

Who Is Paying The Piper? Examining the Prevalence of Corruption in Wildlife Crime in Kenya

By Paul Mwaniki Gachoka * and Sunday Memba *

Abstract

The legal realm which discusses corruption vis-à-vis wildlife crime is extremely limited in scope and depth. Yet, a myriad of politico-legal issues increasingly arise and remain unaddressed by the day. At the heart of this intellectual voyage is a quest to discover the manner in which the corruption mammoth affects wildlife.

There is no doubt that the current unprecedented Illegal Wildlife Trade (IWT) has greatly been aided by corruption and corruption-related activities. With more beneficiaries and consumers of Illegal Wildlife Trade, corruption has been utilised as a tool by perpetrators of this crime to facilitate wildlife crime. As a result of corruption, significant profits soaring to billions of dollars are easily actualised by players in Illegal Wildlife Trade. Indeed, the prevailing exponential corruption levels and institutionalized wildlife trafficking pose an existential threat to flora and fauna globally.

It is the disposition of this paper to analyse the corruption and wildlife predicament as it is. This discussion shall thoroughly assess the existing legal framework, both internationally and municipally, the regulatory mechanisms, corruptions risks among other appurtenant themes. This discussion will also aim to provide wings to the future of wildlife protection and the curbing of Illegal Wildlife Trade. The interests of non-humans, that of wild trees and animals, can only have humans as legal guardians to protect and subsequently ensure that generations to come to enjoy nature's beauty. Hence, it is extremely important that man disembarasses himself of selfish short term perspectives and takes wings into the future.

1. Introduction

We live in interesting as well as dangerous times. Interesting in the sense that novel technologies are shaping unforeseen ways of human interaction and dangerous that the world is still ravaged by epidemics and pandemics. On 11th March 2020, the World Health Organisation Director-General, Tedros Adhanom Ghebreyesus, categorized the coronavirus (COVID-19)¹ disease a global pandemic.² The genesis of this pandemic, at the writing of this paper, was believed to be the pangolin³, the most

* Paul Mwaniki Gachoka is a Commissioner at the Ethics and Anti- Corruption Commission (EACC). He is also an Advocate of the High Court of Kenya and the Founding Partner of Mwaniki Gachoka & Company Advocates. He is also a Fellow of the Chartered Institute of Arbitrators and holds a Masters of Arts (Philosophy and Ethics) from Strathmore University.

* Sunday Memba is an Advocate of the High Court of Kenya. He is also a Correspondent with the YourCommonwealth and an Associate Advocate at Busaidy Mwaura Ngárua and Company Advocates LLP.

¹ The coronavirus disease is an infectious disease caused by the corona virus (Severe Acute Respiratory Syndrome CoV-2 virus). Corona viruses are mainly found in animals and are rarely infectious to humans. However, some strains of the corona virus can spread from animal to animal, then, from person to person.

² <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> accessed on March 27, 2020.

³ The pangolin, also known as the scaly anteater is a mammal whose body is covered by ketanin scales. Pangolins are poached and killed for their ketanin scales which are used in Chinese traditional medicine and meals.

illegally trafficked mammal in the planet⁴. The genome composition of the coronavirus had a 99% composition with a virus associated with only pangolins.⁵

The stark question is how the wild and endangered pangolin proximity to mankind became so close to the extent of causing a global pandemic.⁶ It is even perplexing to consider the thought that an endangered species, at one time in history, endangered the magnanimity of humanity. Kenya's history is awash with many incidents of corruption cases in wildlife crime. The most notable is the conservation efforts by the late Wangari Mathai who shed her blood, sweat and tears to protect the Karura Forest. Karura Forest is one of the biggest forests within a city in the world.⁷ The forest which has a size of over 1,000 hectares, is home to indigenous trees and rare wildlife species such as the ginets, eupallates among others.⁸

In the year 1990, land grabbers secretly began clearing huge parts of the forest in order to set up residential properties. To hide their activities from the public eye, the land grabbers began clearing the bushes from the middle of the forest but it was realized by the locals. Pleas from the locals and other environmental enthusiasts to have the land grabbers flushed out of the forest were not heeded by the state. In light of this, Wangari Mathai alongside others fought fearlessly against the land grabbers who facilitated their actions by bribing high ranking officials in government. The forest was eventually saved and the rich biodiversity allowed to flourish. To this end, it is clear that it is important to continue the preservation efforts started by men and women of previous generations and resist any forces to destroy flora and fauna.

