s questionaire. This is captured in Table 4.4 and Figure 4.2 below:

**Table 4.4: In terms of Work Experience**

	Frequency	Percent
1-5 years	39	25.65
5-10 years	67	44.07
10-20 years	23	15.13
20-30 years	18	11.84
Above 30 years	5	3.31
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.2: Work Experience**



From Table 4.4, it is evident that majority of the respondents, 44.07% had worked for the CJS between 5 and 10 years, while 25.65% of the respondents surveyed had worked for 1 to 5 years. 15.13% of the respondents had worked between 10 to 20 years, while 11.84% had worked for

between 20 to 30 years and 3.31% had worked for the CJS above 30 years. Therefore cumulatively, 74.35% of respondents had worked in their respective organizations within the CJS for a duration in excess of 5 years and beyond. This is a confirmation that the respondents were very knowledgeable and well conversant with wildlife crime issues and the changing trends in combating wildlife crime over time. Their responses were therefore expected to be based on their long experience in combating wildlife crime and were very informative and relevant for this study.

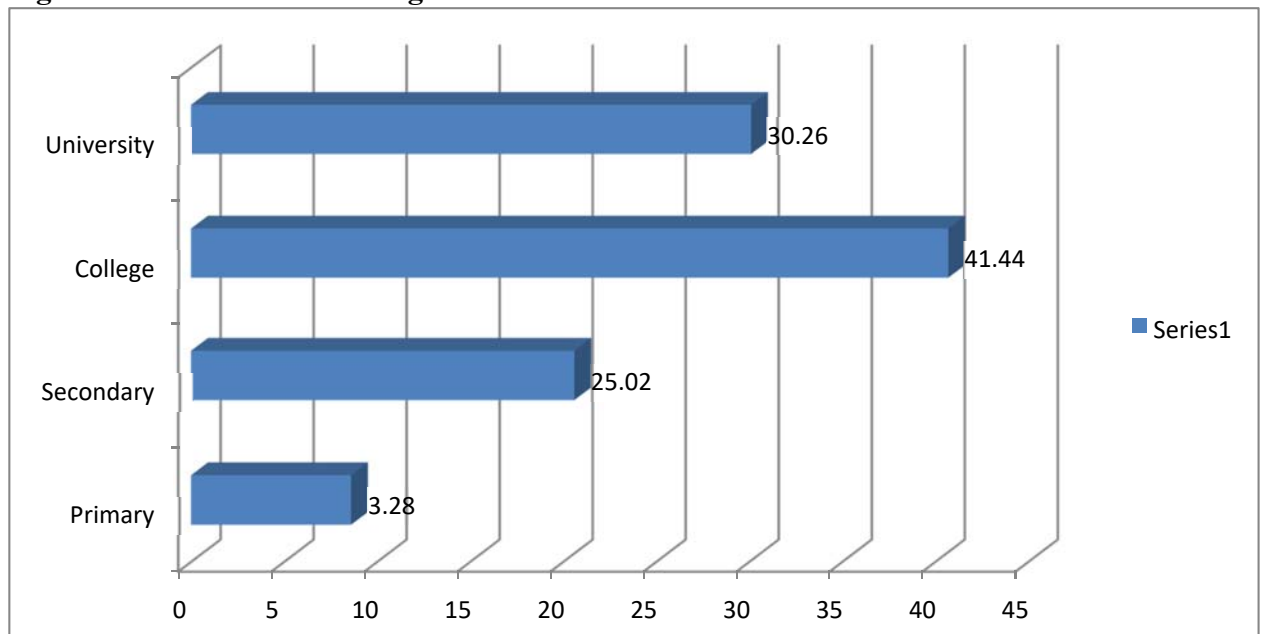
## 5. Educational Background

The study sought to find out the respondents education qualifications which are captured in Table 4.5 below and Figure 4.3 below:

**Table 4.5: Educational Background**

	Frequency	Percent
College	63	41.44
University	46	30.26
Secondary	38	25.02
Primary	5	3.28
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.3: Educational Background.**



From Table 4.5 and Figure 4.3, it is evident that majority of the respondents representing 44.44% of the respondents surveyed held college education, while 30.28% held university education. This

means that 74.72% of all respondents surveyed held either college or university education. As for the rest, 25.28% of the respondent held secondary education and the remaining 3.28% held primary school education only. This is evidence that majority of the respondent were very highly educated and academically qualified to easily understand the research questionaire and relate what it sought in the questions to their work experience and therefore offer very valid, reliable and informative responses. This was necessary for this research since wildlife crime is a local, cross border and international crime. Therefore ability of the respondent to understand international current affairs relating to wildlife crime and the ability to relate the same back to local situation would enable the respondent to give reliably and informed response to the questions in the research tool. Besides this, the high level of education possessed by the respondents meant that they could independently answer the question in the questionaire which was very good for the avoidance of any bias that can arise during the data collection process This also explains why the respondents were all able to collect and complete the questionaire without requiring the presence of the researcher to explain anything at any time. It is safe to conclude the respondents were very suitable for this research and because of this, this enabled this research to achieve its research objectives and pronounce its findings and resolutions.

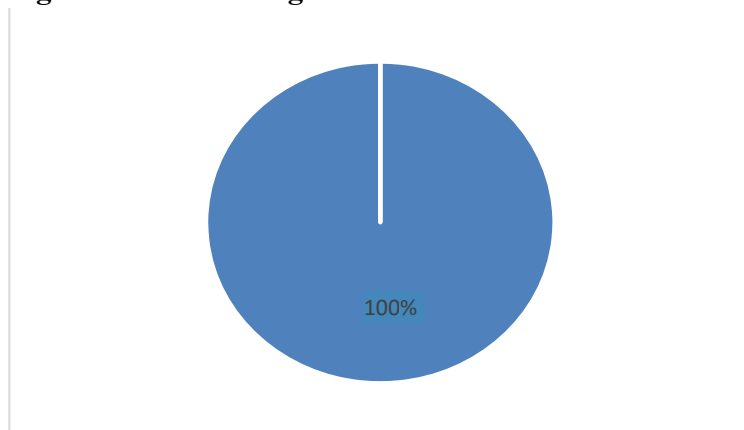
#### 6. Knowledge of the 2013 Wildlife Conservation and Management Act

The study sought to find out the respondents familiarity/knowledge of the Wildlife Conservation and Management Act (2013) which is captured in Table 4.6 and Figure 4.3 below.

**Table 4.6: Knowledge of the 2013 Wildlife Conservation and Management Act**

	<b>Frequency</b>	<b>Percent</b>
Yes	100	100
No	0	0
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.4: Knowledge of the Wildlife Conservation and Management Act (2013)**



From Table 4.6 and Figure 4.3, it is evident that all 100% of the respondents were aware of the 2013 Wildlife Conservation and Management Act. Their knowledge of the 2013 Wildlife Conservation and Management Act was important in this study as it illustrated that they were all able to understand what is wildlife crime and the penal sections of the Act. Therefore the respondent had sufficient prerequisite knowledge to understand the concept under research.

#### **7. Effectiveness of Penal Sections of the 2013 Wildlife Conservation and Management Act**

The study sought to find out the effectiveness are the penal sections of the 2013 Wildlife Conservation and Management Act in deterring wildlife crime in Kenya. The results are captured in Table 4.7 below.

**Table 4.7: Effectiveness of Penal Sections of the 2013 Wildlife Conservation and Management Act**

	<b>Frequency</b>	<b>Percent</b>
Moderate Extent	97	63.81
Great Extent	26	17.12
Least Extent	29	19.07
Very Great Extent	0	0
Not at All	0	0
<b>Total</b>	<b>152</b>	<b>100.00</b>

Table 4.7 shows that majority of the respondent surveyed representing 63.81% indicated that effectiveness of the penal sections of the 2013 Wildlife Conservation and Management Act in

detering wildlife crime in Kenya was to a moderate extent, while 17.12% indicated it was to a great extent and 19.07% indicated that it was to least extent. These results indicates that effectiveness of the penal sections of the 2013 Wildlife Conservation and Management Act in detering wildlife crime in Kenya is not adequate.

### 8. Familiarity with the CITES

The study sought to find out the respondents familiarity with the CITIES and its system of classifying wild animals on a level dependents on how endangered species are. The results are captured in Table 4.8 and Figure 4.4 below.

**Table 4.8: Familiarity with the CITES**

	Frequency	Percent
Yes	152	100
No	0	0
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.5: Familiarity with the CITES**

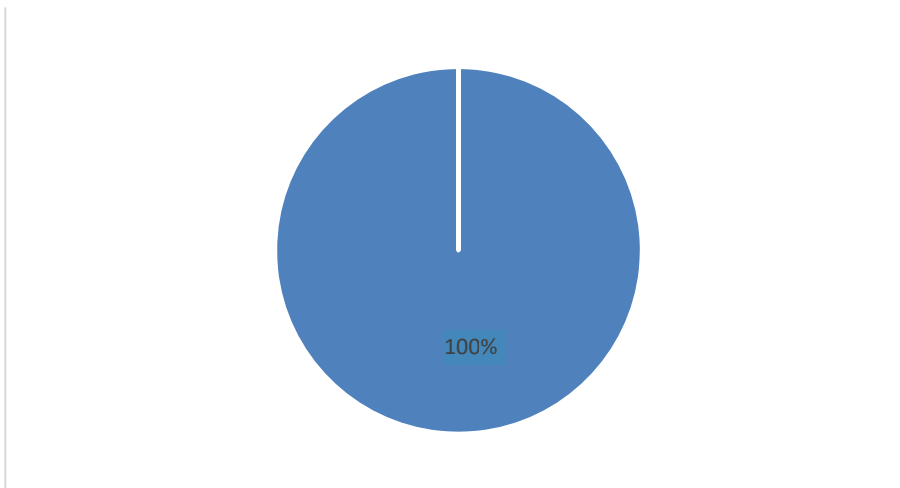


Table 4.8 and Figure 4.4 shows that all the respondents were familiar with the CITIES and its system of classifying wild animals on level dependent on how endangered the species were

### 9. Effectiveness of the Criminal Justice System When Combating Wildlife Crime

The study sought to find out the effectiveness in combating wildlife crime in Kenya of the provided organizations within the Criminal Justice System namely policing, prosecution and judiciary. The respondents were asked to rate their responses on a scale where 1 = Not at all, 2 = Least Extent, 3 =

Moderate Extent, 4 = Great Extent, 5 = Very Great Extent. The results were captured in Table 4.10 below.

**Table 4.9: The Richter Scale**

Level	Category
1 and less than 1.5	Not at All
1.5 and less than 2.5	To a least extent
2.5 and less than 3.5	To a moderate extent
3.5 and less than 4.5	To a great extent
Greater than 4.5	To a very great extent

Means greater than 1 and less than 1.5 implied that the factor the activity influenced employee engagement to no extent. Means greater than 1.5 and less than 2.5 implied that the activity influenced employee engagement to a little extent. Means greater than 2.5 and less than 3.5 implied that the activity influenced employee engagement to a moderate extent. Means greater than 3.5 and less than 4.5 implied that the activity influenced employee engagement to a great extent while means greater than 4.5 implied that the activity influenced employee engagement to a very great extent.

The standard deviation on the other hand describes the distribution of the responses in relation to the mean. It provides an indication of how far the individual responses to each factor vary from the mean. A standard deviation of 1 indicates that the responses are further spread out, greater than 0.5 and less than 1, indicates that the responses are moderately distributed, while less than 0.5 indicates that they are concentrated around the mean. Standard deviations of greater than 1 indicate a significant variation from the mean, signifying no consensus on the responses obtained.

**Table 4.10: Effectiveness of the Criminal Justice System When Combating Wildlife Crime**

	N	Mean	Std. Deviation
Policing	152	2.32	0.817
Judiciary	152	2.29	0.808
Prosecution	152	2.13	0.721

Table 4.10 shows that the respondents indicated that the different arms of the Criminal Justice System were effective to a moderate extent when combating wildlife crime as indicated by their means score. They however ranked Policing or KWS first among the three in its effectiveness in

combating wildlife crime with a mean of 2.32, while Judiciary was ranked second with a mean of 2.29, and Prosecution third with a mean of 2.13.

#### 10. Effect of Corruption and Poor Governance in Combating Of Wildlife Crime in Kenya

The study sought to find out from the respondents their view as to the whether corruption and poor governance was affecting combating of wildlife crime in Kenya. The results are captured in Table 4.11 and Figure 4.5 below.

**Table 4.11: Effect of Corruption and Poor Governance on Combating Of Wildlife Crime in Kenya**

	Frequency	Percent
Yes	129	84.86
No	23	15.14
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.6: Effect of Corruption and Poor Governance on Combating Of Wildlife Crime in Kenya**

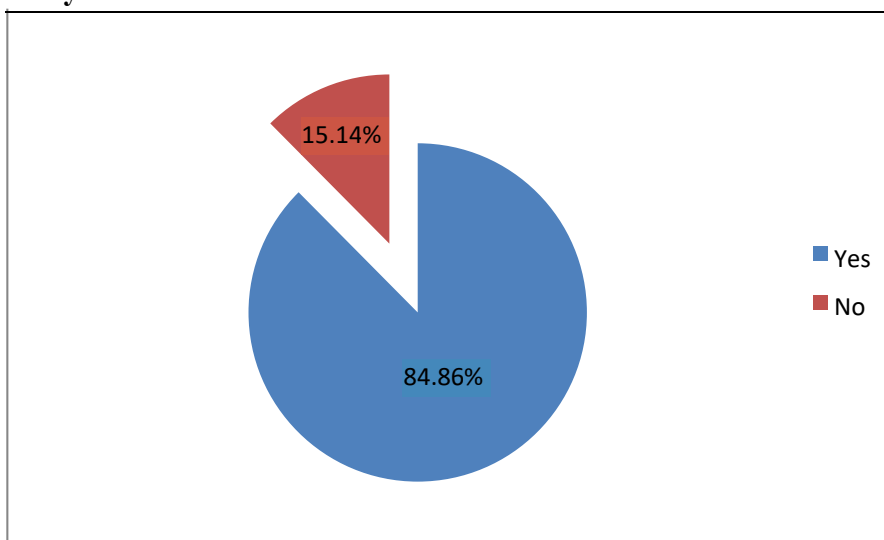


Table 4.11 and Figure 4.5 shows that, 84.86% of the respondents indicated that, corruption and poor governance were affecting the combating of wildlife crime in Kenya, while 15.14% indicated both corruption and poor governance were not affecting combating wildlife crime in Kenya. The results

therefore clearly show to majority of the respondents, corruption and poor governance was affecting combating of wildlife crime in Kenya.

#### 11. In terms of awareness of the five Animals in CITES Critically Endangered Species List

The study sought to find out whether the respondents were aware that 5 wildlife species in Kenya, namely the elephant, lion, rhino leopard and the cheetah were in CITES critically endangered species list The results are captured in Table 4.12 and Figure 4.6 below.

**Table 4.12: Awareness of the five Animals in CITES Critically Endangered Species List**

	Frequency	Percent
Yes	152	100
No	0	0
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.7: Awareness of Animals in CITES Critically Endangered Species List**

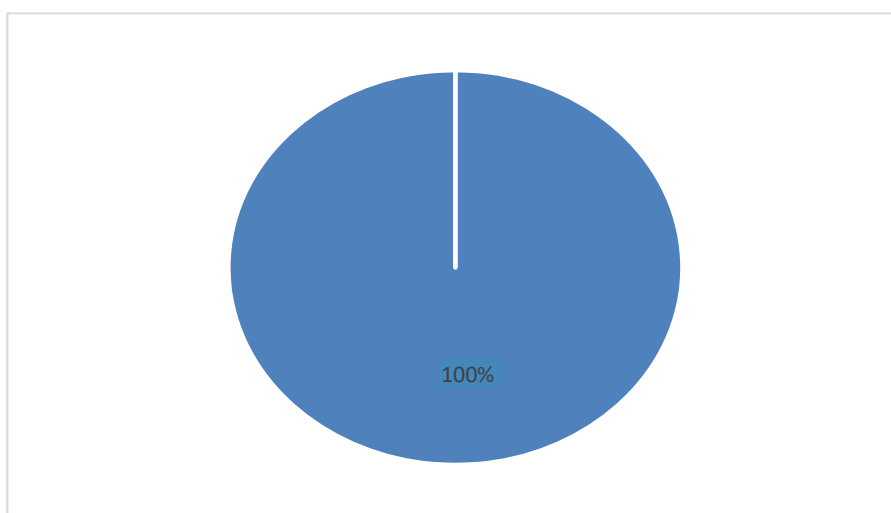


Table 4.12 and Figure 4.6 shows all the respondents 100% indicated that they were aware that 5 wildlife species in Kenya, namely the elephant, lion, rhino leopard and the cheetah were in CITES critically endangered species list

#### 12. Effect of International Treaties Barring Trading In Game Trophies

The study sought to find out the respondents view as to whether International Treaties barring trading in game trophies acted as motivators to poaching of animals by creating scarcity of the endangered wildlife species trophies. The results are captured in Table 4.13 and Figure 4.7 below.



**Table 4.13: Effect of International Treaties Barring Trading in Game Trophies**

	Frequency	Percent
Yes	105	69.07
No	47	30.93
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.8: Effect of International Treaties Barring Trading In Game Trophies**

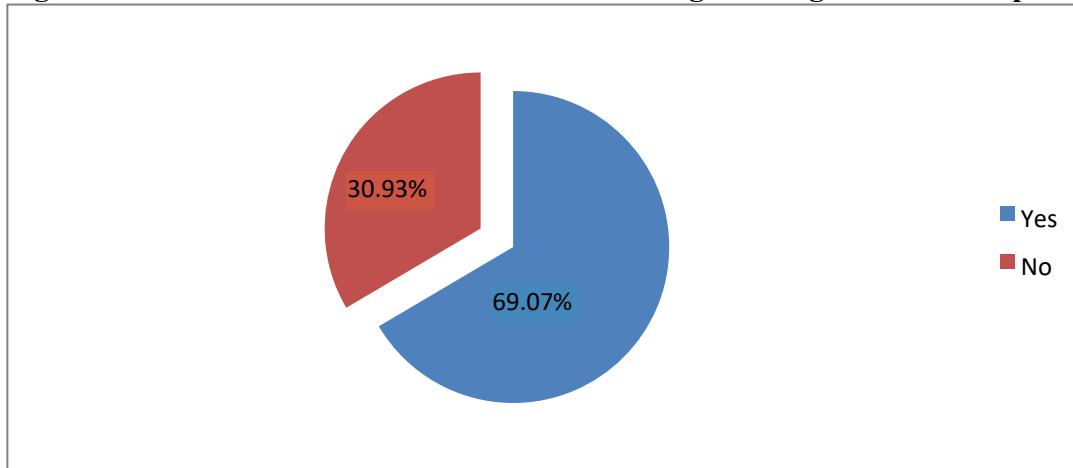


Table 4.13 and Figure 4.7 shows that 69.07% of the respondents indicated that International Treaties barring trading in game trophies did act as motivators to poaching of animals by creating scarcity of the endangered wildlife species trophies, while the remaining 30.93% indicated that International Treaties barring trading in game trophies did not act as motivators to poaching of animals by creating scarcity of the endangered wildlife species trophies.

### **13. Factors Affecting Effectiveness of Combating Wildlife Crime**

The study sought to find out the extent to which several provided factors in the questionnaire affect the effectiveness of combating wildlife crime in the various organizations. The respondents were asked to rate the extent to which each factor affect the effectiveness of combating wildlife crime in their organization on a scale of 1 to 5 where; 1= Not At All, 2= Too Little Extent, 3= To a Moderate Extent, 4= To a Sufficient Extent, 5= To a Great Extent. The results are indicated in Table 4.14:

**Table 4.14: Factors Affecting Effectiveness of Combating Wildlife Crime**

Factors	1		2		3		4		5		Mean
	no	%	no	%	n	%	n	%	n	%	
Lack of awareness and support from the public	0	0	1	0.65	37	24.34	25	16.46	89	58.55	<b>2.67</b>
Lack of modern equipment	0	0	0	0	61	40.33	19	12.5	71	46.71	<b>2.59</b>
Lack of adequate personnel	0	0	0	0	36	23.68	34	22.36	82	53.94	<b>2.71</b>
Lack of proper training	0	0	0	0	38	25	38	25	76	50	<b>2.60</b>
Lack of coordination between different institutions of CJS	0	0	0	0	46	30.26	43	28.30	63	41.44	<b>2.60</b>
Lack of harsher laws to deter likely offenders	0	0	0	0	30	19.68	40	26.32	82	54	<b>2.82</b>
Lack of Political goodwill from leadership	0	0	0	0	33	21.71	39	25.65	80	52.64	<b>2.65</b>
Lack of support from top management/officials	0	0	0	0	24	15.78	65	42.78	63	41.44	<b>2.73</b>
Political Interference from Politicians and senior officials	0	0	0	0	19	12.5	43	28.28	90	59.22	<b>2.82</b>
Corruption within your organization	0	0	0	0	24	15.78	42	27.65	86	56.57	<b>2.71</b>
Lack of motivation due to poor remuneration	0	0	0	0	30	19.68	46	30.32	76	50	<b>2.63</b>
Upward surge of demand of wildlife trophies in the international market	0	0	0	0	0	0	42	27.65	110	72.35	<b>2.85</b>

From Table 4.14, majority 58.55 % of the respondents agreed to a great extent that lack of awareness and support from the public affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system. On average the respondents indicated that lack of awareness and support from the public affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as depicted by the mean of 2.67.

Lack of modern equipment affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 46.7% of the respondents. On average the respondents indicated that lack of modern equipment affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a moderate extent as depicted by the mean of 2.59.

Lack of adequate personnel on the other hand affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 53.4 % of the respondents. On average the respondents indicated that lack of adequate personnel affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.71.

The table further shows that lack of proper training affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 50 % of the respondents. On average the respondents indicated that lack of proper training affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as depicted by the mean of 2.69.

Lack of coordination between different institutions of CJS affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 41.44 % of the respondents. On average the respondents indicated that lack of coordination between different institutions of CJS affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as depicted by the mean of 2.60.

Lack of harsher laws to deter likely offenders affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 54 % of the respondents. On average the respondents indicated that lack of harsher laws to deter likely offenders affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.82.

Lack of political goodwill from leadership to deter likely offenders on the other hand affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 52.64% of the respondents. On average the respondents indicated that lack of political goodwill from leadership affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.65.

The table further shows that lack of support from top management/officials affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 41.44% of the respondents. On average the respondents indicated that lack of support from top management/officials affected the effectiveness of combating wildlife crime in the

various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.73.

Political interference from politicians and senior officials on the other hand affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 59.22 % of the respondents. On average the respondents indicated that political interference from politicians and senior officials affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.82.

Corruption within the various organizations forming the criminal justice system affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 56.57 % of the respondents. On average the respondents indicated that Corruption within the various organizations forming the criminal justice system affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.71.

Lack of motivation due to poor remuneration affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 50 % of the respondents. On average the respondents indicated that lack of motivation due to poor remuneration affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.63.

The upward surge of demand of wildlife trophies in the international market affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a great extent as indicated by 72.35 % of the respondents. On average the respondents indicated that the upward surge of demand of wildlife trophies in the international market affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.85.

In terms of ranking, the upward surge of demand of wildlife trophies was ranked first among the provided factors as affecting the effectiveness of combating wildlife crime in the organizations that they worked for. Second was lack of harsher laws that can deter wildlife crime, while third was Political Interference from Politicians and senior officials.

#### 14. The Greatest Contributors of Wildlife Crime in Kenya

The study sought to find out the extent to which the respondents thought that the provided groups of people in the questionnaire, had been the greatest contributors of wildlife crime in Kenya. The respondents were asked to rate the extent to which the provided groups of people had been the greatest contributors of wildlife crime in Kenya on a scale of 1 to 5 where; 1 = Not at all, 2 = Least Extent, 3 = Moderate Extent, 4 = Great Extent, 5 = Very Great Extent. The results are indicated in Table 4.15:

**Table 4.15: The Greatest Contributors of Wildlife Crime in Kenya**

Factors	1		2		3		4		5		Mean
	no	%	no	%	no	%	no	%	no	%	
Local poachers	2	1.3	19	12.5	82	53.9	30	19.8	19	12.5	<b>2.37</b>
Local Organized Crime gangs and cartels	8	5.3	24	15.8	79	52	27	17.7	14	9.2	<b>2.52</b>
International Organized Criminal Syndicates	0	0	0	0	27	17.8	35	23	90	59.2	<b>2.69</b>
Armed State Actors	21	13.8	59	38.8	58	38.2	14	9.2	0	0	<b>2.16</b>
Neighboring countries insurgent Or Militia Groups	0	0	21	13.8	39	25.7	35	23	57	37.5	<b>2.29</b>

The ranking from Table 4.15, was done according to contributor identified as contributing to wildlife to a very great extent by the largest number of respondents. The majority of the respondents numbering 90 and representing 59.2 % of the respondents indicated that international organized criminal syndicates were contributing to wildlife crime in Kenya to a very great extent. The table further indicates that on the average international organized criminal syndicates were thought to contribute to wildlife crime in Kenya by a mean of 2.69.

Insurgents or militia groups neighboring countries were ranked second with 57 or 37.5% of the respondents indicating that they contributed to wildlife crime in Kenya to a very great extent. These neighboring countries insurgent or militia groups were on the average rated as being contributors to wildlife crime to as indicated by the mean of 2.29.

Local poachers were ranked third with 19 respondents representing 12.5% indicating that they contributed to wildlife crime in Kenya to a very great extent while the majority 82 respondents representing 53.9% indicated that it was to moderate extent. The table further indicates that on the average local poachers were thought to contribute to wildlife crime in Kenya by a mean of 2.37.

Local organized crime gangs and cartels were ranked fourth with 14 respondents representing 9.2% of the respondents indicated that they contributed to wildlife crime to a very great extent while 79 respondents representing 52% indicated it was to a moderate extent. The table also indicates that on the average the local organized crime gangs and cartels were rated as being contributors by a mean of 2, 52.

The respondents indicated that armed state actors did not contribute to wildlife crime to a great extent, but 14 respondents representing 9.2% thought it was to a great extent while the majority 59 respondents representing 38.8% indicated it was to a least extent. The table also indicates that armed state actors on the average were rated as being the least contributors to wildlife crime in Kenya as indicated by the mean of 2.16.

It is notable that the local poacher was ranked higher than the local organized crime gangs. This probably because the local poacher is the one who carries out the poaching and supplies the raw wildlife trophies to the local crime gangs many of which have kingpins who do the purchases and live in the capital cities and they don't venture into the jungles. The local poachers normally in possession of trophies from a single poached wildlife will transport the trophies concealed using public transport therefore making the operation easy for the local crime gangs and their kingpins.

## **15. Factors Enhancing Effectiveness of Combating Wildlife Crime in Kenya**

The study sought to find out the extent to which the respondents thought that the provided factors in this question in the questionnaire enhanced the effectiveness of combating wildlife crime in Kenya. The respondents were asked to rate the extent to which the those factors enhanced the effectiveness of combating wildlife crime in Kenya on a scale of 1 to 5 where; 1 = Not at all, 2 = Least Extent, 3 = Moderate Extent, 4 = Great Extent, 5 = Very Great Extent. The results are indicated in Table 4.16:

**Table 4.16: Factors Enhancing Effectiveness of Combating Wildlife Crime in Kenya.**

Factors	1	2	3	4	5	Mean					
	no	%	no	%	no	%	no	%	no	%	
Increasing the number of employees in your organization	0	0	0	0	32	21	31	20	89	59	<b>2.68</b>
Providing proper equipment and training	0	0	0	0	0	0	34	22	118	78	<b>3.01</b>
Immediate prosecution of Poachers	0	0	0	0	0	0	21	13.8	131	86.2	<b>3.12</b>
Imposing tougher penalties upon conviction to deter poachers	0	0	0	0	0	0	1	0.6	151	99.4	<b>3.21</b>
Translocation of critically endangered species to safer parks	0	0	25	16.4	28	18.5	30	19.8	69	45.3	<b>2.52</b>
International treaties barring trading in game trophies	0	0	0	0	11	7.2	43	28.4	98	64.4	<b>2.91</b>
Fencing of the parks	0	0	0	0	41	27	38	25	73	48	<b>2.52</b>
Nationwide campaign on Wildlife conservation education and extension services (e.g. importance of the charismatic 5 animals and anti-poaching and detection campaign)	0	0	0	0	14	9.2	37	24.4	101	66.4	<b>2.91</b>
Involving Community neighboring parks in revenue sharing from park gate collection fees, employing their youth as warders	7	4.6	33	21.8	16	10.5	59	38.8	37	24.3	<b>2.86</b>
Compensation of victims of human wildlife conflicts	9	5.9	27	17.7	25	16.5	48	31.6	43	28.3	<b>2.86</b>

From Table 4.16 (above), a majority of the respondents totaling 89 representing 59 % of the number of all respondents, agreed that increasing the number of employees in the various organizations of the criminal justice system would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent. The table further indicates that on the average increasing the number of

employees in the various organizations of the criminal justice system was rated as enhancing the effectiveness of combating wildlife crime in Kenya by a mean score of 2.68.

Providing proper equipment and training would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent was indicated by a majority of 118 representing 78 % of all the respondents. On the average this factor scored a mean of 3.01.

Table 4.16, further shows that a majority of 86.2 % or 131 respondents agreed that immediate prosecution of poachers would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent. This was also rated on the average a mean of 3.12 among other scores.

Imposing tougher penalties upon conviction to deter poachers would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent was indicated by a majority of 151 respondents representing 99.4 % of all respondents. Further, on the average this factor was rated by the mean score of 3.21.

Table 4.16 also highlights that a majority of respondents totaling 69 and representing 45.3 % of the all respondents agreed that translocation of critically endangered species to safer parks would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent. Further, translocation of critically endangered species to safer parks was on the average rated as enhancing the effectiveness of combating wildlife crime in Kenya as indicated by the mean of 2,52.

A majority of 98 respondents representing 64.4% of the total number of respondents indicated that International treaties barring trading in game trophies would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent. Further, International treaties barring trading in game trophies was rated on the average as enhancing the effectiveness of combating wildlife crime in Kenya as indicated by the mean of 2.91.

Table 4.16, further illustrates that a majority of 73 respondents representing 48% of the total respondents, agreed that fencing of the parks would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent and the same was indicated by mean of 2.52

Nationwide campaign on Wildlife conservation education and extension services (e.g. importance of the charismatic 5 animals and anti-poaching and detection campaign) would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent as indicated by 101 of the



respondents representing 66.4 % of all respondents. Further, on the average this factor scored a mean of 2.91

Table 4.16 shows that while 37 respondents representing 24.3% of the total number respondents indicated that community neighboring parks involvement in revenue sharing from park gate collection fees, employing their youth as warders would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent, the majority the respondents totaling 59 representing 38.8% of the respondent indicated this would enhance the effectiveness of combating wildlife crime to a great extent. Further, this factor was rated on average as enhancing the effectiveness of combating wildlife crime in Kenya as indicated by the mean of 2.86.

A total of 43 representing 28.3% of all respondents in this study indicated that compensation of victims of human wildlife conflicts would enhance the effectiveness of combating wildlife crime in Kenya to a very great extent while the majority 48 respondents representing 31.6% of all respondents indicated that would only be to a great extent. Further, compensation of victims of human wildlife conflicts was rated on the average as enhancing the effectiveness of combating wildlife crime in Kenya as indicted by the mean of 2.86.

#### 16. Mechanisms or Capacity to Detect Illegally Trafficked Wildlife Trophies

The study sought to find out the respondents view as to whether Kenya has the mechanisms or capacity to detect illegally trafficked wildlife trophies from the neighboring countries. The results are captured in Table 4.17 and Figure 4.8 below.

**Table 4.17: Mechanisms/Capacity Of Detect Illegally Trafficked Wildlife Trophies**

	Frequency	Percent
Yes	111	73
No	41	27
<b>Total</b>	<b>152</b>	<b>100.00</b>

**Figure 4.9: Mechanisms/Capacity Of Detect Illegally Trafficked Wildlife Trophies**

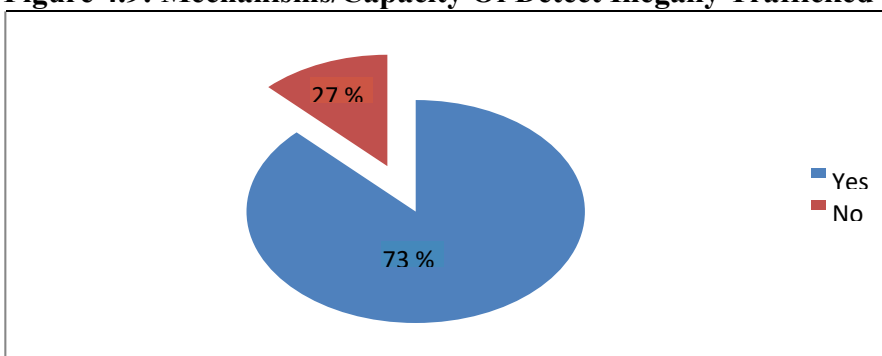


Table 4.17 and Figure 4.8 shows that 111 respondents representing 73% of the respondents indicated that Kenya has the mechanisms and capacity to detect illegally trafficked wildlife trophies from the neighboring countries, while the rest 27 % indicated that Kenya does not have the mechanisms and capacity to detect illegally trafficked wildlife trophies from the neighboring countries.

### **17. Why Has There Been A Sudden Upsurge in Wildlife Crime Kenya?**

In response, 89 % respondents indicated that the sudden upsurge of wildlife crime in Kenya was aggravated by a number of factors. They cited the high demand of game trophies in the international market, especially in the Eastern Asian market like China as one of the main factors. This was made worse by the increased presence, of in Kenya and the rest of the eastern and central Africa region, of nationals from those nations in eastern Asia with large and flourishing illegal games trophies market. The sudden upsurge of wildlife crime in Kenya was also reported to be brought about by other factors key among the lack of employment and poverty in the community that has led the locals to engage in this illegal but lucrative trade of wildlife crime.

The Respondents also indicated that corruption and poor governance in institution charged with fighting wildlife crime had become rife especially after the entry of foreigners and international crime syndicates in the illegal wildlife trade in Kenya. The respondents indicated that these international crime syndicates and the foreign nationals have become very influential within Kenya and the rest of the eastern and central Africa because they have a lot of money to bribe senior staff members within the CJS and politicians for protection. This they indicated has a tickles down effect on the juniors as it demoralizes them and makes them think that their effort in combating wildlife crime is an exercise in futility as even if they arrest the culprit, they will be ordered to release him immediately. This has made the illegal wildlife trade very lucrative and easy to get away with in Kenya as a local source market.

In addition, all respondents 100% indicated the lack of awareness about the importance of wildlife in maintaining the bio diversity and ecological balance in the environment lead to unnecessary human wildlife conflicts which was also seen as exuberating wildlife crime and causing an upsurge in wildlife crime but to a moderate extent. All the respondents 100% were of the opinion that fencing of the parks would reduce this human-wildlife conflict and enhance wildlife protection.

All respondents 100% were of the opinion that poor remuneration among personnel dealing with wildlife had led some of them to fall prey to poaching kingpins who lured them with huge rewards for wildlife trophies making some KWS wardens to conspire and collude with poachers and

traffickers in carrying out wildlife crime which can cause an up surge. The lack of support from top managers was also reported as leading the junior personnel to wildlife crime as there is no monitoring, evaluation and feedback system in place.

A total of 93% of the respondents also indicated that the up surge was also caused to a moderate extent by the media as it has portrayed wildlife crime as a lucrative trade with wildlife trophies of selective wildlife species having a high monetary values. This the respondents indicated the media does constantly when reporting the arrest of individuals with game trophies and they also tell the public what was the value of the trophies that the individuals were arrested with sometimes exaggerating the value and making it look like game trophies of those species are very valuable..

Another 33% of the respondents indicated that the cause of the upsurge was also from low to moderate extent caused due to the current international economic recession and crisis that has led to an increase in global poverty. They further indicated that many the other factors were an upshot of this global economic crisis. They indicated that due to the said economic crisis, entrepreneurs and criminals alike in foreign countries in Asia and in Europe have had to venture outside their known borders to seek opportunities and money beyond their borders and found their way into Africa and in particular Kenya and the rest of East and Central Africa. There they found known weakness in law enforcements structures which were conducive for their criminal activity. They are therefore only exploiting those existing weakness which are being cited as factors causing the current upsurge of wildlife crime. They indicated that the Asiatic and European international criminal syndicates had not previously ventured into Africa in such a big way as they have currently.

A further 2% of the Respondents indicated that there was no upsurge but just heightened awareness due to extensive media coverage giving the impression of a crisis. They indicate that poaching of wildlife has been going on since the colonial days

#### **18. What would Aid the Prevention of Wildlife Crime?**

The Respondents had many suggestions but key among the responses was adoption of modern technology such as Cyber Tracked and unmanned surveillance by use of drones. Container and luggage X-rays machines and game trophies detecting machines should also be installed at all point of entry and exit from Kenya to help nab any trophies coming or leaving Kenya as the country has also been used as a transit hub by traffickers. Equipping the employees with modern equipment was also noted as going a long way in preventing wildlife crime. The staff involved in wildlife conservancy should also be given proper training and better remuneration to deter them from wildlife

crime. Frequent recruitment should also be undertaken to ensure that adequate number of staff is available to man the national parks and national reserves. In terms of corruption and poor governance suggestions were made for continuous staff vetting, continuous life style audits and opening confidential channels of communication where reports can be lodged about corruption among all members of staff without fear of retribution. It was also suggested that the justice must not only be done but must be seen to be done Therefore, offenders and their protectors once arrested or identified must face the full wrath of the law publicly.

Furthermore, the respondents stated that community sensitization and education should be conducted country wide to inform the community on the importance of wildlife to the eco system. Community and conservancy projects should also be initiated and the community should then be involved and employed to be part of the conservancy team to prevent wildlife crime. This was observed to have worked very well in Masai Mara National Reserve where the community forms the game scout and former poachers have turned to wildlife protectors. The relevant authorities should also work to empower the community organizations to enable them to effectively carry out conservation and prevent wildlife crime. They also stated that revenue sharing would go a long way in preventing wildlife crime as the community would value the wildlife more as a source of revenue. Funds should also be allocated to the community for their benefit such as education kitties. The victims of human wildlife conflict should be well compensated to avoid retaliatory attacks on wildlife from the community.

#### **19. Effect of International Treaties Imposing Total Ban on Wildlife Trade**

The study sought to find out the respondents view as to whether international treaties imposing total ban on wildlife trade help in combating wildlife crime. The results are captured in Table 4.18 and Figure 4.9 below.

**Table 4.18: Effect of International Treaties Imposing Total Ban on Wildlife Trade**

	<b>Frequency</b>	<b>Percent</b>
Yes	99	65
No	53	35
<b>Total</b>	<b>152</b>	<b>100.0</b>

**Figure 4.10: Effect of International Treaties Imposing Total Ban on Wildlife Trade**

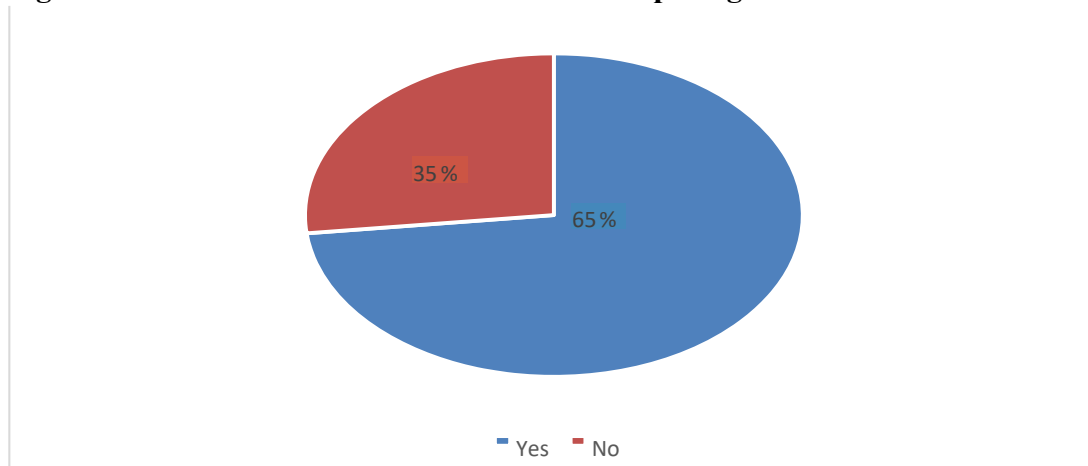


Table 4.18 and Figure 4.9 show that 99 respondents representing 65 % of the respondents indicated that international treaties imposing total ban on wildlife trade would help in combating wildlife crime, while the rest 53 representing 35% indicated that international treaties imposing total ban on wildlife trade would not help in combating wildlife crime.

### **Other Suggestions**

The respondents also suggest imposition of mandatory custodial sentences that removes the discretionary powers on sentencing from the magistrate for persons convicted for committing wildlife crime be enacted. They also suggest total closure of the Far East Asia wildlife trophies preparation factories and markets. This would also assist in combating wildlife crime locally. Steps should also be taken to destroy evidence in wildlife crime cases immediately after pictures have been taken which can be used as evidence in court. This will deter the staff from pilfering the evidence which occasionally disappears in wildlife crime cases only to emerge as wildlife trophies captured in foreign capitals in a Far East Asia country with marking that show it was evidence in a wildlife crime case in Kenya. Freezing of the wildlife trade and ensuring there is coordination between the different arms of the Criminal Justice System would also go a long way in preventing wildlife crime and ensuring quick/direct prosecution of the suspects and perpetrators. The top management and politicians should be advised to stop politicizing wildlife but instead strive for proper governance and elimination of corruption in order to eliminate wildlife crime.

More funding from CITES should be sought to enhance the wildlife conservancy initiatives as well as provide equipment and salary increment for the staff in the organizations within the CJS that are involved in combating wildlife crime. However, some respondents noted that endangered wildlife should be moved or trans-located to safer parks and conservancies. Further there were even

suggestions that elephant and rhino tusks be removed as the animals do not need them but in fact with the current upsurge, the tusks have become a liability to the security of the animals.

## **SUMMARY**

Overall, these findings show that this research aims and objectives were achieved. It is now evident that the problems relating to wildlife crime are multifarious. Yet, the findings of this research have identified each of the challenges, beside corruption, as witnessed by the stakeholders involved in the wildlife protection process. Notably, other challenges were identified with higher mean scores than corruption that should be of more concern, like the upsurge in demand for game trophies in the international consumer markets. One cannot tackle corruption alone in such circumstance and expect change in combating wildlife crime. These findings show there is a need for a new and holistic approach to combating wildlife crime. All these challenges and comments will be re-examined and ways proposed in the conclusion of this research study, some of which will be the ones proposed by respondents for combating wildlife crime as they are the ones on the ground and therefore know the most effective ways for combating wildlife crime.

## **CHAPTER FIVE**

### **An evaluation of current enforcement mechanisms**

This chapter summarizes the findings and discusses the results gathered from the analysis of the data, as well as the conclusions reached. Findings have been summarized alongside the objectives of the study. This chapter also adopts a taxonomic process that offers the Thesis synopsis and data findings in form of a discussion. It outlines the process utilized for data collection, and explains the comparative data analysis process utilized to determine the data findings and to scientifically define and report the results. This chapter is therefore a culmination of the reporting of the answers to this Research study's questions in its research tool or questionnaire and successful achievements of the Research's goals. This has enabled this Research study to critical evaluate the current enforcement mechanism alongside its findings which is explained in this chapter .

### **General findings from the study**

The sample population for the study comprised of KWS wardens, prosecution and Judiciary Staff. In all 156 questionnaires were distributed to this particular sample frame. A total of 152 questionnaires were successfully completed and returned, representing a 97.4% response rate. The study findings indicated that a majority of the respondents totaling 96.7% were in Policing (KWS wardens) while 1.97% of the respondents were prosecutors and 1.31% were magistrates within the areas of jurisdiction where wildlife crime cases are put on trial. These findings indicate that the study was able to collect information from all the targeted respondents who make up the Criminal Justice System that directly deals with combating wildlife crime in Kenya.

This research study critically evaluated the gender ratio of the respondent. The findings indicate that there were more male respondents interviewed as compared to female respondents. The study indicates that 63.15% of the respondent were male while 36.84 % were female. It is evident from the study findings that most of the respondents had worked for between 5 years to above 30 years totaling 74.35 %, with only 25.65% of respondents having work experience for up to 5 years. That the majority respondents had such long work experience duration confirms that the respondents are very knowledgeable with the wildlife crime sector and their roles in combating wildlife crime and can independently offer knowledgeable and dependable information that was very valuable and reliable and informed this research study as to what are challenges for combating wildlife crime in Kenya are. Their responses were therefore very relevant for this study.

Furthermore the study findings indicate that most of the respondents totalling to 71.7 % held college and university education. The level of qualification was very crucial for this study because it was essential for evaluating whether the respondents had the prerequisite knowledge to understand the concepts under research some of which had an international bearing. Even more crucial and appreciative was the fact 96.72 % of respondents had secondary level and above education qualifications, which illustrated that they were able to understand and explain the concepts of wildlife crime and the information that they gave in this study's question was an expression and a true reflection of the knowledge and experience that they have in combating wildlife crime in Kenya and the challenges that they face which was what this study sought to scientifically determine.. Majority of the respondent were very highly educated and academically qualified to easily understand the research questionaire and relate what it sought to their work experience and therefore very knowledgably provide the information required in the questionaire which they did. This information informed most of the findings in this research this being an empirical research.

All respondents 100 % were aware of the WCMA(2013). Knowledge of the WCMA (2013) was an important finding for this study. This is because it was essential for evaluating whether the respondents had the prerequisite knowledge to understand the legal mechanisms under research. The fact that most respondents had knowledge of the 2013 Wildlife Conservation and Management Act, illustrated that they were able to understand the concept of wildlife crime.

This aspect is placed in to better perspective by this study's findings that 63.81 % of the respondents indicated that effectiveness of the penal sections of the 2013 Wildlife Conservation and Management Act in deterring wildlife crime in Kenya was to a moderate extent, while 19,07 % indicated that it was to a least extent. Therefore a total 82.88 % indicated that it was not very effective deterring wildlife crime. This is a serious indictment against this law enforcement mechanism which is the law itself. It is apparent from this research that WCMA (2013) has failed as an effective law both in enforcement and as a deterrence. Based on these findings, this aspect will be thoroughly examined in this research under the theoretical framework analysis in the conclusion

For CITES, the findings show that all respondents 100% indicated that they were familiar with the CITES and its system of classifying wild animals on level dependent on how endangered the species are. All respondents 100% also indicated that they were aware that 5 wildlife species in Kenya namely the elephant, rhino, lion, cheetah and leopard were in the CITES critically endangered list. However 69.07 % of the respondents indicated that international treaties barring trading in wildlife trophies acted as a motivator by creating scarcity of endangered species trophies. International



treaties dealing in wildlife is the purview of CITES. On the other hand a total of 92.8 % respondents also indicted that international treaties barring trading in wildlife trophies could enhance the effectiveness of combating wildlife crime with 64.4 % indicating that would effectively be to a very great extent. This is an indicator as to how important CITES and international treaties are as on one side they do motivate wildlife criminals as the scarcity increases the price in wildlife trophies, while still on the other hand they are one of the best tools for combating wildlife crime as the respondents indicated and findings of this research study shows.

The study findings show that the respondents indicated that the 3 organizations of the Criminal Justice System were effective to a moderate extent when combating wildlife crime as indicated by their means. They however ranked Policing first with a mean of Judiciary second with a mean of 0.817 and Prosecution third with a mean of 0.721. Further, the results indicate that corruption and poor governance was affecting combating of wildlife crime in Kenya as indicated by 84.86% of the respondents.