2. Terms and Concepts

Concepts play a key role in any academic manoeuvre. Proper functioning legal systems depend on well-defined concepts and terms for certainty and implementation⁹. Hence, to enable a coherent exposition of facts and issues, it is important that relevant terms and concepts are eloquently defined. For this discussion, we are aware that the definition of the term 'corruption' lacks universal acceptance, we, therefore, adopt the World Bank definition of corruption being, 'the abuse of public office for private gains'.¹⁰

Closely connected to corruption is corruption risk which is the potential for a corrupt act to occur.¹¹ The United Nations Office on Drugs and Crime further defines wildlife crime as the taking, trading, (supplying, selling, trafficking or buying), importing, exporting, processing, possessing, obtaining and consumption of wild flora and fauna, including timber and other forest products, in contravention of national or international law.¹²

⁴ Heinrich, Sarah, *The global trafficking of pangolins: A comprehensive summary of seizures and trafficking routes from 2010–2015*

⁵ <https://www.weforum.org/agenda/2020/03/coronavirus-origins-genome-analysis-covid19-data-science-bats-pangolins/> accessed on March 28, 2020.

⁶ S. Steingruber(2020) *Corruption in the time of Covid-19 :A double threat for low income countries* CHR Mischlsen Institute

⁷ <https://www.nation.co.ke/lifestyle/1190-147486-gifvujz/index.html> accessed on April 13, 2020.

⁸ <http://www.friendsofkarura.org/news-views/wangari-maathai/> accessed on April 13, 2020 .

⁹ Mccubbins, Mathew AU - Turner, Mark , *Concepts of Law*, 86JO Southern California Law Review 1997

¹⁰ World Bank, *"Helping Countries Combat Corruption: The Role of the World Bank,"* 1999

¹¹ The United Nations Office on Drugs and Crime(UNODC), *Scaling Back Corruption, A guide for Addressing Corruption for Wildlife Management Authorities*(2019).

¹² Ibid.

Having laid down the blueprint of the paper, it is now behoving to consider the correlation between corruption and wildlife crime.

3. Corruption and Wildlife Crime

Corruption is the key catalyst of illegal wildlife trade in the world. In the wildlife context, the most common type of corruption is the taking of bribes by wildlife protection and enforcement personnel.¹³ Sometimes, bribes are taken by top ranking-government officials at the echelons of power. Conspicuously though, wildlife corruption also occurs in the form of intimidation and coercion of wildlife protection and management staff and also through conflict of interests.¹⁴ In exchange for bribes, wildlife protection and enforcement personnel willingly accede to the poaching of protected species, facilitate illegal logging of endangered tree species and promote illegal fishing.¹⁵ In some instances, rangers and wardens furnish wildlife traffickers with information relating to patrol timelines and other measure taken to protect wildlife. Utilising this information, traffickers then orchestrate their plans.

On the higher corruption index, government officials sometimes participate in the actual scheme of things. The officials are the protectors and the traffickers in equal measure. Further, the government officers knowingly issue licences of permits to entities that lack proper documentation or clearances. At times, the documentation may be forged or include false information. These entities are sometimes shell organisations and companies used by wildlife traffickers to hoodwink their ill intent. In the midst of wanton corruption, there are international and local statues that bar the same. Unfortunately, as the laws increase, the corruption levels still spiral exponentially.

4. The Legal Framework on Corruption and Wildlife Crime

In combating corruption and wildlife crime, laws have been legislated at the international and municipal levels. In Kenya, non-municipal law finds its force of law by virtue of Article 2(6) of the Constitution.¹⁶ The Legislature is further tasked with the duty of domesticating international law as a law-making body.¹⁷ The following international body of law constitutes the panoply of laws apropos to wildlife crime and corruption.

4.1 The International Legal Framework

4.1.1 The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

CITES¹⁸ is a multilateral treaty agreement which regulates close to 36,000 endangered flora and fauna and provides measures to ensure wildlife trade does not threaten their survival. The convention lists the endangered species in three appendices according to the threat level and other factors. Appendix I enumerates the animal and plant species that are extremely threatened. Any trade on this species is prohibited except in exceptional circumstances provided in the treaty.