### **Challenges of Combating Wildlife Crime**

The study sought to find out the extent to which several factors affects the effectiveness of combating wildlife crime in the various organizations. The respondents indicated that lack of awareness and support from the public affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as depicted by the mean of 2.67. Lack of modern equipment affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a moderate extent as depicted by the mean of 2.59. Also, the lack of adequate personnel affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.71. Lack of proper training affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as depicted by the mean of 2.60. Lack of coordination between different institutions of CJS affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as depicted by the mean of 2.60.

Lack of harsher laws to deter likely offenders affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.82. Lack political goodwill from leadership affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.65. Lack of support from top management/officials affected the

effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.73. Political interference from politicians and senior officials affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.82.

Corruption within the various organizations forming the criminal justice system affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.71. Lack of motivation due to poor remuneration affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2,63. The upward surge of demand of wildlife trophies in the international market affected the effectiveness of combating wildlife crime in the various organizations of the criminal justice system to a sufficient extent as indicated by the mean of 2.85.

In totality, upward surge of demand in wildlife trophies was ranked first as the leading factor affecting the effectiveness of combating wildlife crime. In fact 72.35 % of the respondent indicated that this was to a great extent. Second was political interference from politicians and senior officials with a majority of 59.22 % indicating that this was to a great extent. Thirdly was lack of harsher laws with 54% of the respondent indicating that this too was to a great extent.

When the respondents were asked the extent to which different groups of people had become contributors of wildlife crime in Kenya, the respondents indicated that local poachers were thought to contribute to wildlife crime in Kenya to a moderate extent as shown by the mean of 2.37. Local organized crime gangs and cartels were thought to contribute to wildlife crime to a moderate extent as indicted by the mean of 2.52. The findings indicate that international organized criminal syndicates were rated as being contributors to wild life crime to a great extent as indicted by the mean of 2.69. Armed state actors on the other hand were rated as being contributors to wildlife crime to a moderate extent as indicted by the mean of 2.16. The findings indicate that other armed non-state actors were rated as being contributors to wild life crime to a moderate extent as indicted by the mean of 2.19. However, the respondents indicated that neighboring countries insurgent or militia groups were rated as being contributors to wildlife crime to a moderate extent as indicted by the mean of 2.29.

The study then sought to find out the extent to which the respondents thought that the given factors enhanced the effectiveness of combating wildlife crime in Kenya. The respondents agreed that

increasing the number of employees in the various organizations of the criminal justice system was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 2.68. Further, Providing proper equipment and training was also rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 3.01. Immediate prosecution of Poachers was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 3.12 while, imposing tougher penalties upon conviction to deter poachers was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 3.21.

Translocation of critically endangered species to safer parks was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a moderate extent as indicated by the mean of 2.53 while international treaties barring trading in game trophies was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 2.91.

Fencing of the parks was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a moderate extent as indicated by the mean of 2.52, while nationwide campaign on Wildlife conservation education and extension services (e.g. importance of the charismatic 5 animals and anti-poaching and detection campaign and importance of wildlife in general to the Eco-systems) was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 2.91. Community neighboring parks involvement in revenue sharing from park gate collection fees, employing their youth as warders was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 2.86. On the other hand compensation of victims of human wildlife conflicts was rated as enhancing the effectiveness of combating wildlife crime in Kenya to a great extent as indicated by the mean of 2.86.

Imposing tougher penalties to persons convicted for committing wildlife crime was indicated as the most effective factor that can enhance combating wildlife crime. The law remains the most effective tool of combating wildlife crime but as majority of the respondents indicate, it needs to be made harsher. In fact, 99.4% of the respondents indicated that this factor would enhance combating effectiveness of combating wildlife crime was to a very great extent. Secondly immediate prosecution of poachers and providing proper equipment and training to the CJS can also enhance the effectiveness of combating wildlife crime.

The study sought to find out the respondents view as to whether Kenya has the mechanisms or capacity to detect illegally trafficked wildlife trophies from the neighboring countries. The study

findings show that 73% of the respondents indicated that Kenya has the mechanisms and capacity to detect illegally trafficked wildlife trophies from the neighboring countries, while the rest 27% indicated that Kenya does not have the mechanisms and capacity to detect illegally trafficked wildlife trophies from the neighboring countries. Some of the 111 respondents referred to the KWS forensic laboratory and ongoing sample profiling for Kenya wildlife species DNA according to wildlife species families, as wildlife was borderless. It is important to know from where in the region the trophies were from in order that effort and resources can be applied in the right direction to effectively curb wildlife crime.

### **COMPARATIVE ANALYSIS OF PRIMARY AND SECONDARY DATA**

The study found that wildlife crime was a persistent problem in Kenya and all over East and central Africa. This is in line with previous studies which present poaching is a persistent global problem with a profound effect on the East African region (Adams & Hulme, 2001; Achieng, 2014; ACF, 2013; Agger & Hutson, 2013; Animal Welfare Institute, 2013; CITES, 2013). The international demand for ivory and rhino horn is fueling catastrophic declines in the elephant and rhino populations in Kenya, Tanzania and throughout Africa. This was evident from the research study which depicted that the upward surge of demand of wildlife trophies in the international market had contributed a lot towards the challenges of combating wildlife crime.

Local poachers, local organized crime gangs and cartels, armed state actors, other armed non-state actors, neighboring countries insurgent or militia groups were thought to contribute to wildlife crime to a moderate extent. The findings indicate that international organized criminal syndicates were rated as being contributors to wild life crime to a great extent. This is in line with previous studies which attributed poaching to amongst others, poverty in African communities resulting in individuals hunting for food or profit (Jackson, 2008; Knecht, 2006), or overseas demand for exotic animals as live pets or their constituent parts for use as traditional medicines and decorations (Warchol, Zupan & Clack, 2004). Several researchers applied economic theories to understand the problem, focusing on supply and demand (Wilkie & Carpenter, 1999; Bulte & Horan, 2002). Other studies, though fewer in number, have examined poaching by the application of criminological theory focusing on offenders (Eliason, 2003; Eliason & Dodder, 1999). As is the case for many countries in Africa, in Kenya wildlife crime has evolved over time and presents new challenges to wildlife conservation.

More importantly, this study observed that poachers were present at or near all the parks this research was carried out in. This was partly due to large human populations living in close proximity

to the conservation areas with desirable wildlife species with high value trophies and the populace has very high unemployment rates. Schneider (2008) as a point of fact states that theft of more exotic property, such as endangered plants, animals, and their parts, occurs as a result of these same dynamics thieves, poachers, and handlers who trade in these items because somewhere, there is a handler who has people ready and willing to purchase the wildlife trophies. The concept of the poacher, which includes both the employer and employee who participate in wildlife crime and intruders who illegally enter a park or reserve to hunt all of whom were motivated offenders, were a product of socially disorganized areas (Williams & McShane, 2010; Jones, et al 2004).

## **SUMMARY**

The analysis in this chapter have revealed startling and stunning findings on the challenges the CJS faces when combating wildlife crime. In order to effectively combat wildlife crime, the CJS must therefore be able to focus and effectively utilize resources and apply the right enforcement mechanism identified in the research findings in this chapter. The challenges uncovered through this research will be revealed in the next chapter as the Dominant Discourse of this research.

## **CHAPTER SIX**

### **THE CONCLUSIONS:**

This chapter offers a comprehensive and validated conclusion. Through the research findings and available evidence rigorously collected and analyzed in this research, it presents an illuminating discussion referred to as the Dominant Discourse of this research, through which the challenges of combating wildlife crime are unveiled and some practical field based solutions are offered.

This chapter then proceeds to examine and dispute the apocryphal causes that is widely accepted as the cause of the current escalation of wildlife crime. Through this research's finding this functional cause is rejected and a new validated cause is revealed thus resolving this apocryphal phenomenon that has been a serious misnomer and an enigma on this topic. This s new proven knowledge generated and offered through this research thesis.

In another original contribution to knowledge generated from this research's findings, a new concept for combating wildlife crime called the 3Cs concept is formulated and unveiled through this chapter. This concept together with its 3Cs Hierarchical Model and the 3Cs Tool kit are a unique systematic mechanism for combating wildlife crime created and formulated through this research. This research also presents the Crime Facilitate Crime Theory. Finally this research presents its own recommendations for immediate implementation as the final outcome of this research.

### **THE RESEARCH SYNOPSIS**

The below research synopsis framework explains the process and procedure this research underwent in order to arrive at its processed, definitive and efficacious findings, concepts and recommendations in this chapter.



FIGURE 5: RESEARCH SYNOPSIS FRAMEWORK

## **THE DOMINANT DISCOURSE**

The overall findings in this research shows that this research's aims, objectives and goals were achieved. It is now clear that the challenges relating to combating wildlife crime are numerous thus making wildlife crime a perennial problem for Kenya and other east and central Africa countries. Identifying each of these challenges distinctively has itself been a challenge and as such no solution can be offered in such a situation. Imagining that either lumping the challenges together under one name or that solving one of the challenges would solve all the others only makes a bad situation even worse. Through this research, the respondents identified numerous challenges in the war against wildlife crime. The Respondents selected for the survey in this research were from as broad a field as possible within the CJS, but all having some connection with wildlife and were able to pin point what the real challenges of combating wildlife crime in Kenya were. They also ranked those challenges in the order of the extent to which each challenge has contributed or caused the escalation of wildlife crime.

The Respondent have proposed some ways through which they thought that these challenges could be resolved. The Respondents are the people on the ground and therefore their opinion on combating and curbing wildlife crime are instructive and reliable. In this research study it yielded astonishing information as to these challenges and the best ways to combat them. This information was very important for this research as the solution offered were coming from the people on the ground who understand what challenges they face and know what the practical solution are as opposed to theoretical solutions. Moreover they are the same people who will be expected to implement the solutions and solve the wildlife crime crisis. It is therefore important that they own the process by making their observations and suggestions on how to curb wildlife crime a part of this research in its findings and recommendations.

This is probably the most distinctive part of this research as in comparison with other researches on this area of wildlife crime as those others have concentrated in finding solutions from anecdotal evidence and other secondary data based on "what others have done" in perceived similar situations. In wildlife crime, circumstances are very dynamic and the ground changes rapidly while no two situations can ever similar. All these challenges were identified, marked and ranked by the mean scores that they scored in the sample survey, ranging from the highest score ranking to the least.

These challenges are now illuminatingly presented here as the Dominant Discourse of this research study in their order of ranking from the highest ranked to the last but not least. This is in line with this research study's overall Aims and goal to explore and discover the challenges that are responsible for the incapacitation and ineffectiveness of legal mechanisms that have been set up to protect wildlife especially the charismatic 5. Thereafter to ultimately offer practical solutions that

will effectively solve the problem without burdening the government of Kenya and other regional governments with the need to source for more resources, but draw from what is already existing on the ground through promoting synergy among all stakeholders, so that after identifying the challenges and offering the solutions through this research study, they will share the resources they possess to implement the proposed solutions.

The identified challenges and practical solutions to each identified challenge are as follows:

**1) The Upward surge of demand of wildlife trophies in the international market**

This research found that 72.35% of the respondents surveyed were of the opinion that the upward surge of demand of wildlife trophies in the international consumer markets in Far East Asia was the major cause for the escalation of wildlife crime in Kenya and the rest of the East and Central African countries. This cause scored the highest mean score of 2.85 from amongst all other identified factors that were affecting the effectiveness of combating in Kenya. It therefore ranks as the highest identified challenge that has caused the upsurge of wildlife crime in Kenya. .

In order to examine the veracity of this identification and ranking of upsurge in demand of wildlife trophies in the international markets as the cause of the corresponding upsurge of wildlife crime in Kenya, this research seeks to establish if there is a relationship and justification to link this identified cause in the primary research data by re-examining the evidence collected in the secondary data of this research. To do this it is imperative to firstly, examine the upward surge of demand of wildlife trophies within the context of the current escalation of wildlife crime and its relationship with the International Market by comparing what is in the primary data and what is in the secondary data.

Secondly, from a perspective of demand and supply, is there a relationship between the upward surge of demand of wildlife trophies and the supply within the economies of supply and demand and price index that would justify the link between the supply market and demand in the consumer markets in the Far East?. Considering the illegality of the product and the fact that the product must be exported from the supply market to the consumer market, is there a supply chain system that is in operation that meets the requirement of demand and supply factors in this illegal trade?

Thirdly, since wildlife trophies of the charismatic 5 are not a consumable product, why is there is a high demand for it? Is it due to cultural practice, customers satisfaction in possessing such trophies, speculation due to the growing value of the illegal wildlife trophies, or just as display items for personal gratification or show off ?.



Fourthly, although wildlife crime is a perennial problem in Kenya, could the identified upsurge of demand in wildlife trophies in the consumer market as the cause of the corresponding escalation of wildlife crime in the source market, be an ongoing phenomenon or are there any new dynamics in either emerging socio-economic factors in Kenya relating to the new and expanding international development partnerships between Kenya and some Far East countries like China and increased presence of Chinese workers in development projects in Kenya and also in trade as alluded in the secondary data of this research.

(i) *The International Markets:*

It is very important to note right from the onset that not all international wildlife trophies markets are illegal markets. That is because there are no synchronized international laws banning trading in wildlife trophies on a global scale. CITES is the international organization which through international conventions has the mandate to regulate this international market in plants and wildlife trophies. Therefore whether a wildlife trophy is legal or illegal to trade in at an international market scale will depend on which level on the endangered species classification that the species the wildlife trophy is extract from, falls. All the charismatic 5 wildlife species are in the critically endangered species list and therefore any trading in their trophies is prohibited unless otherwise allowed by CITES. That is why some nations in Africa which claim to have legally sourced wildlife trophies from the charismatic 5 wildlife species like those which have died from natural causes, have been pushing for CITES to allow a one off sale of those trophies that they possess. This in essence would convert the current illegal international market of those trophies from those species to a legal international market. Otherwise some nations in the Far East do allow trading in these endangered species trophies but within their local markets. Data on the illegal international wildlife trophies market is rather scanty. But it is established that the largest illegal market for wildlife trophy is in the Far East countries starting with China, Japan, Vietnam, South Korea and Taiwan. These countries have very large populations and a growing middle class due to economic growth associated with the transfer of manufacturing and technology from the West to the Far East Asia and in return growth of export from the Far East to the rest of the world. Today, illegal wildlife trade is estimated to be worth US\$50-150 billion per year (UNEP, 2014). Comparatively, the global illegal fisheries catch is valued at US\$1023.5 billion a year and illegal logging, including processing, at US\$30-100 billion (UNEP, 2014). Illegal ivory trade, for example, has doubled since 2007 (Lawson and Vines, 2014). Up to 25 000 elephants are killed each year in Africa, out of a total population of 420 000-650 000 (Nellemann et al., 2014).

One can also not examine this illegal market without examining the non-State actor involved in this illegal international market namely the international crime syndicates. These are the drivers of this illegal markets of which China has been identified by Traffic, the international agency that monitors the illicit trade in ivory as the main destination for trafficked ivory in its 2011 report. The secondary data and information available globally on the illegal international market for wildlife trophies and their shares is very well documented in other chapters of this thesis.

Therefore based on the data made available through this research thesis, a conclusion can be drawn that opinion of the majority of the respondents numbering 110 and representing 72.35 % of the total respondents surveyed in this research study, that among the challenges identified as causing an upsurge in wildlife crime in source countries like Kenya, the highest ranking and major cause is the current upsurge of demand in of wildlife trophies in the Far East Asiatic markets led by China. A further confirmation of this is the fact that the demand in the illegal international market is for trophies from particular wildlife species namely the charismatic 5 species and these are the wildlife species being targeted by poachers and are the ones under threat of extinction. Therefore the veracity of the claim by majority of the respondents who took part in this survey that the upsurge of wildlife crime in Kenya and other source countries, targeting charismatic 5 wildlife species is fueled by an upsurge in demand for trophies from these particular species in the international market.

(ii) *The Economics and the forces of Demand and Supply as market growth stimulants:*

According to the Economic Theories and Laws of Demand and Supply if there is a demand for a product, the supply curve will continue to rise until it reaches a stage of equilibrium where the demand and supply are at par. This theory assumes that the supply is constant. But where the supply is not constant like for an illegal product, the demand may continue to rise but will never be at equilibrium with the supply. This technically means that as the demand rises so does the price index since the product is in demand but not easily available. As the price rises, pressure for the handsome profits obtainable bears on suppliers and there is a lot of activity on the supply side as it seeks to meet the demand and make huge profits. This is what is happening in the source markets like in Kenya where the suppliers are exerting pressure to meet demand for illegal wildlife trophies using all manners of illegal tactics and activities. The only risk factor for them to overcome is law enforcement. In a country where law enforcement and governance structures are weak for whatever reasons, the supply risk factor is low. The suppliers only have to deal with other non-State actors like poachers and militias to complete the deal. But Kenya has a functioning criminal justice system albeit the challenges highlighted in this Thesis.

The price of a kilo of ivory or rhino horn is higher than a kilo of gold. During the eight years from 2002 to 2010, the price of ivory increased about eighteen-fold from about \$100 per kilogram to \$1,800 per kilogram (Straziuso, Casey, & Foreman, 2010). This makes illegal wildlife trade very lucrative and can only compare to narcotic drugs or illegal arms trade. There is no market for wildlife trophies in Africa and the product is sold in the international market. But wildlife trophies of the charismatic 5 can only be obtained in Africa of which Kenya and the rest of the southern eastern and central Africa countries are the major source markets. Therefore, an upward surge in demand in the consumer countries of the international market will exert pressure in the source market to deliver at whatever costs and by whatever circumstances. Therefore there must be a supplier who is supplying the wildlife trophies to the illegal international markets to meet the demand.

In the survey carried out through this research, 59% of the respondents indicated that international crime syndicates were the greatest contributors of wildlife crime in Kenya. Since the product they are acquiring is not for the local market, but the markets that the syndicates are from, that means they are the suppliers of the wildlife trophies to the international markets. Therefore they are able to determine the price by manipulating the pricing index and maximizing on profits. There is no available data that can explain the supply chain of International crime syndicates and their distribution chains or networks as they are surrounded in mystery being criminal activities. But their presence and activities are an indicator that an illegal activity is in progress and they have been identified as such by the respondents in this research study to be the armed non state actors contributing the greatest to the escalation of wildlife crime.

Viewed within this perspective, it is clearly justifiable and correct for the respondents to identify upward surge of demand in wildlife trophies the international market to be the major cause for the escalation of wildlife crime in Kenya and the rest of the east and central African countries. Indeed, in recent years, wildlife has become the fourth largest illicitly traded good in the world, representing a \$19 billion industry (Bergenas, 2014).

*(iii) Cultural:*

Is possession of the wildlife trophies due to cultural practice, customers satisfaction in possessing such trophies, speculation due to the growing value of the illegal wildlife trophies, or just as display items for personal gratification or show off ?.

The growing middle class in China and neighboring states has caused the increase in demand for wildlife trophies to fulfil some traditional beliefs that are strange, repugnant, mysterious and

mythical. Some of these beliefs are pegged on cultural practices that have existed for thousands of years but are misinterpreted and have led to the unnecessary destruction of wildlife in other parts of the world due to the demand of wildlife parts. While Eastern Asiatic culture recognizes animals as very important in their everyday lives to the extent that they name years after animals and even their horoscope contains animals. But that does not mean one has to keep a part of the animal with them. It is purely mythical to assume possession of a wildlife trophy would give its possessor any strength of the animal it is from by simply being in possession of a part of the dead animal. Neither will the consumption of skeletal powder from a Rhino's horn give any man any prowess power.

Indeed considering the high population numbers in the Eastern Asiatic region, a surge in demand for a product can translate to a demand by hundreds of millions of consumers. Such a demand will obviously increase the price of the illegal trophies thereby exerting pressure on suppliers to do whatever is necessary to harness from this gravy train. Therefore, the supplier will use all methods to satisfy that customer's demand and make money.

In 2014, China's Standing Committee of the National People's Congress in 2014 made it illegal to hunt and buy any of the country's 420 protected endangered species, which include Asiatic black bears, South China tigers, golden monkeys, and giant pandas although the statutory language is highly ambiguous. Consumers of endangered animal products who knowingly buy or consume animals that were poached may face jail term. Consumption of various animal parts like the eating of Tiger penis, Rhino Horn, and Other Endangered Animal Product thought to offer assorted health and other benefits, is now outlawed. The aim of the law is to crack down on the demand for endangered species like Rhino horn and deer musk which are more valuable than gold or cocaine as they are widely used in traditional Chinese medicine (Ruble K; (2014). In other Asian countries however, the use of products derived from endangered species has been falling.

There is therefore evidence in secondary data that there is an upsurge of consumer demand of wildlife products in China including of endangered species for various reasons like cultural practice, strange beliefs, and for speculation purposes, since wildlife trophies like ivory and rhino horns have a higher value than gold. Therefore the respondent's identification of this cause as being responsible for upsurge in wildlife crime in Kenya can therefore be confirmed from the consumer market itself.

#### (iv) Emerging Dynamics

There are emerging socio-economic factors in Kenya that have led to the increased presence of Chinese workers in development projects in Kenya as alluded to in the secondary data of this

research. A relatively new factor in ivory smuggling is the widespread involvement of East Asian nationals within Kenya, particularly Chinese. (Gastrow, 2011). Their extensive presence across the African continent has brought them into closer contact with local populations and improved their knowledge of the terrain. Japan traditionally dominated the global demand for illicit ivory, but in the late 1990s China surpassed Japan and is now the world's largest market for trafficked ivory (Gossmann, 2009). Today Chinese nationals are behind all of the recent smuggling rings identified in South Africa, Zimbabwe, Zambia, Malawi, Tanzania, and Kenya and have also been shown to be important players in Sudan (Gossmann, 2009). The majority of ivory smugglers arrested at Nairobi's Jomo Kenyatta International Airport are now Chinese nationals. Traffic, the international agency that monitors the illicit trade in ivory, points to China as the main destination for trafficked ivory.

*'Chinese nationals have been arrested within or coming from Africa in at least 134 ivory seizure cases, totalling over 60 tonnes of ivory; and another 487 cases representing almost 25 tonnes of ivory originating from Africa was seized en route to China'. BBC News (2009)*

As ever, more than any other country, China seemingly holds the key for reversing the upward trend in illicit trade in ivory (Gastrow, 2011). The same holds true today as it did then. This would also cause an upsurge of demand of wildlife trophies in those countries. To that extent it is justifiable to identify the upsurge of demand in the international market as a major cause of the escalation of wildlife crime in Kenya

In conclusion, it is true and justifiable to categorically state that the upsurge of demand in the international market is the major contributor of escalation of wildlife crime in Kenya and other East and Central African countries. Other causes/challenges may be related to this cause. Considered from a critical study point of view, this cause has many extraneous side causes that all seem to relate to it one way or another. There is a need to place wildlife crimes in the same category as narcotic drugs trafficking as the perpetrators are the same actors. This includes deploying the same sorts of techniques to combat illicit wildlife trafficking as are used to combat narcotic trafficking (Scanlon, 2014).

The only and most obvious solution for dealing with this challenge has been created through this research and is offered as its original contribution to knowledge in this sector of combating wildlife crime and appropriately called the 3Cs solution.

## 2) **Political Interference from Politicians and senior officials**

This cause was ranked second amongst the challenges that have caused the current escalation of wildlife crime with 59.92% of the respondent identifying it as causing the upsurge of wildlife crime to a great extent. It also scored means a score ranking 2.82. This cause may be considered under two aspects.