¹³ Environmental Investigation Agency. *Vanishing point: criminality, corruption and the devastation of Tanzania's elephants*. (2014)

¹⁴ Holmes, L. *Rotten states? Corruption, post-communism, and neo-liberalism*. Durham: Duke University Press. (2006).

¹⁵ Supra Note 10

¹⁶ The Constitution of Kenya 2010, Government Printer.

¹⁷ Article 21(4) of the Constitution of Kenya 2010. Government Printer.

¹⁸ The CITES treaty entered into force 1st July, 1975. Kenya ratified the convention on 13th December 2008.

The species in Appendix II consists of the commonly traded species. Most of these species are not in danger of extinction but lack of regulation in their trade may risk their extinction. Appendix III species are species protected in at least a single state. States voluntarily include any species, that they deem to be in need for protection, in order to alert other CITES parties of their trade.

Implementation of CITES at the municipal level of each state party is by the CITES Management Authority¹⁹. States also have a designated Scientific Authority²⁰ and sometimes an Enforcement Focal Point to ensure compliance with the treaty provisions. In Kenya, the CITES Management Authority is the Kenya Wildlife Service (KWS)²¹ while the CITES Scientific Authority is the National Museums of Kenya (NMK)²². KWS being the CITES Management Authority, it is the only body allowed to issue permits and licences for the licit trade of wildlife.

4.1.2 The United Nations Convention Against Corruption (UNCAC)

The UNCAC²³, is the only anti-corruption treaty that has gained universal acceptance. Despite being the internationally recognized international convention, the treaty does not define corruption. Nonetheless, the instrument enumerates actions and omissions that can be deemed corrupt in form. One of these forms is the bribery of government official which is rampant in wildlife crime.²⁴ Further, the convention obliges state parties to adopt preventive measures, such as the designation of a special body, to tackle corruption.²⁵ To this end, Kenya established the Ethics and Anti-Corruption Commission (EACC)²⁶ as the anti-corruption czar to be compliant with the treaty provisions.

Another important treaty provision is the requirement for state parties to co-operate in the fight against corruption²⁷. International co-operation is paramount, especially where wildlife crime is transnational in nature. Finally, the state provides a fundamental principle, that of asset recovery, the right to recover the proceeds of corruption²⁸. This novel inclusion is considered as a radical shift of the underpinnings of criminal law such as punishment and deterrence.

4.1.3 The United Nations Convention against Transnational Organised Crime (UNTOC)

The UNTOC²⁹ treaty is aimed at addressing cross border organized crime. This treaty is particularly important in the curbing the menace of corruption and wildlife since most wildlife traffickers are organized in international or transnational criminal gangs.

¹⁹ Article 9 of the Convention on International Trade in Endangered Species of Wild Flora and Fauna

²⁰ Ibid.

²¹ The Kenya Wildlife Service is a statutory body established under the Wildlife Conservation and Management Act (WCMA, 2013) with the mandate to protect and preserve wild flora and fauna.

²² The National Museums of Kenya is established under section 6 of the National Museums and Heritage Act as a national repository for scientific, cultural and traditional things of human interest.

²³ The United Nations Convention against Corruption was adopted by Member States In October 2003 and entered into force on 14th December 2005. Kenya ratified the convention on 9th December 2003.

²⁴ Article 16 of The United Nations Convention against Corruption.

²⁵ Article 5(1) of The United Nations Convention against Corruption.

²⁶ Article 79 of the Constitution of Kenya provides for the establishment of the Ethics and Anti-Corruption Commission. The same is established under section 3 of the Ethics and Anti-Corruption Commission Act Chapter 56 Laws of Kenya.

²⁷ Article 43 of The United Nations Convention against Corruption.

²⁸ Article 51 of The United Nations Convention against Corruption

²⁹ The United Nations Convention Against Transnational Organised Crime (UNTOC) entered into force on 29th September 2003. Kenya acceded to the instrument on 16th June 2004.