(i) God father-ism: This refers to wildlife criminal who get protection from politicians or senior government officials in either institutions of CJS or other government agencies including KWS. The protectors of criminals are called the godfathers, a slang used by Italian Mafia gangs in Italy and USA to describe their senior kingpin in their extortionist rackets, where citizens used to pay the godfather for protection. Careful analysis of this cause reveals that it is actually corruption masquerading as interference from politicians and senior officials. Most person coming into a new place of trade for which the product they wish to deal with is illegal, will want to befriend or “pocket” the people who are influential or in law enforcement in that area. Obviously the biggest risk factor in their illegal trade is getting arrested, prosecuted and even sentenced. They therefore offer bribes to the politicians and senior KWS officials so that they can protect or intervene on their behalf when they are arrested and order for their release. This is simpler then offering bribes to the warders or policemen on the ground who may not be in a position to give such orders after the arrest. What is alarming about this cause is that it is ranked number two amongst the challenges of combating wildlife crime in Kenya. That means there is a lot of interference with law enforcement from the top implying that there is also a lot of corruption at the top. This is hampering the working at the ground by game warders and policemen as persons arrested committing wildlife crimes are suddenly freed by ‘orders from above’. There is no worse demotivating factor for a law enforcement officer then to watch a criminal whom he has worked so hard to arrest walk away without charges because someone at the top has made a call for their release. Although they cannot accuse the top management of corruption since this requires evidence, one is reminded of the paraphrase “it looks like a duck, it quacks like a duck, it must be duck”. Why would a politician or senior official intervene in a judicial process to have a suspect freed after arrest unless he or she is gaining for whatever reason or manner from the suspect In fact it is even more acceptable for law enforcement officers if it is the court that release such a suspect because they will feel they took the case to their ultimate goal and the accused person has faced the law though he won the case or “beat the system or beat the wrap” a common slang used by accused person who wins a criminal case or is acquitted though they know they are guilty and had committed the crime.

(ii) Political interference in KWS management by various parties including senior government officials from ministries for the purpose of controlling KWS resources either through the appointment of the Board of Trustees or in appointment of Human resources director in order to have their relatives or henchmen employed. When such interference occurs, there is infighting between the KWS management, the game warders and the parent ministry whose position is always taken as the government's position. But in reality it is just the machinations of a few senior ministry officials seeking control of KWS and its vast resources. In 2014 the parent ministry appointed a task force on wildlife security. The task force completed its work and a report entitled report of Lifting the siege: Securing Kenya's wildlife; launched. (GOK Report, 2014) However it raised eye brows as it seemed to focus on KWS, its restructuring and the infighting between the organizations management, the Ministry and the board of trustees as opposed to giving viable solution on securing wildlife and the parks. Indeed the report appeared to be an audit of KWS then on wildlife security in Kenya and the larger East Africa region as wildlife knows no border.

For the purpose of this research after due scrutiny of factors surrounding this cause of interference from the top, it is obvious it is related to the first cause that is upsurge of demand in the international market. The international suppliers when dealing with risk factors in their illegal wildlife trophies trade at the local source market level will seek and get protection from politicians and top KWS officials so that they are easily able to obtain and export the wildlife trophies to the international markets. Therefore it is justifiable for the Respondents in this research to have ranked this cause as number two amongst the causes causing the escalation of wildlife crime in Kenya.

The Challenge this cause offers to law enforcement and contributes to the current escalation of wildlife crime is that it interferes with law enforcement and key management policies and working environment. This has far reaching repercussion in all other challenges as it plays catalytic role in that it not only offers escape channels from prosecution and sentencing to wildlife criminals, but also gives them the confidence that they can return and continue destroying wildlife resources in the country with impunity. In fact it enhance a justification for corruption amongst other Criminal Justice System employees since "the bosses are taking why not us? That is how corruption grows like a cancer in a nation. Out of a score of 10 (highly clean) to 0 (highly corrupt), Kenya is ranked 154<sup>th</sup> out of 178 countries, with a score of 2.1 (Transparency International, 2010).

An appropriate solution for this challenge is to give the game warders and other members of the law enforcement in the CJS the ability to expose such interference from whatever quarters without having to fear the repercussions of having made that report. There is an urgent need to establish

reporting communication channels like a mobile phone application that warders can use to report when they have made an arrest and the type and quantity of trophies seized including what charges have been preferred against the suspect. This information can be relayed to the media and other interested parties including civil society and other government agencies who have subscribed to the application. This application can then be used to report the progress of the case to its conclusion. Corruption is a crime that is perpetrated in secrecy between a giver and a receiver. If the information relating to a case is made public information, the risk to a receiver of a bribe losing their job or a politician being exposed if they are interfering with an arrest or judicial process in wildlife crime cases rises dissuading such acts. Since the acts are also illegal, investigating and prosecuting the persons involved would drastically reduce if not eliminate such acts of corruption and interference cited in this challenge.

### **3) Lack of harsh laws to deter likely offenders**

This cause was identified by 54% of the respondents as being the third cause for the upsurge of wildlife crime in Kenya. The law The Wildlife (Conservation and Management) Act of 2013 came into effect after vigorous campaign by conservationists who accused the old law of being too lenient. The new law imposed hefty fines as much as 200,000 UK pounds for convicted offenders. This amount in fine was supposed to deter offenders and make committing the crime uneconomical if arrested. But in reality it has not. In the research survey, 63.81% of the respondents indicated that the penal sections of this act were effective in deterring offender to a moderate extent. Indeed for a new law to be moderately effective in deterring shows it is weak and not up to the task. It is ineffective for the law enforcement purpose it was established for.

This law is the most important tool for protecting and conserving wildlife. If it is not working then there is a very serious problem there. Kenya is East and Central Africa's regional trading hub of illegal wildlife trophies and this region is the largest supply source market for those trophies. Therefore actions or inactions in Kenya have a repercussion globally on illegal wildlife crime. If therefore the most important tool in combating wildlife crime is not working, that erodes law enforcement capabilities globally which can only lead to chaos and anarchy in source markets countries. This is probably the first research that is offering an assessment of how the New Law is performing.

The most effective solution for this challenge is to amend the law removing the non-custodial sentence i.e. fines and imposing direct prison jail terms instead. There are loud allegations of lack of consistence in sentencing by magistrates. Some offenders are fined the full amount imposed in



the fine by the law while others facing similar charges with higher quantity of similar trophies seizures are fined less Therefore even when a suspect caught, legal penalties are often weak, and where stronger penalties do exist, the judiciary has often been reluctant to impose them (McLellan, et al., 2014). It is pertinent for the global community, international organizations, and civil societies dealing with wildlife in Africa and in Kenya in particular to once again join forces and lobby for amendment of the law to impose custodial sentences with a mandatory sentence of 15 years imprisonment upon conviction with no option of a fine. This way combating and curbing wildlife crime will be accorded the seriousness it deserves. Poaching and trafficking in wildlife trophies should not be treated as petty offences attracting non-custodial sentences in Kenya. These are very serious international crimes. Considering their adverse environmental effect touching on the very existence of humanity, they should be categorized at the same level as terrorism or being in possession of weapons of mass destruction.

#### **4) Lack of Political goodwill from leadership**

In this fourthly identified cause by 59.22% of the respondents, what they were pointing out was the lack of political support from the country's political class especially the top leadership. In Kenya like many other African countries, government and governance structure is top-down approach and therefore decisions made at the very top carry a lot of weight (Wilson 2007; Acenoglu and Robinson 2012,). Therefore support from the very top leadership means resources will be made available, doors are open to all government offices and all government officials are compelled to do everything to ensure implementation of that decision. To be fair the President and many other global leaders have played a very important role in combating and curbing the runaway wildlife crime and keeping it in check. Top Leadership from the UK, USA and even China have joined hands with African top leadership to bring awareness of this disaster and have contributed immensely in stopping its runaway growth. China shut down the ivory curving factory while the UK has even sent military support to Kenya to assist and train game warders in guarding the parks. It would appear like the Respondents would wish for more action from top leadership as it is only directives from that level that action is immediately taken and positive results instantly visible and felt on the ground.

The willingness and support for protecting wildlife amongst the world's top leadership is very obvious and appreciated. Acknowledging the fact that the United States of America is the second largest recipient of the illegal wildlife 'products', President Barack Obama has issued an Executive Order banning the commercial trade of elephant ivory which according to the Secretariat for international trade in endangered species sends a very powerful message both domestically and internationally on the need to treat wildlife crime as a serious crime on a par with narcotics and arms

trafficking (CITES 1). Furthermore, the British Royal Family has joined forces with the British Prime Minister in proclaiming war on the illegal wildlife trade, when hosting the *London Conference on The Illegal Wildlife Trade* at which, the government of the United Kingdom together with representatives from approximately 40 countries, several conservation organizations, the European Union and relevant sections of the United Nations drafted and signed a declaration promising a political commitment and called upon the international community to act together to bring wildlife crime to an end.

#### **5) Lack of support from top management/officials**

Lack of support from top KWS officials including other top officials from other institutions within the CJS and other law enforcement agencies like Customs and Immigration departments including senior government officials from other government agencies was identified by 44.44% of the respondents surveyed as a cause for the upsurge of wildlife crime to a great extent, while 42.78% indicated that it was to a sufficient extent. It is evidently clear from these findings that top KWS management and government officials have not been performing their duties in leading their juniors in combating wildlife crime. Instead their juniors accuse them of interfering with law enforcement process by having warders release suspects arrested with wildlife trophies. This shows that the real reason for their not supporting the war against wildlife crime has to do with corruption at the top. This is an indictment against top KWS officials who are occupying offices not to serve the country by protecting wildlife resources but to serve themselves and preside over the wanton slaughter and extinction of the wildlife they are supposed to be protecting and are paid salaries to do so. This is a serious challenge that hampers enforcement of the law and causes the escalation of wildlife crime. The solution is to name and shame such officials before exiting them from those offices. Using an established reporting communication channels like a mobile phone application as proposed in this Thesis when a wildlife crime suspect is arrested and the type and quantity of trophies seized including what charges have been preferred against the suspect are made public knowledge immediately after such an arrest is made. This would dissuade top management and government officials from interfering.

#### **6) Lack of adequate personnel**

It is notable that 53.94% of the respondents identified lack of adequate personnel as the sixth leading cause to the upsurge of wildlife crime. Although this management issue and function that has been adequately covered in other parts of this chapter it is important to remember that the world is moving towards Robotics and Artificial Intelligence to perform some functions like security surveillance. Already drones are being used to patrol some conservancies in Kenya with remarkable success.

Suffice to add that it is not the size of the work force that matters but how committed and effective they are to their duties and what kind of support are they getting to enable them to adequately and successfully accomplish the tasks assigned to them.

Therefore this is a cause that will be solved very soon by technological advancement in ICT with introduction of Robotics and other Artificial Intelligence high tech equipment into combating wildlife crime in Kenya which will perform some of the tasks KWS wardens performer and thereby reduce the necessity adding more personnel.

#### **7) Corruption within your organization**

Corruption was identified by 56.55% of the respondent as a factor that was affecting the effectiveness of combating wildlife crime in their respective organization. That proves that corruption is a big stumbling block in combating wildlife crime in Kenya. Corruption has many faces and names like interference and can masquerade in different forms of causes and challenges. Corruption takes a more horrendous turn when it is given to top government officials, already well remunerated, for the destruction of irreplaceable national and international icons that those officials are supposed to be protecting. Inability of effective enforcement of any law can lead to anarchy and disorder in society. States are failed states because the governments were unable to maintain law and order. Corruption erodes the authority of the law and no nation should entertain it. Transnational criminal networks are corrupting and undermining state institutions in some countries to such an extent that they pose a threat to the state itself, according to two new reports from the International Peace Institute (Gastrow, 2011).

The solution to this challenge is to adopt ways of combating corruption and improving governance through establishment of economic/ administrative/ market reforms; update of mandatory accounting, audit, procurement regulations; involvement of civil society groups; strengthening capacities for decision-making, delivery of basic services; implementation of developmental initiatives and the use of 3Cs solution offered in this research study. Public awareness and participation through utilizing mobile phone applications as suggested elsewhere in this chapter as a way of combating corruption would probably be a quick way and more sustainable approach than over the desk and in shut offices approach that the current Ethics and Anti-Corruption Act seems to work with i.e. call the person into their offices for interrogation. The use of modern technology and applications designed to help in combating corruption like the 3Cs solution offered in this research study are also very effective and sustainable methods of combating corruption and wildlife crime simultaneously.

### **8) Lack of awareness and support from the Public**

The respondents identified this as cause for the escalation of wildlife crime with 58.55% of the respondents indicating that it affected the effectiveness of combating wildlife crime. Lack of awareness by the public, leads to lack of support. In Kenya and the rest of the east and central African countries, the citizenry are not aware as to the environmental importance of the charismatic 5 animals. They view them as iconic objects meant for tourism which tourists come to see and photograph and because the government earns revenue from the tourist the KWS has been established to protect those iconic animals more than they are protected by the government. Some view wildlife as menaces due to human wildlife conflict. It is not uncommon to hear communities living on land neighboring the park complaining and threatening to kill the animals in mass or even poisoning water holes as well as poison carcasses and place them near the big cats to poison them as they are a threat to the communities and their livestock. This would not happen if the public were made aware of the environmentally important role that these animals play and in their absence those communities would even suffer more than when the animals are present.

The best solution to this challenge is teaching these communities the importance of wildlife for the eco and biodiversity system that they live which is also important to them and their livestock. Sharing tourism earnings by providing the basics necessities like drilling boreholes for adequate water supply and providing free medical treatment and free schools for their children would be the correct approach and would be an encouragement for the communities to also protect the wildlife. To avoid human wildlife conflict, the warders can educate the communities how to keep the wildlife away through simple methods. An example is the use of solar swinging torches during the hot seasons when the animals move closer to the communities farms in search of food. These torches makes the animal think there is a human being walking around and they should keep away.

The challenge this has to law enforcement and combating wildlife crime is two-fold. Members of the public are the best source of intelligence for law enforcement. It is impossible for law enforcement agents to be everywhere. Crime is best combated with the assistance of the members of the public. Indeed in Scotland in the UK, law enforcement have set up mobile phone applications through which members of the public can quickly report a wildlife crime case. Public support and assistance is probably the most important tool for law enforcement.

Secondly, where there is disenchantment, it is easy for wildlife crime perpetrators to get public support from communities neighboring the parks and this the worst thing that can happen in combating wildlife crime. These communities know the terrain and the behavior of each wildlife

species in the parks. They know which spot each particular species of the charismatic 5 animal will be at any particular time of the day or night. They also know where the warders are. If they shared this information with wildlife crime criminals, it would be a disaster for the wildlife and game warders in the respective park.

There is an urgent need to educate the members of the public nationally and within the entire region that the charismatic 5 animals are also important in maintain the regions ecological balance and ecosystem for the environment to thrive. They must be informed that without these animals then disaster of unparalleled and unmitigated proportions looms on them. These communities are agricultural communities and understand the importance of the environment in terms of rainfall which is seasonal. They will understand desertification, lack of rainfall and ensuing hunger and starvation that would occur without the charismatic 5 animals. Public education programs through vernacular and national radio stations that broadcast in those area must be carried out on the important environmental role these animals play and KWS can use that platform to solicit for public support. On 15 January 2014 the European Parliament passed a resolution calling on the Council of Ministers and the European Commission to adopt an EU plan of action against wildlife crime and trafficking, establish a specialized Wildlife Crime Unit within Europol, and make the issue a priority in the programming of the financial instruments for development aid. The group has the potential, for example in association with the proclamation of the new World Wildlife Day on 3 March 2014, to maintain UN attention on the issue, include more destination countries in the process, and permanently integrate China (Hellwig-Bött, 2014).

Similarly, Kenya and the rest of East and Central Africa countries need to set up a group to maintain the public and world attention on issues related to wildlife crime

#### **9) Lack of Motivation due to Poor Remuneration**

The respondents identified this as the ninth cause with 50% of the indicating that it had affected the effectiveness of combating wildlife crime to a great extent. Poorly remunerated staff will not perform to their best ability and low wages will not attract good professional personnel. It also makes them susceptible to corruption

The challenge these have in combating wildlife crime is that if the respective departments of the criminal Justice system do not have management structures that employ modern management practices and strategies like keeping the staff highly motivated through good remuneration and rewards system in order to effectively combat wildlife crime then the war will not be fought effectively and definitively.

The solution to this challenge is for all departments of the criminal justice system to embrace modern management practices like Performance Management Systems, and working with the strategic plans. Performance Management Systems if well followed have been found to enhance employee job productivity by 30%.

**10) Lack of proper training:**

On this factor 50% of the respondents identified it as affecting the effectiveness of combating wildlife crime in various organizations of the criminal justice system. For effective and efficient services, continuous training of employees is a very essential agenda in any organization. It is through such training forums that both formal and informal discussions take place between the employer or senior management and employees and between the employees themselves where ideas are exchanged, actual feedback on strategies being used by the organization in combating wildlife crime is given by game warder who are the persons on the ground and new strategies are created. Besides this it is essential to continuously updating the game warders on the new threats and training them on how to combat these new threat or the parks will run the risk of being guarded by incompetent and inefficient warders and curbing wildlife will remain a mirage

Currently the wardens are receiving such training from the British army. The game warders in KWS are a para military force which requires both physical fitness training and continuous training on armed combat, learning new strategies of armed combat and new weaponry and rearmament training so that they remain a more superior force to the threat which in wildlife crime is the well-armed and better resourced international crime syndicates. In other organizations of the CJS engaged in combating wildlife crime like prosecutors and magistrates, continuous training is essential where weakness in both the legal structures and implementation can be identified and new strategies formulated to circumvent these weakness. Staff trained on the best way to implement such strategies. But there must be a willingness by senior management to carry out this important management strategy for improved performance and efficiency in the organization. It is important for KWS to adopt modern management methods in Human Resources management, like performance management strategies, under which training is a very essential ingredient for efficient and effective performance of duties and overall improvement of the organization's performance and achieving its goals and targets.

**11) Lack of coordination between different institutions of CJS**

Although 411.44% of the respondents identified this factor as a challenge that was affecting the effectiveness of combating wildlife crime, this is a very serious challenge when it comes to

combating wildlife crime as lack of coordination between institutions combating wildlife crime is a major weakness to the entire operations of the CJS and law enforcement and can cause the proliferation of wildlife crime. Since they don't coordinate "the right arm does not know what the left arm is doing" and yet they are supposed to be working towards a common goal. There is a lot of suspicion between the departments especially pertaining to claims of corruption being perpetuated by one department or the other. The issue of corruption again rears its ugly head in this challenge as well as it breeds disunity and mistrust amongst law enforcement agents and departments leading to ineffective and inefficient law enforcement and hence the current escalation of wildlife crime.

As a solution it is very important for the different institutions of the CJS in Kenya to coordinate and work together at the local level as they are also expected to coordinate and work with other international organizations and Criminal Justice Systems in other nations also engaged in combating wildlife crime which is an international crime. As a result, wildlife trafficking should be treated as a serious crime and States and should engage both locally and internationally with other nations customs, police, warders, the judiciary, and sometimes the military to implement CITES effectively, which may necessitate intervention from the highest political level. The nature of wildlife crime also requires increased effort to combat transnational crime and corruption (Scanlon, 2014).

A Multi-Agencies Task Forces have now been set up to work ways of improving efficiency and coordination between the different departments of the CJS and it is therefore a work in progress.

## **12) Lack of essential equipment, military equipment, finances and other resources**

This was identified by 46.71% of the respondent as a challenge that was affecting the effectiveness of combating wildlife crime in Kenya. This is also a very serious challenge. Law enforcement agencies must always be better equipped than the criminals otherwise they will not be effective. However due to scarcity of resources and equipping KWS warders may not a priority agenda in KWS budgets, consequently poachers like international crime syndicates and militias like Al-Shabab are better equipped militarily than the game warders, and police. They possess modern high caliber guns, night goggles, GPS systems, trail motor bikes and even Rocket propelled grenades (RPGS) which KWS warders and police don't have. Anecdotal reports indicate that in some cases; the poachers possess far greater resources, capabilities, and firepower than park rangers who protect wildlife, sometimes unarmed (Bennett, 2012). This creates fear in them when going to confront these poachers especially when moving in a vehicle as the RPGs can blow up the vehicle. Yet the game warders have to move in big formations in order to confront the enemy. Lack of essential equipment and other resources slows down time needed to get to the scene of poaching and lets the

poachers get away. Where KWS have been successful and even captured these high caliber guns, the gun have been taken away from them and brought to Nairobi to be used by other law enforcement agencies to fight crime. In essence protecting wildlife with these guns is not a priority despite the fact that those very guns are being used to slaughter the wildlife.

The challenge here is if the criminal are better equipped than the law enforcers then it will be impossible to combat and win the war against wildlife crime. Following reports that many armed non-state actors have diversified into the illegal wildlife trade, many offences may fall within the scope of the United Nations Convention against Transnational Organized Crime. Insurgent groups may target wildlife to raise funds for militancy, as seen in the Great Lakes region, and are implicated in the illegal wildlife trade chain (UNODC, 2012).

The solution here is that while it is true that the national budget is strained by the necessity to deal higher priority areas, the government must reach a decision on whether to privatize security in these parks and let the gate fee cater into paying for the security. Alternatively the government can set a Rapid Deployment Unit well equipped that is capable of reaching any part of the parks in as little time as possible.

### **13) Other observations**

The other identified causes by the Respondents in their responses under the “*Any other comment*” question on the Research questionnaire were very relevant and notable. Although they were identified by just a few respondents, they were new and unexpected challenges and very relevant deserving to be considered by this research study. Therefore this Researcher recognized that they were all essential and after consideration made recommendations. The small challenge of today may grow into a big challenge in the future. So it is better to deal with it now. These are:

#### *(i) Lack of modern technology and expertise within the legal departments of the criminal justice system*

This was cited as a challenge by 4 respondents. It was notable that this challenge affects the very core of the CJS which is due process and justice, and should therefore be accorded the importance it deserves. The solution lies in continuous legal training and adoption of modern technology in the judicial process. It is notable that evidence in courts in Kenya is still recorded using long hand by the magistrate/judge. There are now voice dictation equipment that translates spoken words to text which should be introduced in judicial process. This would hasten the duration the court takes to complete a case and make the process of recording evidence transparent and reliable. The new office of the director of public prosecution is currently recruiting and training prosecutors.



*(ii) Lack of consistency in sentencing accused persons by the courts*

This was cited by 53 respondents representing 34.8% of the total respondents as a factor that was affecting the effectiveness of combating wildlife crime in Kenya. There have been reported instances when some accused persons upon conviction are fined the full amount allowable under that penal section of the law while in other cases with similar facts are fined only a fraction of the fine. Although the magistrate will be exercising the discretionary powers provided under the law and does not have to give justification for the decision, in some instances, it raises a lot of suspicion when an accused person charged with being in possession of an high quantities of game trophies is fined a fraction of the total fine allowable in the same penal section which another one convicted for being in possession of a single trophy is fined the full amount allowable under the law. This leads to mistrust and strains the already strained working relationship between the departments of the criminal justice system. Kahumbu, Byamukama Mbuthia and Drori, (2014) in their study on the prosecution of wildlife related crimes in Kenyan Courts, reports that Kenya's legal system has led to a culture of impunity within the criminal fraternity which may account for the escalation of poaching of elephants and rhinos and trafficking of ivory and rhino horn. Although thousands of poachers have been arrested for killing elephants and rhinos in recent years, the study found evidence of only 8 convicted poachers being jailed between January 2008 and June 2013. Despite major seizures of ivory at Mombasa ports, no case in court could be found for this period. All offenders are bailed at a fraction of the value of the wildlife trophy, even in cases of repeat offenders. 65% of all wildlife offenders plead guilty and penalties on conviction are fines of Kshs 3,000 to Kshs 40,000. Fewer than 4% of all convicted wildlife offenders ever go to jail. Their study of wildlife trials in Kenyan courts reveals that the Kenyan legislation makes it easy for poachers and dealers to operate in our country. This leniency in the courts has led to a culture of impunity within the criminal fraternity, and Kenya has become a safe haven for international criminal cartels that control poaching and trafficking in the country.

The challenge here when it comes to combating wildlife crime is that without coordination and joint effort to honestly combat wildlife crime the war can never be won

The law is a need to be amended so penal sections of the law providing for non-custodial sentences or fines upon conviction are repealed and replaced with custodial sentence upon conviction with a fixed jail time like 15 years imprisonment without giving the magistrate the desecration to reduce length of the jail term or award a fine.

*(iii)Poverty, human wildlife conflict, Repugnant Culture Practices by local communities, encroachments into the parks to graze of cattle or fetch fire woods, communities competing for scarce resources with wild animals like water, communities cutting electrical fence to access the parks, which also allows wildlife to leave the park increasing human wildlife conflict*

These were all identified as some of the challenges and causes for the current escalation of wildlife crime. Poverty among communities living around the peripheral of the parks has been exploited by criminal gangs dealing in wildlife trophies, to recruit youths from those communities who are sent into the parks to poach. Human wildlife conflict is a common occurrence between the communities but the scarcity of resources due the current erratic weather pattern as a result of Global warming and climate change has only enhanced the conflict further thereby heightening tensions between the communities and KWS.

Although all cultural practices that involve slaughter of wildlife are illegal, some tribes still practice them secretly. When discovered and arrests made, the issue is politicized and since in all cases the persons doing slaughter are from communities neighboring the parks, they threaten to attack more animals unless their boys are released. Although KWS will not easily relent to these threats but due to the politicization of the issue a settlement is usually arrived at to release the boys on conditions that the offence does not take place again and sensitization of the community of the repugnancy of the practice be done. But old habits die hard.

There are also instances where KWS heightens tension with locals when it seizes their cattle found grazing in the park and arrests the pastoralists found in the park and takes them to court trespass. There are areas in the park especially those close to human habitats located outside the parks that the wildlife will avoid and are therefore good pastures for livestock. But they are in the parks and KWS will not allow the local communities to graze in those areas. Yet the pastoralists have exhausted their grazing fields and their livestock are dying from hunger and only some wires separates them from adequate pastures for their livestock. It would be foolhardy to expect pastoralists to sit back and not cut the wires and drive their cattle into the parks. Yet KWS game warders are also aware that with the erratic weather patterns they have to conserve some pastures for the wildlife

The challenge here to combating the current escalating wave wildlife crime is that KWS and the Criminal Justice System are spending a lot of time and resources battling locals while criminal gangs and international criminal syndicates are having an easy time poaching and slaughtering wildlife at

a large scale within the same park Therefore important legal resource are being misdirected in fighting small local wars while the real criminals rein in the very park.

Currently KWS is engaging youth from the communities in employment as game warders while conservationists and NGO's are engaging these communities and the youth as scouts and friends of the parks and wildlife. They are being employed to keep cattle from the parks and ensuring the parks fences are not cut. This releases KWS warders to go and concentrate their efforts in other areas of the park where they are needed. This is a commendable job and the government, donors and international wildlife agencies should link up with these NGO's to further assist this worthy initiative. The UN Environment Programme (UNEP) report 'Elephants in the Dust' highlights that poaching is exacerbated by poverty and food insecurity. Poachers may be driven by poverty, or are exploited by criminal organizations seeking to recruit hunters with knowledge of the local terrain. Poverty and inadequate bureaucracy enable criminal groups to corrupt poorly paid enforcement authorities (UNEP, 2013).

(iv) *Porous borders, Vastness of territory and Communication challenges*

The parks seizures are enormous running into hundreds of thousands of square miles, some seizure of some countries in the world. They cannot be adequately patrolled by a few hundreds of warders on foot or in old trucks. Some of these parks border international borders with some neighboring states where there are ongoing conflict and civil war or insurrection. The militias battling the governments in those states were identified in this research as non-State actors in Kenya who encroach into the parks through these porous borders and engage in poaching for wildlife trophies to exchange for guns and ammunition from International crime syndicate.

A wall is currently under construction along the Kenya Somalia borders which when completed will allow the government and KWS more latitude and release the thousands of military and KWS warders currently patrolling the border to concentrate on protecting the wildlife within the parks. Al-Shabab have been crossing into Kenya to commit terrorist acts in towns neighboring the borders thus necessitating increased patrols along that border. Although the wall with Somalia has been priority project due to the Al-Shabab terrorist activities within Kenya, other borders are also equally porous and a danger to Kenya wildlife like the ones shared with Ethiopia, Southern Sudan and Uganda which are all at different stages of conflict and are therefore no better than the Somalia border. The difference is that the Al-Shabab also attacks the citizenry in Kenya while militias from those other states only carryout poaching activities and attack on wildlife in the parks. Therefore it is important to build more walls along all those borders shared with neighboring state in conflict.

Fencing of parks with electricity and alarm sensing cables that alerts KWS on the particular spot where there has been breakage or tampering would tremendously assist in keeping the poachers out of the parks. Acquiring helicopters for each park for rapid deployment of game warders where such encroachment has been detected will be a big boost for keeping the parks and wildlife safe. Creating more out park posts within the parks for game warders and acquiring trail motor bikes for faster communication between the posts and to hot spots would give the parks a much needed feel of game warders presences all over the parks.

Ultimately the game changer in patrolling and keeping the parks effectively, efficiently and economically secure are military drones with capability of engaging in armed conflict with poachers is the way to go as they can patrol large areas of the park and communicate with the out posts.

(v) *Conflict, failed States, insurrection*

In the research tool, among the greatest contributors to wildlife crime, 37.5% of the respondents indicate that insurgents and militia groups from neighboring countries were contributing to the upsurge of wildlife crime in Kenya to a very great extent while 23% indicated that it was to a great extent and 25.7% indicated it was to a moderate. These responses by the respondents proves that the insurgents and militia groups from neighboring countries are actively involved in wildlife crime in Kenya and are contributing to the current upsurge of this vice to a very great extent.. The linkages between wildlife trafficking and armed groups suggest that the illicit wildlife trade is entrenched in the crime, conflict and terror nexus. Poaching and trafficking relies on the instability provided by conflict, with the revenue contributing to prolonged violence and terrorist activity (Jespersion, 2014). The UN Environment Programme estimates that 90 per cent of killed elephants within striking range of conflict zones are killed by non-state armed groups.

This challenge's impact and implication as a cause for the escalation of wildlife crime in Africa is tremendous. The best solution is to utilize the 3Cs solution on conflict proposed in this thesis.

(vi) *Excessive Tourism, Adventurists, Film and Documentary Makers*

This factor as a challenge was identified by 107 respondents. They indicated there were too many mushrooming hotels in parks, many hot air balloons as well as low- flying aircrafts and unmanned aerial vehicles which are causing congestion, high traffic levels within the parks and as a consequences there was a lack of effective security control within the parks. It has been noted that while tourism is important and necessary in Kenya, it has tended to concentrate around a few parks like Nairobi, Amboseli, Meru, Masai Mara and Tsavo. Unfortunately these are also the parks that most poaching takes place. This leaves law enforcement agencies wondering whether there is a

connection between poaching in these parks and tourism and whether criminal gangs enter the parks masquerading as tourists.

It has also been noted that some film and documentary film makers literally live in the parks for many years filming members of the charismatic 5 wildlife species. Yet none has ever caught any poaching activity taking place on film or reported presence of poachers in the park. While it is acknowledged that some are genuine and have done a great service to wildlife through the films that they shoot, some may not be so genuine and may be guiding poachers where to poach.

The challenge in combating wildlife crime here is that without law enforcement agencies having effective control of the security in the parks, these parks will remain precarious areas easily accessible by poachers.

The solution is KWS, the Kenya Police and Immigration to coordinate, investigate and determine who is a genuine tourist and who requires to be monitored. Maintaining surveillance within the parks will also help boost genuine tourism as most of them are afraid to visit the country and the parks due to insecurity. Detection and Intelligence gathering is an important function for KWS and the INTERPOL.

(vii) *Ownership of areas around the Parks*

According to 47 respondents who identified the communities living in areas around the park as a security threat with majority suggesting they be removed and the county government which was settling them around those area be asked to get for them alternative land elsewhere away from the parks. There has been an emerging conflict between the KWS and County Governments in areas where these parks are located as slums and business like kiosks, bars and curio shops selling handcrafts ostensibly to tourists have mushroomed along the park fences and the gates of the park and along the roads to the park. This is blamed on county governments. KWS argues is a danger to the wildlife and tourism as people being settled in those slums have no sources of livelihood and the area is not arable. They will engage in criminal activities like attacking tourists and poaching to the detriment of the parks. The five-volt electrical fence surrounding the preserve may keep the rhinos in, but it does nothing to keep the poachers out (Bergenas, 2014). The Respondents in this research during the interview process as well as “any other comment” in the research questionnaire or tool proposed as a practical solution that the government should consider setting up no-man’s land in areas around the parks. That would be a buffer zone similar to those around airports or military installations. The parks are important national assets which must be protected.

The best solution and protection for the wildlife and their habitat can best come from the communities neighboring the parks if only they can be incorporated into that process instead of entrenching the divisive populist system of “Them against us”, or KWS against the communities neighboring the parks some who have lived there from their ancestral times or were displaced when the areas they lived in were designated as game parks. They need to be treated in a humane way.

(viii) *The alleged interference in the workings of Criminal Justice System by civil societies*

It notable that 14 respondents indicated that the Criminal Justice System was not working effectively because of excessive interference from various organizations like civil societies, NGOs, conservation groups and media who are always looking over their shoulders to find faults or create false reports when they couldn't find any fault, which they would take to the media which would publish the false information thereby giving the organizations under the CJS bad publicity. They complained that they at times learn of faults detected by civil society in their respective organizations concerning wildlife crime through the media. Indeed they felt the civil society organizations in the wildlife sector seek media attention through finding faults in the CJS especially when dealing with wildlife crime which they sensationalized in order to attract donor attention and funding.

The challenge here is that the respondent cannot work efficiently as they are demoralized and demotivated by the negative publicity that they were receiving. This affected their effectiveness in combating wildlife crime. The solution to this challenge is for all sides to form a joint reconciliation team which can be attending to any grievance either side has as the civil society and media also have valid complaints against the CJS and the staff in organizations under it.

### **Originality of Thesis and contribution to knowledge**

The originality of this thesis is created through its research findings which have been methodologically and analytically deduced to process originality of thought and knowledge, culminating in a two tier original contribution to knowledge and a process which to-date is the most effective approach existing globally in combating wildlife crime. This original approach coupled with well enumerated recommendations and discussions propounded by this thesis can be expected to cause a paradigm shift in the way wildlife crime is fought and ensure success in that battle to save wildlife, the global environment and international insecurity.

Wildlife crime is a trans-boundary and internationally recognized crime. Kenya is the international communication hub for both air and water transportation within east and central Africa region. Collaboration therefore between local law enforcement agencies and other international law

enforcement agencies to fight wildlife crime as a united force and employing global synergy can in turn guarantee regional and global security through also combating spill over crimes like terrorism, human rights abuse, drugs and arms trafficking. The economic prosperity of the entire region that is sub-Saharan Africa which includes the area below the Great Green wall is dependent on the success of this war of combat wildlife crime. Kenya's unique landscape supports abundant and varied wildlife of scientific, intrinsic, and economic value and has a considerable extent of wildlife habitat (Government of Kenya, 2008, 2009; KWS, 2008; Western, 2008). This flora and fauna has both economic, environmental and international security value for the entire region and for the rest of the Global Community. Indeed that is why all wildlife has been referred to as being of international Heritage and not of just national or continent heritage.

The originality of thought and knowledge propounded in this research is two-fold:

Firstly, it challenges the apocryphal cause and existing knowledge and replaces it with a new one that is based on the research findings achieved through scientific research methods adopted in this study and the empirical evidence generated through this study.

Secondly, this Thesis propounds an original three tier conceptual approach to combating wildlife crime otherwise referred to as the 3Cs concept on wildlife crime which is similarly based on the research findings achieved through scientific research methods adopted in this study and the empirical evidence generated through this study.

Thirdly and finally, this thesis expounds generally, on the theory of Crime Facilitating Crime Theory, the rule of Asymmetry in wildlife crime, the mixed approach outcome for the theoretical framework, as well as presents recommendations as the final outcome.

### ***(1.1) Challenging the apocryphal causes***

The expostulation of a globally existing knowledge that the functional cause of the escalation of wildlife crime in Kenya is due to corruption can now be scientifically challenged through the research findings in this study. The fallacious belief that corruption was the epic cause of the current escalation wildlife crime has led to wastage of scarce resources and time in combating corruption in the belief by solely dealing with it would lead elimination of wildlife crime at least in Kenya and Africa. This belief by itself contributed to the escalation of wildlife crime by drawing attention and focus away from the real cause. By misdirecting the deployment of essential resources needed in combating wildlife crime, resulted in delays in tackling the crime thereby allowing it to grow into a global calamity, besides raising confusion through tackling the wrong cause of a problem. Martini (2013)

observes that, while there is little research on the relationship between corruption and wildlife crime, majority of the literary discourse on wildlife crime concur that corruption often facilitates poaching and wildlife trafficking. The question is, why would literary discourse concur on such a serious issue and make such a damning conclusion without evidence. This research offers empirical evidence which proves them wrong.

Without knowing the cause of a problem like in wildlife crime, stakeholders will only be fire-fighting the damage but not addressing the real cause of the fire or rather fighting symptoms rather than the cause of the disease. Therefore identifying the right cause through a scientific research process, will not only contribute new knowledge to the existing body of knowledge in the wider area of wildlife crime but will also have a ricochet effect in adopting new methods like the 3Cs method for combating wildlife crime which is a product of this research. It will also give the CJS direction and impetus to similarly with over spill over crimes associated with wildlife crime. This study by engaging in a research exploration process has discovered and established a new functional cause that is based on this study's scientifically authenticated research findings and can therefore conclusively pronounce and unveil the validated cause of the current escalation of wildlife crime

### **(1.2) *Unveiling the validated cause***

This thesis propounds based on the empirical evidence scientifically collected through this research, the results show that the leading cause of the escalation of wildlife crime in sub-Sahara Africa including Kenya is the upward surge of demand in wildlife trophies by the consumers in the consumer markets of the Far East Countries, namely China, Vietnam, Taiwan, South Korea and Japan, and Middle East Markets. China is pinpointed as the main culprit due to its high population status and a fast growing bourgeois class even though this is replicated in all other nations that have been identified as consumer markets of wildlife trophies sourced from wild game in sub-Sahara Africa.

Corruption and other vices surrounding wildlife crime are through this research identified as spill over or facilitating crimes that are committed to facilitate the commissioning of the targeted crime by the criminals which in this case is poaching, illegal acquisition and possession of illegal wildlife trophies, trafficking and illegal trading in prohibited wildlife products. The targeted or desired end of the supply and distribution chain for this illegal product is obviously the consumer. The international trafficker and trader will obviously have to commit other offences in order to facilitate trafficking the illegal wildlife trophies from the supply countries where they are illegal to acquire, possess or even traffic. Offences such as poaching, trafficking and corruption are an essential part



of wildlife crime besides many other offences like illegal possession of fire arms and sometimes even murder. These offences are committed by wildlife criminals in the commissioning of their criminal activities.

Treating these facilitating crimes as the cause of wildlife crime is a serious misnomer that has led to wastage of time and resources thereby exacerbating the problem even further. This has also worked very well for the wildlife crime criminals as focus is directed away from them, yet they are the real culprits. As wildlife stakeholders continue to expend resources in combating corruption as the major cause of the escalation of wildlife crime, wildlife crime criminal have continued to grow along them wildlife crime as is currently happening. Indeed the international illegal wildlife trophies traffickers have participated in entrenching this misnomer by claiming they are in control of systems of governance and criminal justice system within the Kenya and the entire region by claiming it is in their 'pockets'. This misinformation aids the criminal gangs and non-State actors, especially the international criminal gangs as it essentially gives the illegal trade a boost and a thriller like undertaking and appearance. This enables the wildlife criminal to over price the illegal wildlife trophies by creating a phony high value illegal products purportedly requiring a lot of effort and protection to source and acquire.

To expound further on this, 89% of the respondent in this research indicated that the upsurge of wildlife crime in Kenya was aggravated by other factors among them the increased presence in Kenya of nationals from those countries where the illegal consumer markets are. The fact that many nationals from those countries have been arrested in Kenya and elsewhere trafficking or in possession of these illegal wildlife trophies is well captured in the secondary data of this research. Clearly therefore the suppliers and traffickers of these trophies to those overseas consumer markets are national from those countries. They are therefore in total control of the entire supply and distribution chain of these illegal wildlife trophies and also of the illegal source and consumer markets. This way the wildlife crime criminals have managed to create high value illegal products from illegal wildlife trophies through manipulating market forces of demand and supply and pricing index of wildlife trophies and now they are trading in an illegal product with a value a higher than the value then gold.

Since the price of these trophies have grown steeply from their initial figure, consumers have viewed wildlife trophies as an investment and speculation products. If the market fundamentals like consumer patterns and marketing strategy enable a product even illegal wildlife trophies to be traded in within the market, then demand for the product will grow as will the value and there will be an

upsurge of demand of the product in the consumer markets.. By creating a mystical scheme surrounding their ability to deliver due to their connections in the source markets international wildlife trophies traffickers ensures the consumer will remain in the consumer market awaiting delivery.

It is therefore a waste of resources and time to tackle corruption and those other challenges and vices without tackling the upsurge of demand in the consumer markets as the main cause of the escalation of wildlife crime. If this upsurge of demand of wildlife trophies is successfully tackled in the manner proposed in this Thesis, then the other challenges including corruption will disappear immediately or become irrelevant. Once the wildlife criminal has no market to sell the trophies in, then he has no interest in even being in Kenya to corrupt or devices other ways to illegally export wildlife trophies. The focus now should be how to treat the cause that is the upsurge of demand of wildlife trophies in the consumer markets while building capacity for effective policing and law enforcement in the parks and protecting the wildlife in the short term to ensure none of the few remaining charismatic 5 wildlife is lost to poachers. This cause of the escalation of wildlife crime has been extensively covered under four perspectives in the Dominant Discourse in this chapter of this Thesis where it has been analyzed, from its origin to the current stage and status it has today.

### **(1.3) The apocryphal phenomenon resolved**

An apocryphal phenomenon had grown around the sudden escalation of wildlife crime through which it had been professed globally that corruption in Kenya and the rest of Africa countries, amongst its government officials was the cause of the escalation of wildlife crime. This accusation was repeated so many times that it started being treated like a truth. It therefore became an apocryphal truth with many people believing it. Various initiatives and action were and are still being taken to combat the corruption as the ultimate remedy in solving wildlife crime. A lot of time and resources have been expended at fighting corruption as the cause of the escalation of wildlife crime in Kenya. Yet the situation has only gotten worse. More effort and resources are being injected by various western governments and international agencies into tackling corruption as a way of combating wildlife crime, but to no avail. This has baffled many as to why even after utilization of all these resources, wildlife crime continues to escalate unabated. As a result internationally renowned researchers from universities in the UK began to doubt the authenticity of these claims that corruption was the root cause of the escalation of wildlife crime. They called for further research on this topic.

This research has answered their call and resolved their doubts. The phenomenon over what is causing the upsurge of wildlife crime in Kenya and the rest of Africa has now been resolved. The cause is the upsurge in consumer demand for wildlife trophies of the charismatic 5 wildlife species in certain regions of the world especially the Far East countries, poached in Kenya and the rest of Africa.. This Upsurge of Demand in the illegal global consumer markets puts pressure on the source/supply market to deliver the product in large quantities hence the escalation of wildlife crime in the source/supply market

Therefore any solution on combating or curbing wildlife crime must primarily deal with the upsurge of demand of wildlife trophies in the consumer markets of the Far East countries while tackling the associate causes in the secondary markets that are the source and supply markets. Tackling the causes in the source market alone will be a frustrating journey as long there remains a rising demand for a product with a higher value than gold, This thesis steps beyond authoritatively identifying and professing the true cause of the upsurge of wildlife crime for wildlife trophies poached from the charismatic 5 animals, by offering very viable solutions for tackling this upsurge of demand in the consumer markets and dealing with the other associated causes in the source markets that only support supply to the consumer markets. These are practical solutions offered through this thesis are firstly in the dominant discourse, the 3Cs and the recommendations for immediate implementation.

This new knowledge on the cause of the escalation of wildlife crime being the upsurge of demand in the consumer market which for the first time is supported by empirical evidence will assist in directing resources to where they are most effective for combating wildlife crime. Focusing on dealing with the demand in the consumer markets in the Far East while building capacity in security surveillance and monitoring functions within the CJS in the supply nations as recommended in the 3Cs solutions will solve the problem.

## **(2.1) The 3Cs Concept**

The 3Cs stands for the consumer demand, corruption and conflict which are the three essential factors that have been determined through these research findings to be the contributing factors that have led to the current escalation of wildlife crime.

While upsurge consumer demand has been determined as the main functional cause of the escalation of wildlife crime, corruption and conflict are the facilitating criminal factors utilized in the execution of the crime in order for the consumer demand to be met at the consumer market. The 3Cs concept formulated in this thesis propounds that the current escalation of wildlife crime is as a result of an

upsurge of consumer demand in certain regions of the world like some far east and middle east countries and that corruption and conflict are both supporting and facilitating crimes but NOT the causes of the upsurge of wildlife crime.

### ***Consumer demand***

The consumer in the context of wildlife crime is the main beneficiary of this crime. It is to satisfy this consumer's demand that the crime is committed. By referring to the Consumer within the context of this research and this 3Cs concept, it refers to the buyer or acquirer in the last stage of the supply chain of wildlife game trophies otherwise also referred to in marketing jargon as the "end user". The consumer whether knowingly or not is the final possessor of the illegal product. Various reasons have been advanced as to why there would be consumer demand or a consumer penchant at acquiring these deplorable and despicable illegal products which are essentially remains from slaughtered wildlife. For example, ivory or rhino horns bones from poached elephants and rhinos, while claws, fang and furs are remains from poached lions, cheetahs and leopards. Why anyone would want to possess these bones and wildlife remains is very baffling. For all intent and purposes, these wildlife bones and other wildlife remains look good only on the living wildlife animal that they are removed from and for which they have a special purpose they are utilized by that wildlife animal in its day to day existence in the wild. They are therefore only essential for the habitats of wildlife and not for human habitats where they should not be at all. These reasons have been well covered and addressed in the previous chapter of this Thesis. Suffice to add that the demand has been noted to have risen spectacularly in the traditional markets of the Far East which is a region that is emerging as the global industrial hub for exports of manufactured products across the globe.

The 3Cs concept asserts that dealing with corruption in the source market without dealing with consumer demand in the consumer market is counter-productive and has no beneficial value but rather fosters more weaknesses in the system through stigmatizing law enforcement agents. This theory propounds that given the porous and very large areas that makes up these parks and considering the current capacity of law enforcement agencies and criminal justice system in tackling wildlife crime, it is likely that any similar organization anywhere in the world would be equally challenged.

### ***Corruption***

The second Cs is corruption which was identified by 84.86% of the respondents surveyed in this research as a major cause contributing to the current escalation of wildlife crime in the source market. Corruption is a crime that should be severely punished. It has many faces and shades as it involves

and afflicts both state and non-State actor. Both the giver and the acceptor are guilty of the offence. It erodes the capacity of Law Enforcement agencies like the CJS to effectively combat any crime and not just wildlife crime, by unofficially facilitating and supporting commissioning of the crime to the detriment of the state and citizenry. It therefore makes it possible for an offence to be easily committed as it assists non-state actors either directly or by “looking the other way” as a crime is committed or through the official protector of non-State actors ensuring they are not arrested or are released when arrested. It is therefore a facilitator of the crime but not a cause of the crime. It steps in to aid the commissioning of the crime. It is important to state once again that even without corruption wildlife crime can still be committed without detection. Corruption improves the chance of getting away after committing the crime even after detection.

While corruption removes the risk of facing the consequences of committing a crime it cannot be the cause of why the crime is being committed. Criminals do not commit crime just because they can get away with it. There must be something they are gaining at the end of committing the crime. Criminals according to some theories of crime like Becker (1968) economic approach theory are driven by rational calculation of the prevalence of profit and low risk elements. Evidently, if the risk is high, like having to deal with an efficient and incorruptible law enforcement agencies and criminal justice system, criminals will employ all manners of tactics to “beat the system”. An example is the illegal narcotic drug trade that still flourishes in western countries despite efficient and well trained para-militarily style police forces, like the DEA in the United States of America.

The fact corruption facilitates the committing of other crimes and adversely affects law enforcement in combating wildlife crime to a very large extent as indicated by 84.86% of the respondents surveyed in this study proves it is a factor that requires to be effectively dealt with. Therefore solution for dealing with wildlife crime must also address corruption. This has been done in the 3Cs solution.