4.2 Regional Framework

4.2.1 The African Union Convention on Preventing and Combating Corruption (AUCC)

The AUCC³⁰ is the African legislative tool that prohibits corruption and corruption-related activities. It mandates each state party to put in place appropriate domestic laws and bodies to combat corruption. Most importantly, it emphasises the need for regional co-operation and mutual assistance in corruption matters. Africa being one of the continents with rich and diverse wild biodiversity, it is indeed pertinent that states mutual assist each other in tackling wildlife crime and corruption.³¹

4.3 Domestic Legal Framework

4.3.1 The Constitution of Kenya 2010

The Constitution of Kenya 2010 is the supreme law in Kenya³². It binds all persons including state organs and other statutory bodies. The black letter of the constitution recognizes good governance, transparency, integrity and accountability as national values.³³ Indeed every officer, including officers clothed with the power and duty to protect wildlife are behoved to abide by these national values.³⁴ Further, the constitution details the required leadership and integrity standards to be observed by state officers.³⁵ Article 73(1) of the Constitution demands that every state officer performs their function in a manner that is consistent with the purposes and objects of the constitution, demonstrates respect for the people, brings honour to the nation and dignity of the office and promotes public confidence in the integrity of the officers. It further requires that state officers to solely perform their duties based on public interest.

Chapter 5 of the constitution extensively provides for measures to be taken to protect the environment and biodiversity. In an explicit fashion, the constitution mandates the state to ensure that ensure that there is sustainable exploitation, utilization and management and conservation of the environment and natural resources.³⁶ Further, the grundnorm provides that the state should protect generic resources and biological biodiversity.

To curb environmental destruction and promote the protection of biological diversity, the constitution permits any person, legal or juristic, to apply the court for legal redress if the right to a healthy and clean environment³⁷ is threatened, denied, infringed or violated.³⁸ The right to a healthy environment includes in part to ensure that wildlife is protected.

4.3.2 The Wildlife Conservation and Management Act, 2013

This is the principal legislation that is wholly concerned with the protection, conservation sustainable use and management of wildlife in Kenya. Of particular importance is the statute's recognition of the

³⁰ This treaty was adopted in Maputo, Mozambique on 11th July 2003. It entered into force on 5th August 2006. Kenya ratified the treaty on 3rd February 2007.

³¹ Article 18 of the African Union Convention on Preventing and Combating Corruption

³² Article 2 of the Constitution of Kenya 2010.

³³ Article 10(1) of the Constitution of Kenya 2010.

³⁴ Article 10 (2) of the Constitution of Kenya 2010.

³⁵ Chapter 5 of the Constitution of Kenya 2010.

³⁶ Article 69(1)(a) of the Constitution of Kenya 2010.

³⁷ Article 42 of the Constitution of Kenya 2010.

³⁸ Article 70 of the Constitution of Kenya 2010.

threatened biodiversity species as specified in the CITES appendices³⁹. As earlier stated, the Act establishes the Kenya Wildlife Service to implement its provisos.

In a bid to protect the rich biodiversity, the instrument stipulates a number of offences and sentences. For instance, section 91 of the Act prohibits persons from making false statements, knowingly or negligently when applying for a license or permit and imposes a fine of Kshs. 200, 000 and imprisonment for a period of one year. Further, the Act provides that an officer of KWS who participates in the commission of any of the offences under the Act is liable to conviction as stipulated in the Act⁴⁰

Further, in adopting the transformative spirit of the Constitution of Kenya 2010, the Act provides that a person may approach the High Court if he or she believes that provisions of the Act have been violated or suffer the threat of violation.⁴¹ The Environment and Land Court is also empowered to give redress if there is a violation or threat of any of the provisos of the said Act.⁴²

4.3.3 The Ethics and Anti-Corruption Commission Act No. 22 of 2011

As envisioned and required by Article 79 of the Constitution of Kenya 2010, the statute established the Ethics and Anti-Corruption Commission. This constitutional body is mandated to deal with all types and forms of corrupt practices in Kenya. It is made up of a Chairperson and four commissioners whose conduct is beyond reproach.⁴³

The core functions of the Commission are to fulfil its constitutional mandate and give life to the Anti-Corruption and Economic Crimes Act.⁴⁴ As of April 1st 2020, the commission had recovered assets worth 26.65 Billion Shillings and averted the loss of another 135.5 Billion Kenya Shillings.⁴⁵ It is also worth noting that the annual EACC corruption surveys have addressed the issue of corruption in wildlife crime on a general note. In fighting this vice, it would be vital that the EACC focuses on this province of corruption more keenly.