### ***Conflict***

Conflict is the third Cs in the 3Cs concept. Currently there are 29 active on-going armed conflicts in Africa (Carvalho. 2017). A state in conflict in any regional neighborhood is a nuisance with potential of growing crime in the peaceful neighboring states. In the case of Kenya, insurgents and militia groups from neighboring countries were identified through this research by 37.5% of the respondents as contributing to the upsurge of wildlife crime in Kenya to a very great extent while 23% indicated that it was to a great extent. These insurgents and militia groups from neighboring countries will infiltrate peaceful neighboring countries like Kenya as refugees and start to target resources like wildlife as source of revenue for acquiring food, medicines clothing and arms. This

inevitably attracts the international criminal syndicates interested in getting the wildlife trophies in exchange for arms to the militias. These syndicates will even incite insurgency and fuel civil war in weak sub-Saharan African countries which are endowed with wealthy natural resources like gold or diamonds. Such scenarios have played out in several African countries which lead to western governments branding diamonds from those countries “blood diamonds” and making them illegal for sale in the international diamonds markets.

This led to the fall of Charles Taylor, the former president of Liberia, who was eventually charged and convicted at the International Criminal Court at The Hague and sentenced to 50 years imprisonment which he is serving in the United Kingdom. Diamonds from Africa now require proper certification to prove they are not from a conflict zone before they can be sold in the international market.

Conflict is therefore a major challenge and contributor to wildlife crime that needs to be resolved along with other challenges, if wildlife crime is to be successfully curbed and hence its inclusion in the 3Cs concept. Where there are conflicts in Africa, it is the ordinary citizens of those countries in conflict and the wildlife that suffers.

Although international law in particular Article 2 (4) of the UN Charter and the accepted international law principles called *jus cogens* would stop the peaceful state’s law enforcement from pursuing insurgents and militias back into the country in conflict, sometimes it becomes too much to bear. In October 2011, Kenya sent its military across its border into southern Somalia in corroboration with Somalia military in hot pursuit of the members of the Al-Shabab terror group that had engaged in kidnapping of tourists and Kenyans within Kenya for ransom demands. This joint military operation called in Swahili ‘Okoa Nchi’ meaning save the nation was also required to dismantle Al Shababa training cells and rescue Kenyan Muslim youths who had been brainwashed and radicalized to join the terror group which brands itself religious group but it is actually a terror group engaged in Islamist insurgency.

Therefore, conflict whether in neighboring state or within the state has the potential of exacerbating wildlife crime as it is a facilitating factor.

### **The Explanation and Limitation:**

The 3Cs concept is therefore an original contribution of knowledge from this thesis that offers an explanation to the reason of the escalation wildlife crime and the inability of law enforcement

agencies to combating wildlife crime effectively. Although the challenge in combating wildlife crime that is explained in this concept is limited to the charismatic 5 animals commonly found in the sub-Saharan Africa as these are the critically endangered wildlife species, it can also apply to all other endangered species anywhere in the world whether on land or in the sea. This concept is limited to commercial poaching.

## **(2.2) Testing the 3Cs concept**

This test that is created and utilized in this research Thesis to determine the validity of the 3Cs concept which proclaims that the upsurge of consumer demand is the main functional cause for the escalation of wildlife crime while other crimes and factors thought to be the apocryphal causes like corruption are the facilitating criminal factors utilized in the execution of the main crime in order for the consumer demand to be met at the illegal consumer markets.

The 3Cs test will be to conduct a considered evaluation whether consumer demand of illegal wildlife trophies can still be met without corruption and conflict at the source market. If the answer is positive then this concept and theory are correct. Corruption and conflict are just facilitating crimes that facilitate commissioning of wildlife crime to a very large extent more than any other facilitating crimes, which is a requirement in order to meet consumer demand for the illegal wildlife product.

Alternatively considered hypothetically, can an armed non-State actors, like an international crime syndicate chopper enter into a park and gun down a herd of elephants and take away the ivory and fly them out of the country, without a government official knowing? If the answer is positive then it proves that consumer demand is what is driving the current upsurge of wildlife crime in Kenya and the demand can be meet without involvement of corruption. If we examine the converse of the above tests, if there was no consumer demand for wildlife trophies, even with a corrupt government official and an insurgent from a neighboring State in conflict who is in possession of ivory, would the international crime syndicate be interested in buying the ivory from the insurgent and bribing the government in order to export the ivory.? The answer is no.

### ***Without consumer demand***

Although it can correctly be explained that the threat of extinction of the charismatic 5 animals is as a result of an upward surge in global consumer demand of their products or game trophies coupled with weaknesses in law enforcement system like the CJS in the local or source markets, the real culprit is the demand of wildlife trophies in the consumer markets especially in the Far East consumer markets which has experienced an upward surge in demand for the wildlife trophies.. This

demand has led to an escalation in criminal engagement by suppliers and other non-State actors within the region in order to cash in or join the gravy train has seen the value of a kilo of ivory or rhino horn worth more than a kilo of gold.

This thesis advances the 3Cs concept which explains that, firstly an upward surge in consumer demand for any product including wildlife trophies in a market will by extension increase the relative price of the product in both the source market and the consumer market. The products price index will fluctuate depending on the availability and supply of the product to meet this demand. If the product is readily available in the market, then the price will fall. But if it is not, it will continue to grow due to the inability of the suppliers to meet the demand. As the demand grows so does the price rise making its supply a lucrative business. There are various reasons as to why suppliers can be unable to meet demand, but for the purpose of this Thesis, the product is wildlife Game Trophies which have to be sourced illegally from the source markets. The product then has to be exported or trafficked illegally. Selling the product in most consumer markets is now illegal. That means the supply chain is not smooth flow but hindered flow. Since the product is not readily available, this will lead to an escalation in the pricing index of the game trophies of the charismatic 5 animals.

Therefore, this concept propounds that the combination of increased consumer demand in the trophies of charismatic 5 animals in the consumer markets coupled with corruption, conflict and other challenges facing the CJS and other law enforcement agencies that have been highlighted in this research's findings and in the dominant discourse in this chapter, which are found in the source markets like Kenya are grossly responsible for the challenges in combating wildlife crime. The 3Cs propounded in this concept being the Consumer demand, Corruption and Conflict are the substantial causes of escalation of wildlife crime on a global scale.

The 3Cs concept advanced in this thesis also propounds that unless the 3Cs are tackled in that order firstly with eliminating the consumer demand in these trophies and then employing tactical application both Legislatively and utilizing Non Adjudicatory methods referred to in this Thesis as the 3Cs Applicative Tools for combating wildlife crime globally, then wildlife crime will exacerbate from being a regional concern to global calamity both environmentally and in terms of global security. By global security it is meant that the governments in sub-Sahara Africa are grossly challenged in terms of law enforcement and are likely to become failed states like Somalia which will then be used as breeding and training grounds for terrorism and launching pads for other international crimes like piracy.



### **(2.3) The 3Cs Model**

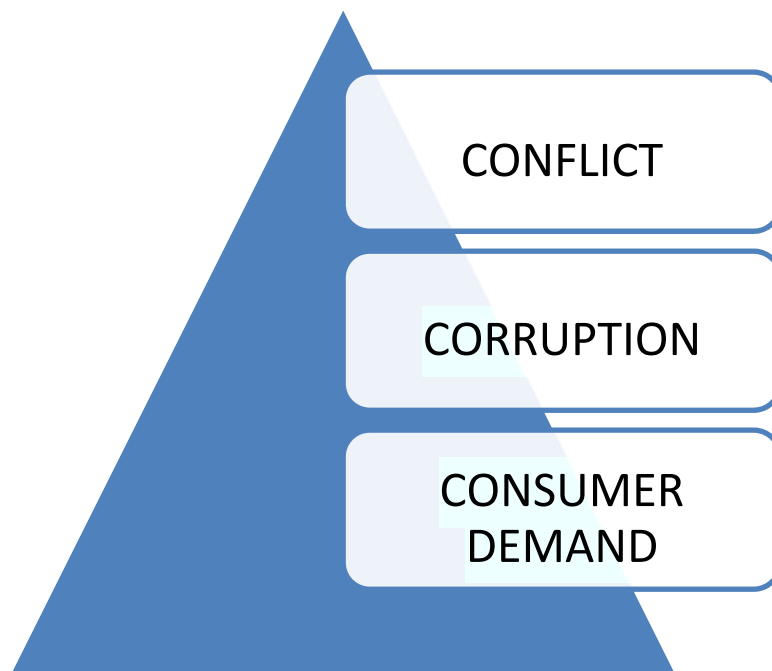


Figure 6: The 3Cs Hierarchical Model

The 3Cs concept advanced in this thesis includes the above model and an applicative tool to be used in effectively combating wildlife crime. The above model shows the hierarchical structure of the 3Cs Model with consumer demand sitting at the bottom of the pyramid. It is the foundation and pillar stone of the pyramid upon which wildlife crime grows from. The essence of this model is to re-emphasize that the base of the wildlife crime is consumer demand. Without dealing with consumer demand the base will continue to be strong and the other two components will simply be replaced with new components or new facilitator crimes.

### **(2.4) The 3Cs Toolkit**

In order to effectively apply the 3Cs concept to wildlife crime, this thesis has developed an application Toolkit that can be used as a guide and a tool by States and other interested conservation groups and the international community on the best way in combating current the escalation of wildlife crime and curbing wildlife crime in general. It is proper to pinpoint a problem but it is even better to find and provide a solution to the problem. This thesis has identified the problem and its cause and now offers the solution. This thesis therefore proposes the following applications tools kit to be used in tackling the 3Cs and combating wildlife crime which if effectively applied will eliminate wildlife crime against the charismatic 5 animals from the globe.

**(i) Curbing Consumer Demand:**

***Applying a Concerted Consumer Campaign Application - Social Media Marketing***

In order to tackle consumer demand it is important to reach out to those consumers in order to create a consumer behavioral change. This can only be achieved through a concerted consumer campaign targeted at informing and creating awareness among consumers of wildlife trophies in the Far East market. It is very important to reach out to the consumer markets where the game trophies are being bought in order to educate the consumers that the products they are acquiring are causing both humanitarian and environmental harm in the source markets which although a distant part of the globe from them, the impact of that effect will eventually also affect them. It is important to make the consumers of wildlife trophies fully aware that adverse climate change that is currently affecting them as well, is due to environmental degradation brought about also partly by wildlife crime and tropic cascade as a result of diminishing numbers of the charismatic 5 animals. These iconic animals are needed in Africa to maintain the eco-system existing in a globally important green belt area that cleans up green gases being emitted from industrialized countries.

This creation of awareness can be achieved through the application of social marketing strategies where media is used to sell an idea to the targeted society. Advertisements with catchy phrases can also be used to bring awareness to the public. The target will be to create a cultural change. The aim will be to prick the consumers consciousness so extensively in order that they loath wildlife trophies and to make buying of wildlife trophies undesirable to them. It is not impossible for consumer behavior to undergo deliberate change including cultural change through a concerted campaign effort. A good example is the mint coats products during the 1950's which were driven from the markets in the west by strong animal rights group. A more recent example is the campaign against "blood diamond" that was led by movies from Hollywood. Currently technological advancement means that a campaign can quickly reach group targeted for awareness campaigns very rapidly and effectively. Social media tools and platforms can be very effective applications that this research thesis will strongly recommend to be used by governments, conservationists and wildlife friends groups that should be formed globally purposely to reach as many people as possible in all social media platforms. The campaign should initially strongly focus on the Far East consumer markets before going global. That is because it is better to start from where the consumer market is strong for best effect.

### ***Regional Legislative Action in Source Markets***

There is a need for the governments in the region to come together and form a regional body to tackle wildlife crime. Combining resources and synergy among the nations in sub-Saharan Africa against this global scourge will give impetus to other nations and international rights groups to participate. The African saying that “*you will be heard further if you shout in a group than solely*” shows the need to work together to attract even more assistance from other nations.

There is also a need to form a joint regulatory regime by all countries within the east and central Africa on combating wildlife crime. Currently, each nation has its own regulatory framework. This has been a challenge in two regards:

- 1) The regulatory regime of any single country in sub-Saharan Africa cannot effectively protect wildlife animals as they are borderless.
- 2) Wildlife poachers can take advantage of different regulatory regimes to determine from where they will commit the crime thereby minimizing any efforts of any one nation in combating wildlife crime.

In Kenya it is obvious there is a need to further amend the new Wildlife Conservation and Management Act 2013. There is a need to be urgently amended it to remove non-custodial sentences like fines for whatever amount from the law. As earlier pointed out, this law as it stands has a negative impact on conservation effort. A convicted poacher or trafficker will pay the hefty fines and then rushes back to engage in wildlife crime in earnest to recoup his loss. The Law should be amended to sentence a convicted offender to a custodial imprisonment upon conviction without the option of a fine. Imposing a fine no matter how high the amount of fine gives this otherwise very serious crime an economic face which does not carry the very terse message of the gravity of the offence for the environment and the entire world and international community.

### ***Mandatory Sentence***

The Law should be amended to sentence a convicted offender to 15 years imprisonment upon conviction. This can be achieved by making the sentence of 15 years a mandatory sentence. This will mean removing the discretionary option for the Magistrate to determine the sentence of a convicted felon and have only one possible sentence upon conviction. In furtherance to this, the wildlife law can also be amended by re-drafting the wordings in the sentencing provisions of the law from “the sentence shall be for a maximum period of 15 years imprisonment” to the sentence shall be “for a minimum period of 15 years imprisonment”. Interchanging the word from “Maximum to Minimum” would have the same effect as a mandatory sentence. The period 15 years imprisonment

is a long time and a period that would deter would be wildlife criminal if they know the likelihood of serving such a long period is real. This will encourage law enforcement and civil society to follow up trails as they will know successful prosecution will result in the criminal going away for a very long time.

**(ii) Combating Corruption: *Sentencing for Corruption***

In order to effectively fight corruption in Kenya, the Ethics and Anti-Corruption Act should be amended to also impose mandatory sentence for the government official and anyone else found engaging in corruption to faces a minimum sentence of 15 years imprisonment upon conviction. This is because the risk of non-enforcement of the law is corruption. To remove this risk, the consequences if caught must be so severe that it will discourage would be offenders.

This begs the question “is it the severity of the law that deters offenders or is it the likelihood of getting caught and punished”? It is a combination of both. A weak law will be ignored while a severe law effectively implemented through the courts will even encourage law enforcement agents to bring offenders to court. The 15 years minimum sentence upon conviction is a long time jail the prospect of which will deter wildlife criminals and also corrupt officials. Fines are economic punishment that can be passed on to the consumer.

**(iii) Taming Conflict: *Non Adjudicatory Methods of Resolving Conflicts***

The 3Cs application tools proposes that nations in sub-Sahara Africa use non adjudicatory methods to resolve conflict in their countries. These methods are encouraged in the international arena and states are under an obligation under the United Nations Charter Article 33(1) to resolve disputes between themselves through peaceful means that are both non Adjudicatory and Adjudicatory.

Similarly, nations should also seek to resolve internal disputes through Non-Adjudicatory methods like negotiations, mediation and conciliation. To term citizens in a nation opposed to a leader’s position as rebels and terrorists and to have them pursued by law enforcement agents, drives the “rebels” to arms which adversely affects the nation and neighboring countries.

Currently the African Union has developed several initiatives and policy documents that assist in implementing its goals on dealing with conflict before it arises or early warning, during and post conflict development. In January 2017, the AU summit endorsed the AU Master Roadmap on Practical Steps for Silencing the Guns by 2020, (Carvalho, 2017) which is an ambitious road map to end all conflicts in Africa by the year 2020. The AU has also developed The African Peace and Security Architecture (APSA) roadmap for 2016 to 2020 through which 5 pillars to prevent and

provide conflict management assistance, particularly by supporting ongoing peace processes or deploying peace support operations. (Carvalho, 2017)

It is notable that regional efforts at conflict resolution in Africa have been successful where they have occurred except where the aggrieved parties fail to implement agreed positions because of various reasons, including external interference, and internal constraints. (Oguonu and Ezeibe 2014) AU has played very important role in conflict resolution through mediations and peacekeeping operations in the region and also raising the alarm for international community intervention where necessary. (Oguonu et al, 2014)

### **(3) THE CRIME FACILITATING CRIME THEORY**

This Thesis proposes and propounds the Crime Facilitating Crime Theory otherwise also called the Crime on crime facilitation Theory. The theory propounds that some crimes like wildlife crime are facilitated by other crimes in order for their execution to be completed. After analysing the results and assessing the findings in this research study, it was apparent that wildlife crime cannot be viewed as stand-alone crime. It requires to be facilitated by other penal crimes like arms trafficking, corruption, conflict and many other penal crimes for its eventual commissioning to occur whether successful or not. Being facilitated by other crimes is an essential ingredient for wildlife crime to be executed.

The findings in this research clearly demonstrated that there are crimes that facilitate the commissioning of other crimes. These types of crimes are named and referred to in this research as facilitating or facilitator crimes. A facilitator crime is a crime that is necessary for the effective execution or commissioning of another crime. It is a crime that is committed solely for the commissioning of another crime. It can also be described as a secondary crime committed in the process of committing another crime called the facilitated crime. A facilitated crime is one that requires the initial commissioning of other crimes in order for it to be committed. There is a third type of crime in the commissioning of crime process which this research aptly calls and refers to as the stand-alone crime which is a crime that does not require to be facilitated by other crimes for it to be effected.

This theory proposes that crime be looked at beyond its definition and be studied with a view of understanding its commissioning process for law enforcement purposes as opposed to crime definition and punishment process that currently exists within all legal jurisdictions globally.

Researching and understanding a crime commissioning process by distinguishing the crime on whether it is a facilitated crime or facilitator crime is very important when combating crime including wildlife crime. Sometimes a facilitator crime may even be more lethal and carry a higher penal sentence than the crime it is facilitating. This theory seeks to understand the crime commissioning process for each crime and charting it out for the purpose of law enforcement.

This theory also observed and expounds this observation that there are crimes that facilitate the commissioning of other crimes which may not be related in their substance to the crime that they are facilitating or committing. They may even be totally unrelated in their actualization but are facilitating execution of another crime. What they only carry in common is 'mens rea' or guilty intention to commit the offence.

An example relevant is wildlife crime. In wildlife crime, a person charged with being in possession of an illegal trophy like rhino horn is an accomplice to poaching, probably possession of an illegal firearm, encroachment or trespass into a park, poaching, handling and trafficking of illegal wildlife trophies depending on where he eventually ceases to be possession of the illegal wildlife trophy either through arrest or sale in the source or consumer markets. Therefore possession of illegal game trophy should not legally be viewed solely as standalone crime. The law presumes that buying or being in possession of an illegal product whether knowingly or not makes one an accomplice to the crime process that was committed in the illegal process of acquiring that product. Game trophies are items any one knows are either illegal to possess or require a permit to keep. Therefore anyone in possession of a wildlife trophy is illegally in possession of the trophy and an accomplice of all the facilitating offences that were committed in the process of acquiring the illegal product unless he has a permit to be in possession.

Facilitating crimes and facilitated crimes can be said to be crimes with tentacles hinged to other crimes. The facilitated crime will be dependent on the facilitator crime for its commissioning. Therefore while the facilitator crime perhaps can stand alone depending on the crime, the facilitated crime can never stand alone. A facilitated crime is therefore a crime that requires commissioning of other crimes for it to be finally and effectively executed or commissioned.

### ***Significance of this theory***

Identifying and singling out each crime by the role it plays in the commissioning process of a crime is very important for the effectiveness of combating crime by law enforcement and criminal justice system (CJS). Focusing on a facilitator crime as commonly happens and ignoring the final or

facilitated crime leads to wastage of resources, time and man power. The test to prove this is to determine whether even if a facilitator crime is effectively eliminated by law enforcement agencies or CJS, there is every possibility that the criminals will device and engage in a new facilitator crime in order to achieve the final targeted which is the facilitated crime. Therefore combating the facilitator crime without also eliminating the facilitated crime would be a waste of resource, manpower and time and leads to law enforcement fatigue.

Another example is in the case of narcotic drugs offences. The cause of this other run away crime is high consumer demand in consumer markets hinged on addiction to the narcotics drugs. A lot of resources time and manpower has been expended in combating this crime. International anti-narcotics law enforcement agencies have waged relentless battles against ruthless drug cartels in places like Columbia and Mexico and even in Asia. Yet the drug trade continues to flourish unabated and is a real challenge to law enforcements and criminal justice systems in all countries globally.

The illegal narcotic drug trade is very similar in many ways to illegal wildlife trade and crime. While narcotics trade destroys human lives, illegal wildlife trade destroys wildlife lives. Both are associated with many other spill over crimes like murder, illegal arms trade, counterfeit products, human rights abuse, human trafficking and slavery. Narcotics crime like wildlife crime is facilitated by other crimes in order for it to be commissioned. Narcotics crimes are facilitated by illegal substance production, possession of narcotics drugs, trafficking narcotics drugs, sale and trading in narcotic drugs and even corruption and conflict just like in the case of wildlife crime.

Both wildlife crime and narcotics crimes are crimes that ultimately end with the consumer and the consumer demand. In the case of narcotics crime the final facilitated crime is illegal consumption of the narcotic substance by the end user consumer and the cause of the consumer demand and consumption is addiction. All these other crimes in the narcotic drug trade are committed to facilitate the sale and illegal consumption of the narcotic drugs substance by the consumer.

To effectively combat narcotics crime, law enforcement must target and deal with the facilitated crime which is possession and consumption of the illegal substance by the end user consumer and that facilitated crime is the driving force and cause of all those other facilitating crimes being committed. If the facilitated crime is curbed all these other facilitating crime will also end.

Similarly, fighting wildlife crime in the source markets and at the trafficking stage may be short term strategy but curbing the consumer demand would be the long term and most effective strategy to

eliminate illegal wildlife trade. Dealing with the end user consumer and ending the demand using strategies and tactics like those proposed in this thesis as the 3Cs will be the only sure way of ending wildlife crime

However in the case of narcotics crime, unfortunately, currently the tackling of the facilitated crime in this lethal narcotics crime process which is possession and consumption of the narcotic substance by the end users consumer that is driven by narcotic drug addiction, has been left to the individual consumer, perhaps his family if any and to society in form of the community he or she lives in and re-habilitation hospitals.. Law enforcement concentrate in battling with the dealers and traffickers but without much success as the consumer craves and seeks more narcotic drugs for consumption. Law enforcement will only intervene if the individual consuming the drug commits another offence, or is arrested when buying the substance or in possession of it or becomes a nuisance to community or becomes uncontrollable due to consumption of the drug. Yet it is exactly this consumption of the illegal narcotics substance whether within the home or elsewhere, that is fueling this lethal and illegal narcotics drugs crime and trade.

The solution for narcotics drugs will be solved by scientists discovering a method of beating drug addiction in narcotics drug trade otherwise the war on narcotics drug will never be won. More effort and resources should be placed to discovering a break through against narcotic drug addiction. The results of this research and further analysis of this Theory of facilitator crime shows that any effort made to curb other facilitator crimes to a main crime only enhance the growth of another facilitator crime and will not therefore stop the main crime. The main crime like wildlife crime can only be fought through identifying the true driving cause and dealing with it directly.

This Research thesis through this theory of crime facilitate crime theory proposes that the best way of combating crime is to fast categorize it as to whether it is a standalone crime, a facilitating crime or a facilitated crime. A research approach of identifying the facilitating and facilitated crimes is recommended. Law enforcement agencies like the local police must employ the services of researchers and work closely with local universities to carry out research on crimes it faces and device methods through which the agencies can use to combat those particular crime by understanding what role that crime plays in the crime process and the stages it evolves in.

This is what the crime facilitating crime theory propounds through this research.

This theory of crime facilitating crime theory expounded in this thesis seeks to explore a new concept in combating crime by proposing that although the law defines a crime and proposes its punishment



as a way to combat and curb the crime, some crimes cannot be curbed or deterred by punishment and sentencing. To combat some crimes may even require the input of institutions away from ordinary law enforcement like science, medicine and medical research or business management and marketing to develop new approaches to curb the crime.

This research therefore recommends a research based approach to combating crime by law enforcement agencies as opposed to a baton and arrest approach. This theory further proposes that a research-based methodology for fighting crime through identifying the role of each crime in the crime commissioning process should be the modern way of combating crime.

#### **(4) THE FINDINGS AND CONCLUSION OF THE THEORETICAL FRAMEWORK STUDY'S.**

##### **The Mixed Theoretical Approach**

All theories of criminology have in common the explanation of non-compliance of the law or regulation. That means lack of knowledge of the law may be a limitation to all these theories in criminology. However in the field of law, ignorance or lack of knowledge of the law is no excuse “ignorantia juris non excusat”. Therefore through the findings in this research, all 100% respondents participating in this research were familiar with the WCMA (2013), while a majority of the respondent surveyed representing 63.81% indicated that effectiveness of the penal sections of the WCMA (2013) in deterring wildlife crime in Kenya was not adequate. Therefore the new law is not adequate to deter crime and therefore cannot ensure compliance. According to Karen Yeung, in *Securing Compliance; A Principled Approach* (2004), where regulatory standards are poorly designed, compliance with these standards will not deliver on the collective goals of the regulatory system. Without compliance review mechanism in Kenya the government needs to rely on empirical research study like this one to be able to assess effectiveness of the enacted law and act on it where research shows it is not effective or does not meet the desired standards or goals. It is a misnomer to think that increasing the fine in the penal sections of a criminal law would be sufficient to deter offenders as according to Yeung(2004) this would make law-breaking conduct a commodity that may be effectively “purchased” by requiring the offender to pay a penalty for breaking the law,

The mixed model framework approach to be adopted in this study will be generated from the three theoretical approach considered in this study. According to the Economic Approach theory, where  $P_f$  is the fine and  $V$  is the value of the wildlife trophy, If  $P_f < (less) V$  then the offender will engage in wildlife crime as the economic gain exceeds the assessed risk.

However if the assessed risk is a custodial sentence to serve a prison term, then where  $P_c$  represents prison time then  $P_c >$  (greater)  $V$  and the offender will have to carefully assess the risk and even if  $S$  represents corruption  $P_c + S > V$  would still make committing the offence carry a greater risk than the value in  $V$ .

According to Becker's deterrence framework which is based on positive economic justification for noncompliance, a wildlife criminal being a rational actor whose main objective is to maximize on his profits, if the positive benefits in his economic assessment exceed the negative deterrence incentive for compliance with the law, he will engage in wildlife crime the extent of which will be guided by the value market value of the wildlife trophies. Therefore if  $V$  is the value of the trophies and  $P_f$  is the penalty which is the fine and therefore where  $V >$  (greater)  $P_f$  = non-compliance with the law.

Abbott expanded Becker's approach by adjusting it to reflect (a) the range of enforcement tools and (b) the escalation of enforcement action and rewrote it to:

$$B < gH + eF + cD$$

where  $gH$  represents the probability and associated costs of detection by an enforcement agency,  $eF$  the probability and associated costs of administrative enforcement action and  $cD$  the probability of formal court action including prosecution and conviction in the criminal courts. This framework though meant for pollution offences can also apply for wildlife crime as it includes enforcement and punishment. For wildlife it can be expanded to where  $R$  is the Criminal Justice System,  $R_k$  is high probability of arrest by KWS while  $R_b$  is prosecution and  $R_z$  prison term from judiciary while  $V$  is the value of the trophies. Therefore where  $R_k + R_b$  are  $>$  (greater)  $V$  then wildlife crime will not be committed.

According to the Routine Activities Theory, where  $V$  is the illegal acquisition of wildlife trophy and  $L$  is its location and  $A_g$  is the absence of a capable guardian therefore the offence of wildlife crime will occur if:

$$A_g + L = V$$

(the easily accessible location and presence of any of the charismatic 5 wildlife and absence of any capable guardian will lead to the offender being motivated and illegally acquiring the trophy) This theory recently came into application in March 2017 when poachers broken into Thoiry Zoo in Paris, France, through unguarded rear doors and shot dead a white rhino and took its horn. (CNN news 2017). This is a case that can be explained through the Routine Activities Theory as there was an easily accessible location ( $L$ ) and absence of guardian ( $A_g$ ) which motivated ( $V$ ) to illegal poaching and acquisition of the rhino horn.

According to the Deterrence Theory if P is the punishment and C is the certainty of the punishment while S is the severity of the punishment and Q is the swiftness of the punishment, therefore the theoretical framework equation will be

$$P = C + S + Q.$$

Therefore if either C or S or Q were in the negative, then P would not occur and instead V would occur where V is committing the offence. Therefore the equation or formula would be:

$$C + S - Q - P = V$$

Therefore considering all these formulas or equations jointly to form the mixed approach (MA) theory presented in this research it would be:

$$B < Rk + Rb$$

$$V = Ag + L$$

$$P = C + S + Q.$$

Therefore where:

$$R(b+k+z) - Ag - L + C + S + Q = MA$$

This Mixed model framework pronounced in the above model or equation encompasses all the positive incentives that ensures compliance and enforcement and the negative disincentives that deter committing of crime by an offender. This is the mixed model theoretical approach to be adopted by this study in explaining compliance and enforcement of the law. From the model it is clear that it is not the severity (S) that deters crime. That is because a negative severity in the equation or mixed model framework would equal to non-compliance with the law, lack of deterrence and upsurge in crime.

Therefore according to the theoretical mixed model framework generated by this study, it is not the severity of the law that will deter wildlife crime, it the likely hood of getting caught and punished with certainty (C) plus severity (S) and swiftly (Q). However this will only be effective in the source/supply country. In the consumer markets, consumer demand must be curbed to eliminate wildlife crime by using the 3Cs concept propagated through this research.

### **(5) The rule of Asymmetry in curbing wildlife crime**

The rule of Asymmetry in wildlife crime as pronounced through this research is that though preferable, it is not an essential ingredient for all organizations in an institution like the CJS to function in efficient symmetrical order to effectively curb any crime including wildlife crime. What is essential is focus on any undertaking in each organization and not on the weakness emanating

from one of the organizations as a clog and a point of blame why the whole system is not functioning well.

## **(6) THE FINAL OUTCOME AND RECOMMENDATIONS**

The final outcome of this research highlights and discusses the immediate actions that can be taken in the short run through taking advantage of institutions and international regulations already existing. While this research is anchored on the results from the data, there are other important antecedent observations that have been discussed that touch on the strength and weakness of various national, regional and international organizations and government institutions involved in combating wildlife crime including laws, policies and agreements in international treaties that have been identified through this research as mechanisms and tools that can be harnessed to effectively combat wildlife crime immediately and reform the wildlife sector. These will be discussed here as the final outcomes and recommendations of this research:

1) Dismantling the wildlife trophies markets: Although CoP17 deliberated and adopted various resolutions including CoP17 Doc.57.3 on the implementation of Res. Conf. 10.10 (Rev. CoP16) on trade in elephant specimens and closure of domestic markets dealing in elephant ivory, actions to combat wildlife trafficking and ivory stockpiles and made recommendation to close domestic markets for commercial trade in raw and worked ivory as a matter of urgency, however in some like CoP17 Doc 27, CoP17 Doc.47, members directed the Secretariat: to contract independent consultant(s) to undertake studies of domestic which is ongoing. Kenya, the EU, the USA and all other nations that voted against allowing the sale should carry out their own independent studies, considering the MIKE report by the secretariat. All countries should follow Kenya's example and destroy their stock piles.

2) There is a need for the African Union and conservationists immediately liaise with the International Criminal Court (ICC) at The Hague. In September 2016 the ICC office of the Prosecutor announced it would give particular consideration to crimes involving destruction of the environment and the illegal exploitation of natural resources. Wildlife crime is illegal exploitation of natural resources. The ICC has been a very effective court in taming dictatorships in the third world.

3) There is a need to give the voiceless a voice. The animals need a person or committee to champion their cause including in law enforcement. There is a need for an Office of a Wildlife Ombudsman to be formed handling wildlife law enforcement issues other than the KWS in Kenya

and within the African Union office as a part of the African Peace and Security Architecture (APSA) as wildlife is equally affected during conflicts.

4) Using modern technology like creating mobile phone applications that enables members of the public and KWS officials to report incidences involving combating wildlife crime This will “shine the torch” on inefficiency and corruption on the concerned government office.

5) Wildlife cyber-crime is a part of wildlife trafficking that is carried out on the internet sales platforms. Wildlife trafficking is an essential ingredient in the execution of wildlife crime especially in Africa where illegal wildlife trophies are exported from the continent to consumer markets in other continents. Wildlife cyber-crime is an emerging crime and laws and regulations are currently being enacted at the international and local levels to adequately cover this crime that is borderless

6) The governments in east and central Africa should invest in modern technology like military drones to patrol and carry out surveillance recording in all parks. There should also be a rapid deployable force on standby when the drones command station reports any unusual activity anywhere in the park. This type of surveillance will save the governments resources in terms of manpower and vehicles required to patrol the parks. It will also save lives of warders as the drone command station will be able to analysis the type of threat on the ground and advice the deploying force on what to expect and the force will be better prepared.

7) The governments in east and central Africa must invest in research and research based reports on not just wildlife matters but all other important national issues. The current trend of government officials preparing reports from their office which are then used as a basis for informing policy creation and guidelines on important international and national matters has had devastating and embarrassing outcomes with accusations of plagiarism being levelled. More often such reports are out dated and not meant for the required purpose or place. Investing in professionals as consultants to guide a process like policies on wildlife laws and policies would ultimately save resources and time.

8) Conservationists, NGO’s and other civil society organizations involved in wildlife sector must up their game and make an effort to increase membership from citizens from within east and central African countries. Organization like the RSPB in the UK has over a million members. It is a very powerful organization funded by its members and influences policy decisions involving animal welfare. It is not difficult to attract a large membership drive. All that is required for that is just accountability and effectiveness in protecting wildlife. No government would not take into

consideration a proposed policy or regulation put forward by an organization with 1 million members. According to Abbot and Lee, historically, regulation has been perceived as a largely state-centered activity, with good reason. But it is also been recognized at all levels of governance that private (non-state and non-EU) actors, composed of economic actors and other ‘civil actors’ such as NGOs hold resources that, if harnessed appropriately, can make a valuable contribution to the regulatory process (Abbott et al 2015).

9) Communities can use the Internet social media platforms to combat wildlife crime. The Communities neighboring the parks and the Global Community are both very important in combating wildlife crime. The global community should take advantage of the availability of social media and keep viewing and logging in into sites that deal with combating wildlife crime. The communities neighboring the parks should take pictures and videos of any unusual happenings in the park and post them on social media platforms. If such posting can attract viewers or hits in the millions of people viewing globally and making comments, that kind of attention will prompt governments and international organizations into action in curbing wildlife crime. Social media brought down undemocratic Kingdoms and governments in the Arab spring. It can also bring down wildlife crime. The global community can therefore make a difference by viewing such posts which is a small but very effective contribution to curbing wildlife crime.

10) Communities neighboring the parks must play a more active role in the management of wildlife resources and their habitats. This alluded chapter 2 of this thesis. This thesis proposes amendment of the current the WCMA (2013) to include elected leaders of communities neighboring parks in the active management of the parks including sitting in the Board of Trustees of KWS. Currently in the UK, Police and crime commissioners (PCC) are being elected by citizens to make sure that local police meet the needs of the community. (gov.uk, 2017).

11) Privatization of the parks through conversion of their ownership and management to public limited companies with global shareholding and listing in large stock markets and bourses globally including in China’s Shanghai and Shenzhen stock exchange is a possibility that requires to be explored. Sense of ownership of something invokes a natural sense of protectionism of the item in humans thereby giving combating wildlife crime at the global stage a much needed boost by introducing a new group of actors who are also the global owners, protecting their investments by combating wildlife crime at the consumer markets. This is an idea whose time has come but requires further research as we must be alive to the recognition of sovereignty of a nation and current sensitivity to immigration issues globally.

One of the aims of this research is to promote synergy among all stakeholders and harness resources from private sector as allies of the state in this war against wildlife criminals. Through following this recommendation, Kenya and Africa can achieve that aim at an international scale thereby making the best use of their wildlife resources.

In conclusion, wildlife crime is a global scourge and dealing with the problem in the source countries will not win the battle but can only slow the slaughter of wildlife for a time. Although currently there has been a remarkable slowdown of the crime in Africa due to global attention and outcry, but shockingly the criminals seem to have moved to Europe. They on 6 March 2017 entered Thoiry Zoo in Paris and shot dead a Rhino named Vince and made off with its horn (CNN news 2017). Wildlife is an international heritage and lose of wildlife in Kenya or in France is loss to the global community.

It is hoped that the utilization of wildlife crime curbing mechanisms proposed within the 3Cs concept in this research thesis and the crime facilitating crime theory as well as all solutions and recommendations made in the thesis can be effectively applied by governments and interested parties in curbing wildlife crime. This research thesis therefore provides a new road map for Africa and to the global community on the future strategies and tactics that need to be applied in combating wildlife crime. This thesis is therefore expected to influence major policy decisions at both domestic/national and international levels of governments and international organizations through the proposed '3Cs concept' and toolkit which will create a much need paradigm shift in this area and a New Normal method of combating not just wildlife crime but all crime.

The final outcome of this research is also expected to introduce a new dimension to the current academic debate and thinking on combating not only wildlife crime, but all crime at both domestic and international levels through applying and expounding further on the Crime facilitating Crime Theory by carrying out further research in its application to all crime and its impact on criminal law and criminology. Further research is also needed on the proposed rule of Asymmetry made in this research for improvement of public management of CJS institutions.

Having identified the challenges of combating wildlife crime in Kenya and having created solutions for those challenges through this research, the next stage is the implementation stage. The strategy and methodology of implementing the 3Cs concept is already provided in the 3Cs tool kit in this research thesis. All it requires is just activation. This activation of the 3Cs tool kit is the surest way of permanently eliminating wildlife crime and saving the charismatic 5 animals. Their numbers are

already depleted to an all-time low. Will they survive the continued upsurge in the levels of poaching for their trophies? Will the global citizens sit back and watch the extinction of these iconic wildlife species and subsequent destruction of a globally important ecological and bio-diversity system and biome in Africa at the hands of international criminals? There is a small window of hope open. It is in the implementation of the 3Cs concept, all the solutions, recommendations and proposals made through this Research Thesis.





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## **FILMS AND DOCUMENTARY**

1. ***“How wolves change rivers” by Sustainable Human, narrated by George Monbiot, a 2014 production, [www.youtube.com/watch?vM18Hx...](http://www.youtube.com/watch?vM18Hx...)***
2. ***“Stop Wildlife Crime: It’s Dead Serious” 2013 Series 1-5 By Worldwildlife organization. [www.worldwildlife.org/deadserious](http://www.worldwildlife.org/deadserious)***

# APPENDICES

## Appendix I: The Questionnaire

- 1) Which organization within the Criminal Justice System in Kenya do you work for that combats wildlife crime ? Please tick in the appropriate box below

Policing (KWS)	
Prosecution	
Judiciary (Magistrate)	

- 2) What is your name? (Optional)  
 .....

- 3) What is your position/role in the organization? (Optional) .....

- 4) Please indicate your Gender: Male [ ] Female [ ]

- 5) What is the duration of your work experience Please tick in the appropriate bracket:
- |                |     |             |     |
|----------------|-----|-------------|-----|
| 1-5 years      | [ ] | 5-10 years  | [ ] |
| 10-20 years    | [ ] | 20-30 years | [ ] |
| Above 30 years | [ ] |             |     |

- 6) What is your highest level of educational attainment?

Primary	[ ]	Secondary	[ ]
College	[ ]	University	[ ]

Other, please state: .....

- 7) Are you familiar with the Wildlife Conservation and Management Act (2013) in Kenya?  
 Yes ( ) No ( )



8) In your opinion, how effective are the penal sections of the Wildlife Conservation and Management Act (2013) in deterring wildlife crime in Kenya?

Not at all ( ) Least Extent ( )  
 Moderate extent ( ) Great Extent ( )  
 Very Great extent ( )

9) Are you familiar with the CITIES and its system of classifying wild animals on a level depends how endangered species?

Yes ( ) No ( )

10) In your opinion, how effective are the following arms of the Criminal Justice System when combating Wildlife crime? Use the five points scale where 1 = Not at all, 2 = Least Extent, 3 = Moderate Extent, 4 = Great Extent, 5 = Very Great Extent.

LEVEL OF CJS	Not At All	Little Extent	Moderate Extent	Great Extent	Very Great Extent
Policing					
Prosecution					
Judiciary					

11) Do you think corruption and poor governance is affecting combating of wildlife crime in Kenya?

Yes ( ) No ( )

If yes, please explain:.....

12) Are you aware that 5 wildlife species in Kenya, namely the elephant, lion, rhino leopard and the cheetah are in CITES critically endangered species list?

Yes ( ) No ( )

13) In your opinion, are International Treaties barring trading in game trophies motivators to poaching of animals by creating scarcity of the endangered wildlife species trophies?

Yes ( )

No ( )

If yes, please explain:.....

14) Please indicate by ticking on a scale of 1 to 5 the extent to which you think the following factors affect the effectiveness of combating wildlife crime in your organization?

(1) Not at all (2) Too Little (3) Moderate (4) Sufficient Extent (5) Great Extent

Factors	1	2	3	4	5
Lack of awareness and support from the public					
Lack of modern equipment					
Lack of adequate personnel/					
Lack of proper training					
Lack of coordination between different institutions of CJS					
Lack of harsher laws to deter likely offenders					
Lack of Political goodwill from leadership					
Lack of support from top management/officials					
Political Interference from Politicians and senior officials					
Corruption within your organization					
Lack of coordination between different organizations of the CJS					
Lack of motivation due to poor remuneration					
Upward surge of demand of wildlife trophies in the international market					

Any other, please list:.....

15) Please indicate by ticking on a scale of 1 to 5, the extent to which you think that the following groups of people have been the greatest contributors of wildlife crime in Kenya.

(1) = Not at all, 2 = Least Extent, 3 = Moderate Extent, 4 = Great Extent, 5 = Very Great Extent.

Factors	1	2	3	4	5
Local poachers					
Local Organized Crime gangs and cartels					
International Organized Criminal Syndicates					
Armed State Actors					
Neighbouring countries insurgent Or Militia Groups					

16) Please indicate by ticking on a scale of 1 to 5 the extent to which you think the following factors enhance the effectiveness of combating wildlife crime in Kenya.

(1) = Not at all, 2 = Least Extent, 3 = Moderate Extent, 4 = Great Extent, 5 = Very Great Extent.

Factors	1	2	3	4	5
Increased the number of employees in your organization					
Provide proper equipment and training					
Immediate prosecution of Poachers					
Impose tougher penalties upon conviction to deter poachers					
Translocation of critically endangered species to safer parks					
International treaties barring trading in game trophies					
Fencing of the parks					
Nationwide campaign on Wildlife conservation education and extension services (e.g. importance of the charismatic 5 animals and anti-poaching and detection campaign)					
Community neighboring parks involvement in revenue sharing from park gate collection fees, employing their youth as warders					
Compensation of victims of human wildlife conflicts					

17) Does Kenya have mechanisms or capacity to detect illegally trafficked wildlife trophies from the neighbouring countries?

Yes ( ) No ( )

If yes, please explain:

.....

**18)** Why do you think there has been a sudden upsurge of wildlife crime in Kenya?

.....

**19)** In your opinion, what would aid the prevention of wildlife crime?

.....

**20)** In your opinion, would international treaties imposing total ban on wildlife trade help in combating wildlife crime?

Yes ( ) No ( )

If yes, please explain:.....

**21)** Any other comments on combating wildlife crime in Kenya?

.....

..

## **Appendix II: CITES Classifications for regulatory purposes.**

CITES is an international agreement to regulate international trade in endangered species. A total of 178 governments have voluntarily agreed to adhere to the convention, which establishes a series of incrementally stringent restrictions on imports and exports of wildlife, depending on the sustainability of such trade. According to the CITES Appendices website:

**Appendix I** lists species that are the most endangered among CITES-listed animals and plants. They are threatened with extinction and CITES prohibits international trade in specimens of these species except when the purpose of the import is not commercial. As a result, trade in Appendix I species is most restricted and approved only under exceptional circumstances.

**Appendix II** lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled. International trade in specimens of Appendix-II species may be authorized by the granting of an export permit or re-export certificate. No import permit is necessary for these species under CITES (although a permit is needed in some countries that have taken stricter measures than CITES requires). Exports of species designated under Appendix II must be accompanied by appropriate CITES documentation.

**Appendix III** is a list of species included at the request of a Party that already regulates trade in the species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation. International trade in specimens of species listed in this Appendix is allowed only on presentation of the appropriate permits or certificates. Appendix III species are therefore subject to the least stringent trade restrictions; they are, however, regulated if traded within the jurisdiction of at least one CITES state party.

## Appendix III: Case Studies

### 1) CASE STUDY 1:-

**The 17<sup>th</sup> Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITIES) – COP17 held on 24<sup>th</sup> September – 4th October 2016 in Johannesburg, South Africa** This was the largest CITIES Conference of Parties (CoP) meeting ever held to date with 3500 delegates and 158 nations represented. To an observer who attended CoP15 in Doha and CoP16 in Bangkok besides other international conferences with a similarly large number delegates and nations represented, this was probably one of the most tense and intriguing conference in recent times in the international plane.

Although the conference was heralded as the most successful CoP meeting, it was successful if measured by the management skill shown by CITIES secretariat, the elected Chair and also other elected officials in managing the varying interest from different nations that played out during the conference. Different nations had formed themselves into groups to push for certain national and regional agendas and vigorously campaigned and canvassed for support. Overall 200 documents, 98 agenda items and 62 species listing proposals were considered in those few days and either adopted or noted with varying recommendations proposed for the future.

This conference was held at the time this research process for this thesis was under way. Therefore the proceedings were thoroughly followed in Johannesburg, South Africa and presentations and recommendations thoroughly scrutinized. Of significance to this thesis were eight agenda items although many other areas dealing with wildlife crime were covered. The inclusion of species in both wildlife and plants from Africa like the African grey parrot into appendix 1 and protecting various other African plants was welcomed

Cop 17: doc13 Establishment of Rural communities committee of the CoP. The role of the rural communities in management of natural resources like wildlife was recognized for the first time in CoP meeting from its inception. Their inclusion in future CITIES conference was proposed and overwhelmingly supported by both delegates and observers. The CoP directed the SC to establish an intercessional working group to consider how to effectively engage rural communities in the CITES processes. Of significance of this to this Research Thesis was that, during this research's Pilot study data collection in August – October 2015 the researcher observed that the rural community which is the community neighboring the parks were very keen in participating in the study and wildlife conservation matters when offered an opportunity. This researcher also noted that they all had very useful information to offer and were very keen on protecting wildlife. It was also this researcher's observation that the literacy level among these communities was now higher than previously thought. This researcher then in October 2015 had to return to the University to re-adjust his research design, sample and tool in order to accommodate and collect data from this new emerging and important state actor in combating wildlife crime. It was therefore welcome to note that the similar observations were also noted during the CoP17 and the rural communities neighboring the game parks will hence forth play an active role in CoP18 in Sri Lanka and into the future.

Wildlife Crime and Ivory trade. CoP17:Doc15- delist, CoP17:Doc16-uplist (both rejected), CoP17:Doc84.1, CoP17:Doc84.2, CoP17:Doc84.3 (on DMM to establish a process to trade in ivory and objections to it). All these proposals all dealing with allowing and objecting to allowing trading in ivory were probably the most acrimonious and intriguing proposals put forth with a lot of drama with all nations representatives and NGOs and conservationists observers all having their position and vigorously wanting to express and be heard on the issue. This issue was probably the apex issue of the entire conference and parties had prepared for it for the last 2 years. Canvassing on different positions on this item had started long before. The fact that the international community and some very influential global political leaders had already spoken against permitting another one off sale of stock pile of ivory and other wildlife products from the charismatic 5 animals in Africa only added fuel to an already tense situation between nations that were against the sale and those for the sale. Although proponents to be allowed the one off sale included the host country South Africa claiming their stock pile were legally sourced and that the proceeds would be utilized for bettering elephant and other wildlife management and rural communities, this proposal was vigorously opposed as the cause of the current escalation of wildlife crime and stressed the failure of previous safe guards to prevent illegally sourced ivory also mixing up with the legal ivory from the previous one off sales allowed by CITES. Gabon delegates dramatized their objection by all dressing as game warders in honor of all game warders who had lost their lives protecting wildlife. The motion was narrowly defeated by one vote 46-45. South Africa called for a secret ballot vote. Instead South Africa's proposal was now resoundingly defeated by 76 against to 25. The voice of the majority spoken.