4.3.4 The Leadership and Integrity Act No. 19 of 2012

This legislation breathes life to Chapter Six of the Constitution which provides for the axioms of leadership and integrity. It stipulates the procedures and mechanisms for the effective administration of the provisions of the said chapter. Provisions of Chapter six are adopted as part and parcel of the statute provisos.⁴⁶ Further, each state officer is mandated to carry out the duties of the respective office with efficiency, honesty, transparency and accuracy.⁴⁷ State officers are also obligated to keep accurate and records and documents and report truthfully to the matters of their organisation. A high threshold of moral and ethical requirements are also set out in the Act. State officers are prohibited from engaging in activities such as corruption that amounts to an abuse of public office.

³⁹ The Act defines the term endangered species to include wildlife specified in the Fourth Schedule and those listed in the CITES appendices.

⁴⁰ Section 106 (1) of the Wildlife Conservation Management Act.

⁴¹ Section 106(2) of the Wildlife Conservation Management Act

⁴² Section 108 of the Wildlife Conservation and Management Act.

⁴³Section 4 of the Ethics and Anti- Corruption Act No. 22 of 2011.

⁴⁴ Chapter 65 Laws of Kenya

⁴⁵ <http://eacc.go.ke/default/> accessed on April 1, 2020.

⁴⁶ Section 6(2) of the Leadership and Integrity Act No. 19 of 2012.

⁴⁷ Section 10 of the Leadership and Integrity Act No. 19 of 2012.

4.3.5 The Kenya Wildlife Service Code of Conduct

This is the administrative framework which governs the conduct of employees of the Kenya Wildlife Service. The guidelines were developed by the Kenya Wildlife Service in partnership with the United Nations Office on Drugs and Crime.⁴⁸ The *raison d'être* of the policy includes promoting discipline within the service, promotion of honesty, ensuring accountability of employees of their decisions, protection of the integrity of the service, providing mechanisms for management of conflict of interest and providing a framework for reporting employee misconduct.⁴⁹

5. Corrupt Practices in Wildlife Crime

A peculiar feature of corruption is that it is hydra-headed; it changes from one type of practice to another according to the circumstances. But the conductors of the corruption orchestra have over time adopted certain weak links to facilitate their ill motives. This section considers the corrupt practices that are rampant in corruption aided wildlife crime.

5.1 Illegal Procurement of Permits and Licences

In Kenya, issuance of permit and licences to engage in wildlife-related activities is mainly granted by the Cabinet Secretary in charge of wildlife.⁵⁰ The issuance of Non-consumption Wildlife User Rights⁵¹ is granted by the Cabinet Secretary and a County's Wildlife Conservation and Compensation Committee while a Trophy Dealer's Licence⁵² is granted by the Cabinet Secretary. Despite the safeguards in place, it is the case that players in the illegal wildlife trade illegally acquire permits and licences. This occurs in a threefold manner. First, most permits and licences are granted by bribing government officials and committees for set up for the processing of permits and licence applications⁵³. Secondly, licence and grant applicants may give false information or falsify documents in their applications. Sometimes, persons procure fake permits and licences which sometimes are extremely concordant to the original ones⁵⁴. In some instances, participants in wildlife crime set up legal enterprises with proper documentation but end up integrating illegal wildlife products with legal products.⁵⁵ The legal business acts as a cover to their enterprise.

5.2 Embezzlement of Resources Allocated to Wildlife Management and Protection

Financial resources are paramount in ensuring effective wildlife management and protection. Funding of KWS is statutorily acknowledged as constituting funds approved by the National Assembly, investments from the service itself and money lent or donated by other partners such as UNODC.⁵⁶ KWS also has an established endowment fund vested in its Board of Trustees aimed at promoting security operations, protecting endangered species and other connected purposes.⁵⁷

Noting that wildlife protection generally covers a large geographical area, any form of misappropriation of funds may easily expose wildlife to the risk of poaching. Embezzlement of funds in this respect occurs through outright theft by heads of department or through procurement fraud. Corrupt activities

⁴⁸ The code was developed as part of the UNODC Global Programme for Combating Wildlife and Forest Crime.

⁴⁹ Clause 3 of the Kenya Wildlife Service Code of Conduct 2019.

⁵⁰ Section 79 of the Wildlife Conservation and Management Act 2013

⁵¹ Section 80 of the Wildlife Conservation and Management Act 2013.

⁵² Section 84(2) of the Wildlife Conservation and Management Act 2013.

⁵³ The Kenya Wildlife Service Corruption and Experience Survey 2019

⁵⁴ *Ibid.*

⁵⁵ DLA Piper. 2014. Empty Threat: Does the Law Combat Illegal Wildlife Trade? A Ten-Country Review of Legislative and Judicial Approaches.

⁵⁶ Section 14 of the Wildlife Conservation and Management Act 2013.

⁵⁷ Section 23 of the Wildlife Conservation and Management Act 2013.

such as procurement fraud lead to agencies possessing substandard equipment leading to difficulties in the performance of duties.

5.3 Corruption in the Judicial Process

The criminal justice system plays an important role in ensuring the perpetrators of wildlife crime are punished for their actions. Therefore, as the last safeguard of justice, any form of infiltration by players in wildlife crime means that all hope is lost to bring to book perpetrators.⁵⁸ Yet, the judiciary remains the Achilles heel in the fight against corruption. Corruption in the judiciary cuts across the support staff to judicial officers. Clerks in the court registries may be bribed to ensure court files or documents disappear in thin air, prosecutors may be compromised to act incompetently during the prosecution period and judges and magistrates may receive bribes to give favourable decisions to accused persons. One of the notable cases involving corruption of actors in the criminal justice system was the trial of Feisal Mohamed Ali. During the trial, evidence in police custody was lost, evidence was tampered with, the scene of the crime was destroyed and even a magistrate overturned a High Court decision.⁵⁹ All these factors led to the acquittal of Feisal Mohamed Ali by the High Court⁶⁰ and efforts to appeal were rejected by the Court of Appeal due to legal technicalities.⁶¹

5.4 In Situ Failures to Prevent Wildlife Crime

Wildlife corruption is also largely attributed to the lack of effectiveness by officers tasked with the protection of wildlife.⁶² Officials may well be aware of ongoing illegal activities in protected areas but turn a blind eye because of bribery. At times officials may provide valuable information to wildlife traffickers relating to wildlife protection measures such as patrol times, location of protected species and weak spots in protected areas.⁶³ It is also reported that a certain clique of wildlife wardens sometimes actively participate in wildlife crime by either acting in cohorts with wildlife traffickers.

6. Factors Contributing to Corruption in Wildlife Crime

Having discussed the forms of corruption in wildlife crime, we now turn to the reasons as to why corruption is prevalent in the wildlife sector. Understanding the root cause of this vice is instructive and vital in progressing to a corruption-less wildlife environment.

6.1 Human Insatiability and Greed

Perhaps this is the main cause of corruption in all fields of human endeavour.⁶⁴ The disposition to compare our fortune with that of others, find it wanting, and pursue illegal ways to gain material goods by any means possible. Especially at the echelons of power, where material abundance is in plenty, it would disturb a reasonable person's human psyche on why one would still want more.

This is also the case in wildlife crime, embezzlement of wildlife budgetary allocations occurs at the hierarchies of most wildlife agencies despite the officials being well remunerated. But it is not confined

⁵⁸ Sundström, A. (2012), 'Corruption and Regulatory Compliance: Experimental Findings from South African Small-Scale Fisheries', *Marine Policy*, 36: 1255–1264.

⁵⁹ <https://www.theguardian.com/environment/africa-wild/2016/jul/23/kenya-jails-ivory-kinpin-for-20-years> accessed on April 6, 2020.

⁶⁰ Feisal Mohamed Ali v Republic [2018] eKLR

⁶¹ Feisal Mohamed Ali Alias Feisal Shahbal v Republic [2015] eKLR

⁶² Moreto, W. D., Brunson, R. K. and Braga, A. A. (2015), 'Such Misconducts Don't Make a Good Ranger': Examining Law Enforcement Ranger Wrongdoing in Uganda', *British Journal of Criminology*, 55/2: 359–380.

⁶³ Ibid.

⁶⁴ D. Melé Corruption: 10 Possible Causes available at <https://blog.iese.edu/ethics/2014/11/06/corruption-10-possible-causes/> accessed on April 8, 2020.

to high ranking officials only, corruption fueled by insatiable human wants extends to lower cadres of wildlife agencies.⁶⁵ The proceeds of corruption most of the time highly exceed the pay of wildlife rangers and other personnel. Despite the fact that their salaries might be sufficient to enable them to live decently, it is the case that the frailty of the human flesh succumbs to the desire to gain more of the world.⁶⁶

6.2 Lack of Social Stigma against Corruption

Corruption in Kenya is considered normalcy. Sometimes corruption is even perceived as an essential component of any administrative body in Kenya. This severity of this perception is compounded by the fact that the end goal of the corrupt practice might be beneficial to either the perpetrator or the beneficiary. However, to the rest of the populace, the corrupt practice is severely damaging to their prospects of being served effectively by authorities.

In 2018, the EACC corruption index report noted that 65.3 per cent of Kenyans did not perceive corruption negatively. On the previous year, the percentage was at a staggering 79.3 per cent.⁶⁷ Although grand corruption is always considered negatively, petty corruption is actually accepted without an iota of shame.⁶⁸ Despite there being avenues to report any corruption scheme, it is highly unlikely for petty corruption to be reported. In the case of wildlife crime, wildlife rangers would easily accept bribes in order to give way to wildlife traffickers.

6.3 Conflict of interest

Conflict of interests manifests itself when a circumstance that has the potential to undermine the impartiality of an employee because of a possibility that there might be a clash between the person's private interest and the interest of a wildlife managing body such as the Kenya Wildlife Service. Notably, this interest may be actual interest or potential interest that may affect the non-economical and economical benefits of the officer, a spouse, relative or a business partner.⁶⁹ However, it is not entirely inappropriate for an officer to have a conflicting interest. It is when a person does not declare openly the conflict of interest and when he or she fails to refrain from any deliberations regarding a matter. This, in turn, adds fire to the corruption brigade since the person can easily be influenced by matters outside his ken of operations.

6.4 Lack of judicial independence

As previously noted, the corridors of justice are sometimes the very citadels of corruption. Judicial officers succumb to the pressures of external forces and thereby leading to miscarriage of justice. Historically, the executive arm of the government has been known to coerce judges and magistrate to deliver rulings or judgments favourable to them.⁷⁰

⁶⁵ Leberatto, A. C. (2016), 'Understanding the Illegal Trade in Live Wildlife Species in Peru', *Trends in Organized Crime*, 19: 42–66.

⁶⁶ Ibid.

⁶⁷ EACC National Ethics and Corruption Survey 2018 Report

⁶⁸ Levin, M. and Satarov, G. (2000), 'Corruption and Institutions in Russia', *European Journal of Political Economy*, 16/1: 113–132.

⁶⁹ Katzner, T. E. (2005), 'Corruption – A Double-Edged Sword for Conservation? A Response to Smith & Walpole', *Oryx*, 39: 260–262.

⁷⁰ DLA Piper. 2014. Empty Threat: Does the Law Combat Illegal Wildlife Trade? A Ten- Country Review of Legislative and Judicial Approaches.

Some wildlife traffickers enjoy the protection of government institutions and persons, therefore, making it easy for them to come to their rescue in case of arrest or prosecution. In other cases, judicial officers are not sufficiently remunerated and therefore easily accede to government favours.⁷¹

6.5 Inadequate Human Resources and Wanting Infrastructure

Lack of personnel, resources and training spur the prevalence of corruption in the protection of wildlife. For any administrative body, human resource is an integral part of ensuring accountability.⁷²

It is also the case that officers who are not well trained may often participate in corruption. Such officers may not be aware of the practices that are considered corrupt, the effects of corruption in the wildlife realm, the legal framework on corruption and the effects of corruption. Any shortcomings, therefore, exposes the Service to corruption risks. In addition to human resources, unreliable infrastructure contributes to the prevalence of corruption.⁷³ Unreliable infrastructure latently exposes opportunities that wildlife traffickers may exploit.

7. The Way Forward on Combating Corruption In Wildlife