On stock piles held by nations: This was another very important item for this research. The Implementation of Res. Conf. 10.10 (Rev. CoP16) on Trade in Elephant Specimens and Closure of Domestic Markets for Elephant Ivory, Actions to

Combat Wildlife Trafficking and Ivory Stockpiles was also hotly debated under proposals CoP17 Doc.57.1 and Namibia's CoP17 Doc.57.2 however the final outcome was good news for conservationists as it recommended that the Secretariat, on ivory stockpiles, to develop practical guidance for the management of legal and illegal ivory stockpiles, including their disposal. The CoP also recommends that all parties and non-parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency; and requests parties to inform the Secretariat of the status of the legality of their domestic ivory markets and efforts to implement the provisions of the resolution, including efforts to close those markets that contribute to illegal killing or illegal trade.

CoP17 Doc.24 (Rev.1) on the National Ivory Action Plans Process (NIAPs), National Ivory Action Plans Process: The Secretariat introduced the document on NIAPs (CoP17 Doc.24 (Rev.1)), highlighting specific areas for improvement for the NIAPs process. Final Outcome: In the decisions (CoP17 Com.II.17), the CoP: urged the identified parties to use the Guidelines to the NIAPs and also directed the SC to review the reports presented by parties already in the NIAP process and determine whether any assistance or other measures are required by these countries to ensure timely and effective completion of the NIAPs. The Secretariat was

also directed to consult with TRAFFIC in order to review current names of the categories used to group parties identified in the TRAFFIC ETIS Report and present its conclusions to SC69.

CoP 17:28 dealt with strengthening measures to deal with corruption urged support cooperation between CITIES and international agencies dealing with it like UN Convention against Corruption (UNCAC) and the UN Convention against Transnational Organized Crime (UNTOC).

Actions to Combat Wildlife Trafficking: The US introduced the draft decisions set forth in CoP17 Doc.27, as related to domestic markets for frequently illegally traded specimens of CITES-listed species and CITES controls for specimens of CITES-listed species produced from synthetic or cultured DNA. Final Outcome: In CoP17 Doc.27, the CoP directs, the Secretariat: to contract independent consultant(s) to undertake a study of domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal; and to undertake a review of relevant CITES provisions, resolutions and decisions to examine how parties have applied the interpretation of Res. Conf. 9.6 (Rev. CoP16) to wildlife products produced from synthetic or cultured DNA, and whether any revisions should be considered

CoP 17:29 dealt with combating wildlife cybercrime. The secretariat was urged to work with INTERPOL on this and to develop guidelines for parties on how to combat wildlife crime linked to the internet more effectively

MIKE REPORT: A statement from the Secretariat: - This was another agenda that attract interest in the CoP 17 conference. Report on Monitoring the Illegal Killing of Elephants (MIKE): The Secretariat introduced a document CoP17 Doc.57.5 and the addendum, noting that illegal killing of elephants continues to negatively impact populations in many parts of Africa despite NIAP implementation since CoP16. The document was based on report referred to in the conference as the Mike report. The data in the report was questioned by some state parties as it was provided to MIKE by some range state. The report was noted. The Secretariat also provided a statement called “A statement from the Mike and ETIS technical advisory group on recent claims that the CITIES approved ivory sales in 2008 caused a spike in poaching levels”. In its conclusion it observed that the claims that elephant poaching was triggered by the one-off ivory sale in 2008 was fundamentally flawed (See Case study 8)

Other relevant documents thoroughly scrutinized for this research process of this thesis and adopted were CoP 17:14.2 on the International Consortium on Combating Wildlife Crime updating parties on activities undertaken by it in pursuit of combating wildlife crime. The document also included INTERPOL’s observation on the importance of capacity building from customs to the judiciary level in order to shut down criminal wildlife networks while The World Bank observed that illegal trade was growing faster than the world economy and urged support for the ICCWC as a critical platform for ensuring legal trade flows and ending illegal trade flows in wildlife.



## 2) Case Study 2 :- Large-Scale Ivory Seizures

One of the best-documented wildlife-related criminal activities is the illicit trade in elephant ivory. Ever since 1989, WWF's wildlife trade specialist partner organization TRAFFIC has compiled information on global ivory seizures through what has become known as the Elephant Trade Information System (ETIS), which is managed by TRAFFIC on behalf of government Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Although the seizure data include records of small-scale confiscations of souvenirs and other decorative items from international tourists, the most significant component of the data is that pertaining to large-scale seizures (defined as those greater than 500 kg). Shipments of this size are considered indicative of the involvement of organized criminals. In order for smuggling of this scale to be attempted, there must be multiple people involved. They are unlikely to undertake such an activity on a one-off basis; rather they will plan to carry out such operations on an ongoing basis using business-like procedures a key characteristic of organized crime (McLellan et al., 2014).

Corruption will inevitably play a role. Such large-scale shipments are unlikely to proceed along the entire trade chain without the connivance of relevant enforcement and other officials. Even if the traffickers themselves are not engaged in other types of crime, the pernicious effect of this trade in terms of undermining governance and the rule of law is clear. Analysis of ETIS data shows an increasing number of such large-scale ivory seizures in recent years, correlating with a rise in poaching levels of African elephants, such that illegal ivory trade activity in 2012 was around two and a half times greater than levels in 1998. In fact, 2011 was the worst year ever for large-scale ivory seizures, with some 21 incidents involving a total of more than 34 tons of ivory (CITES, 2012). And, although data for 2013 are still incomplete, already 18 large seizures have been recorded, yielding more than 41 tons, a greater quantity of ivory than any other previous year going back to 1989 (CITES Secretariat, 2014). Whether this constitutes an increase in actual illegal trade volumes or reflects improved law enforcement in particular countries/territories is presently not known, but statistical analysis of the data indicates beyond doubt that the upward surge in terms of the weight of ivory seized from 2009 to 2011 inclusive, does represent increased illegal activity. In addition to such seizures being indicative of the presence of organized crime in the illicit ivory trade, they often involve Asian-run, Africa-based sourcing of ivory. It must also be borne in mind that these are the shipments that are intercepted; it is not known how many others are getting through (McLellan et al., 2014).

### **3) Case study 3 :- Spill-over Crimes, Human Trafficking and Marine Fisheries**

There is an abundance of evidence of organized crime involvement in fisheries as a cover up for carrying out other illegal activities like wildlife trophy trafficking, human trafficking, trafficking of counterfeit products and even narcotics and arms trafficking. A UNODC study on Transnational Organized Crime in the Fishing Industry (UNODC, 2011) even documented cases of human slavery where humans were trafficked for the purpose of forced labor on board fishing vessels and that frequently involving children. Several instances were recorded where human trafficking on board fishing vessels was linked to marine living resource (MLR) crimes (McLellan et al., 2014 Jain, 2001).

In addition to fishing operators engaging in MLR crimes, transnational organized criminal groups were found to be engaged in MLR crimes in relation to high value, low volume species such as abalone. MLR crimes conducted by such groups can be characterized by highly sophisticated operations, often with complex incorporation and vessel registration strategies, high degrees of logistical coordination. Investigation and prosecution of such criminal activities has proved challenging, with indications that the fishing licensing and control systems were vulnerable to corruption (McLellan et al., 2014). As one response, INTERPOL recently established Project Scale, to detect, suppress and combat fisheries crime as it is now also linked with organized crime.. It was also established that illegal fisheries for food security and livelihoods also had links with other serious crimes including money laundering, fraud, human trafficking and drug trafficking (McLellan et al., 2014).

### **4) Case Study 4 :- Democratic Republic of Congo: Illegal exploitation of natural resources**

The DRC is rated by CITES as one of the two most problematic countries in Africa for illegal exploitation of natural resources, from ivory to elephants. In some sites in the country, 90% of elephant carcasses discovered had been poached (UNEP, CITES, IUCN and TRAFFIC, 2013). Ivory is considered to be hunted and traded by militants for weapons, ammunition, food, and other materials required to sustain insurgent movements. The Lord's Resistance Army (LRA), Janjaweed, the Democratic Forces for the Defense of Rwanda (FDLR), MaiMai Morgan, and various local armed militias regularly poach elephants and hippos for ivory in the DRC. Many of these same groups are directly implicated in illicit timber, charcoal, gold, and mineral trades and have been connected to serious human rights abuses including mass murder, recruitment of child soldiers, kidnapping, forced labour, sex slavery, mass looting, and displacement. These armed groups hunt elephants by organizing and supplying locals to hunt the animals. Importantly, ivory is a commodity

available to lower level fighters who are unable to benefit from more lucrative taxation schemes controlled by militant group leaders.

Garamba National Park is located along the northern border with South Sudan. The LRA and Sudanese poaching gangs use it actively, and local poachers who operate with impunity in the insecure environment, also blame the militias. Most of Garamba is too dangerous to patrol. Park rangers can only conduct foot patrols in the southern third of the park, south of the Garamba River (UNSC, 2013). By 2013 the park's population of 22,000 elephants had decreased by 90% to around 2,000 animals. The park was home to the last wild populations of Northern White Rhinoceros in the world before being poached to extinction in the 2000s by Sudanese poaching gangs, possibly Janjaweed (International Fund for Animal Welfare, 2013). Travelling in gangs of dozens of hunters and porters, the Sudanese poachers, typically armed with AK-47s, poach elephants in and around the park (Agger and Hutson, 2013 Maisels, et al 2013). The LRA, operating on direct orders from their leader Joseph Kony, hunt elephants in order to trade ivory to transnational criminal groups for guns, ammunitions, food, and other supplies. In 2009, the group attacked the park headquarters, killing 17 of the park's staff (ACF, 2013). Ugandan forces linked caches of tusks found in the Central African Republic CAR to the LRA (HSBA, 2013 Kamweti, et al (2009).

Virunga National Park, on the border with Uganda and Rwanda, was severely impacted by the Rwandan genocide and on-going refugee crisis. It served as the battleground in the Kivu War and continues to support multiple armed groups who exploit the park's forest and wildlife resources. The multitude of military groups operating in this region makes Virunga one of the most dangerous parks in the DRC. The groups include the FDLR, URDC, various Mai-Mai groups, and, until their disbandment in 2013, the M23. The charcoal trade is one of many lucrative illicit trades in the park, which also include timber extraction, gold mining, and marijuana cultivation (Hack, 2012; Clough, 2009; Lovgren, 2011). Nearly two hundred rangers have been killed in the park since 1996. In 2008, the rangers' headquarters in the park was attacked by National Congress for the

Defence of the People (CNDP) militants. One year earlier, militants murdered seven of the park's endangered Mountain gorillas in retaliation for attempts to disrupt illicit production and trade of charcoal and timber (Lovgren, 2011; Litoroh, et al. (2012).

The FDLR controls portions of the park and regularly conduct operations from the area. Since 2011 the FDLR have been responsible for the deaths of 20 rangers in the park. The latest attack, carried out in January 2014, killed one ranger and injured two others (Lewis, 2014). News reports suggest the attack was revenge for increased patrolling of charcoal production areas (Lewis, 2014). The Okapi Wildlife Reserve lies within the Ituri forest in north-east DRC, near the borders with South Sudan and Uganda. The site is infamous for a particularly destructive attack by Mai-Mai Morgan in

2012. Mai-Mai Morgan poaches elephants, mines for gold and other materials in the park, and has committed serious human rights abuses including forced labor, mass rape, kidnapping for ransom, sex slavery, and murder (UNSC (2013)). The group attacked the park headquarters killing at least three people and 14 highly endangered okapi in revenge for rangers' efforts to disrupt their illegal activities in the park (UNSC (2013)).

### **5) Case Study 5 :- Conservation impacts in the Selous Game Reserve-Tanzania**

The conduct of recreational hunting is often linked with corrupt practices, particularly in poor countries that attract foreign tourist hunters willing to spend large sums of foreign exchange to hunt prime trophies. In turn, tourist hunting can attract outfitters who seek to circumvent legal controls over biological, ethical and financial aspects of the hunting industry through: exceeding or misusing quotas; poor hunting practices; and flouting of foreign exchange regulations. One solution to such management shortcomings is to ban tourist hunting. Tourists have hunted in at least 23 sub-Saharan African countries, but among the prime destinations, hunting has been banned in Kenya from 1977 to the present, in Uganda from 1967 until 2001 when hunting restarted on a trial basis, and in Tanzania from 1973 to 1977 (Price Waterhouse 1996; Barnett and Patterson 2006, Yasuda, 2008 Wright et al. 2007 WTTC.2013 Lindsey, et al 2007).

Despite assumed links between corruption, the conduct of recreational hunting and the consequent loss opportunities to hunt. Previous studies have featured alleged links between corrupt practices and the conduct of recreational hunting in different countries. While none can be verified independently, the cases illustrate the alleged involvement of different levels of public office holder, ranging from field staff to senior public servants and political leaders. However, these cases cannot generalise any formal relationships between corruption and the conduct of recreational hunting. In this sense, recreational hunting differs little from other aspects of conservation, where the influence of corruption remains poorly documented or researched. In the case of Tanzania, a prime destination for classic African hunting safaris since the early days of the East African Protectorate (Hurt et al, 2000; Mambo 2007), and a source of concern over the alleged influence of corruption on the conduct of its tourist hunting industry since the early 1970s (Planning and Assessment for Wildlife Management (PAWM 1996a; Neumann,2001; Iwai,2008).

The 50,000 km<sup>2</sup> Selous Game Reserve (SGR) is the best known hunting area in Tanzania. Currently a World Heritage Site and an IUCN Category IV protected area, SGR has long been supported through revenue from tourist hunting (Nicholson, 1970, 2001 Thompson, et al 2002). The management of SGR collapsed following the hunting ban in the mid-1970s, and by the late 1980s its annual operating budget from the Treasury was US\$150,000, equivalent to US\$ 3 per km<sup>2</sup>. Meanwhile, commercial poaching for ivory, rhino horn and meat reduced SGR's elephant population

from 110,000 in the mid-1970s to less than 30,000 in 1989, while black rhinos were reduced from over 3000 to probably less than 100 (Siege, 2000). Wildlife staff were allegedly instrumental in the poaching, acting on orders from their superiors or from politicians. Tanzania requested German development assistance in the mid-1980s to restore the SGR. The Selous Conservation Programme (SCP) began at the end of 1987, and sought to achieve two long-term goals: first, to reintroduce management systems and rehabilitate the infrastructure of SGR; and second, to encourage community-based natural resources management in the 15,000 km<sup>2</sup> of buffer zones around SGR. To secure these goals long-term once German funding ended, SCP sought a sustainable income for SGR, and succeeded in difficult negotiations to retain 50 per cent of the Treasury's share of game fees to use directly for SGR management (PAWM, 1996a; Baldus, 2003).

The funding allocated by the Treasury to SGR increased six fold to US\$900,000 when the retention scheme started in 1994, and had further increased to US\$2.8 million, equivalent to US\$ 60 per km<sup>2</sup>, by 2003. Tourist hunting provided around 90 per cent of all SGR's retained revenue, while more than 100 photo graphic tourists were needed to achieve the returns derived from a single tourist hunter (Planning and Assessment for Wildlife Management (PAWM), 1996d; Baldus et al., 2003). These increases in retained revenue allowed SGR to top up staff salaries and introduce proper allowances for game scouts, and to improve management and infrastructure. In turn, elephant numbers have since recovered to around 70,000 and continue to increase (URT, 2007), while most other wildlife populations including black rhinos have also begun to recover. Thus, the changes in fortune of SGR appear closely tied to the potential of retained revenue from tourist hunting to develop a sustainable funding base. Unfortunately, once the SCP ended in 2003, the Government of Tanzania has not since fully honoured the retention scheme agreed in 1994, and disbursements have been much less than the previously agreed 50 per cent share of fees due to the Treasury (Baldus, 2006).

#### **6) CASE STUDY 6:- WILDLIFE CRIME CASES REPORTED AND SENTENCING;**

CASE 1:- A 32-year-old man from Portsmouth has been sentenced to 1 years imprisonment suspended for 2 years for the illegal sale and export of elephant ivory from the UK. Chao XI from Portsmouth, Hampshire appeared at Portsmouth Magistrates Court on Thursday 3rd November where he pleaded guilty to two charges under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 and Customs and Excise Management Act 1979.(NWCUC 2015)

CASE 2:- A man who tried to sell tiger body parts from his home in Fife has been given a community payback order. Gary Whyte's property in Cowdenbeath was searched after wildlife officers were told of tiger claws being put up for sale on an online auction site. The 50-year-old was convicted under the Control of Trade in Endangered Species Regulation, and has been ordered to

carry out 250 hours unpaid work. He was sentenced at Dunfermline Sheriff Court. PC Lindsay Kerr, of Police Scotland, said: "Whyte stood to make a significant profit from the sale of these tiger claws, the sale of which is a contravention of endangered species legislation. As soon as Police Scotland became aware of the items being illegally offered for purchase online, a robust investigation was launched, which resulted in Whyte being convicted in October. "The sale of endangered animal parts will not be tolerated and anyone involved in such activities can expect to be dealt with by police" (BBC News 2016).

CASE 3:- Kenya's New Wildlife Law Cracks Down on Wildlife Crime; Court hands down harshest sentence yet to ivory smuggler. On Tuesday, a Kenyan court ordered Tang Yong Jian, a convicted ivory smuggler from China, to pay a fine of Ksh 20 million, approximately US\$233,000, or serve seven years in prison. It's the harshest sentence handed down yet to a convicted wildlife trafficker since Kenya's new wildlife law, designed to curb widespread poaching and wildlife trafficking in the country, went into effect last month. Authorities arrested Jian last week at Kenya's Jomo Kenyatta International Airport after discovering he had 3.4 kg of raw ivory hidden in his bag. He pleaded guilty to the smuggling charge. (AWF, 2014)

## 7) CASE STUDY 7

### **CASE STUDY 8 :- Wildlife Crime Priorities in the UK and in Kenya Wildlife Crime Priorities in UK**

The UK and Scottish priorities are set every two years and as these were set in 2012, they remained unchanged in 2013.

Badger persecution

Bat persecution

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

Freshwater pearl mussels

Poaching (including deer poaching, hare coursing, fish poaching)

Raptor persecution

Priority groups on poaching and coursing, and freshwater pearl mussel crime, continue to operate in Scotland, as well as the PAW Scotland Raptor Group (formerly the Raptor Persecution Priority Delivery Group).

### **Wildlife Crime Priorities in Kenya as recommended by Task force**

**Lifting the siege: Securing Kenya's wildlife;** report prepared by the Task force on Wildlife Security for

**Report Recommendations;**

Summary of Recommendations:- The Task Force thought it would be helpful to provide its insight on what should be concentrated on in the first instance as follows:

Part A identifies as comprehensively as possible the threats to wildlife and their habitats. But it is the threat posed by commercial poaching and bushmeat poaching that requires immediate attention. The thrust of the report demonstrates that the current ability of KWS to deal with this poaching is significantly wanting. Essentially the KWS regional approach (see Section 5.7) allied to a serious decline in the ability of field staff to respond to poaching problems allied to a fragmentation of responsibilities and confused reporting lines has rendered the Service incapable of delivering a standard of service that used to be enjoyed and delivered. In addition, Bush meat Poaching is not, in reality, on KWS's radar.

2. But restructuring KWS is not enough in itself. There has been an unfortunate decline in some key functions. Intelligence is a key weapon in responding to the poaching challenge are important in illustrating what is required in terms of KWS security operations if KWS is to regain the quality service, this country has a right to expect. Allied to this is the inability of KWS to respond to problem animal control generally let alone responding in a timely manner. This function needs to be mainstreamed as part of the restructuring of KWS.

3. In addition the work environment in regard to work ethics, in-fighting, remuneration, welfare, promotions, transfers and training are seriously hindering KWS in carrying out its mission and have led to a serious decline in the quality of the Service over the last 5 years. The reforms set out in section 5.2 do need to be addressed without any delay.

4. Wildlife crime consists of a chain of people involved in moving wildlife trophies from the field to the market place. The high prices currently enjoyed for rhino horn and ivory, has resulted in this chain including organized rings. It is thought to be critical that wildlife crime be recognized as a crime of national and international significance. It is therefore important to have all the security agencies recognize this, to collaborate accordingly and to use appropriate legislation in regard to economic crime, organized crime, etc. as well as the wildlife legislation. It will also be important to improve detection and collaboration at the border posts, on our roads and at JKIA and Mombasa port.

5. The report inevitably pays considerable attention to what is required to be done in Kenya. But the section on dealing with the demand side of the commercial illegal trade should be given a very high priority. If the demand side can be reduced, then this reduces the pressure and therefore the resources required in the effort needed to protect the species under the current considerable threat.

6. The urgent attention being recommended above, does NOT mean that the threats outlined in regard to habitat, especially in regard to protected areas, conservancies, migratory corridors and dispersal areas and the pressure from encroachment and development are not urgent or critical. Addressing these issues will however take more time and will require inter-ministerial and inter-agency collaboration. Underpinning this need is the implementation of land use planning at National level and County level as soon as possible. Indeed for Counties such as Lamu, the need is urgent.
7. Under the threats requiring attention, as outlined in the previous paragraph, the Task Force would like to highlight the need to have the Hell's Gate National Park/ KenGen issues addressed and solved as a matter of immediate need.
8. The strategy for conserving Kenya's wildlife heritage has been built on a protected area network. However what has gone unrecognized is that many species do not stay in the protected areas and undergo seasonal movement for foraging and breeding purposes. These periods spent outside of the protected areas occur on community land and in some instances private land, e.g. Laikipia. The importance of these areas for the long term viability of our wildlife resources is now being increasingly realized as they come under pressure from the threats outlined in this report. The 2013 Wildlife Conservation and Management Act has also recognized that the strategy must now incorporate the facilitation of communities and private owners in the management and protection of wildlife. But KWS does not enjoy good community relations, with several unfortunate consequences in terms of hampering security intelligence and operations. It is vital therefore that this issue is addressed full on, including having a division in KWS dealing with Community extension. It is also important for the Ministry to produce the regulations and guidelines in regard to benefit sharing and incentives as required under sections 73 and 76 of the Act.
9. This report highlights that KWS cannot work in isolation and there is a need for much improved collaboration as detailed in section 7. But this collaboration cannot happen without some detailed discussion in setting an effective working modus operandi. The report therefore suggests that the Cabinet Secretary appoints a small team as soon as possible in the three areas of collaboration that have been highlighted.
10. To quote directly from the report, the recent imposition of VAT on entry fees to the National Parks has overpriced them. For example a visitor to a National Park in Tanzania pays \$55 per day whereas a visitor to a Kenya National Park now pays \$90 per day. Comparison of visitor numbers for 2012, 2013 and the current part of 2014 clearly shows a decline with reduced park revenues. This decline works against the objectives of Vision 2030, which sees Tourism as a pillar of economic growth. This reduced revenue stream has a serious budgetary implication as it means that to maintain current levels of expenditure, KWS has to obtain a bigger percentage of funds from the Treasury.



Again this is supported by a comparison of income sources over the last two years. The consequence is that there is a real risk that there are less funds to support wildlife and habitat security efforts at a time when Kenya is facing an increase in such threats. This fiscal arrangement needs urgent review. In providing this insight on what needs to be addressed as a priority, The Task Force wishes to emphasize that this does not imply that the other issues and recommendations are not important. But ‘Rome was not built in a day’ and this insight tries to suggest where the reconstruction should start. Finally, the Task Force thought it would be helpful to cross-reference the recommendations more specifically in regard to the terms of reference. Report of the task force on wildlife security 2014. (GOK Report 2014)

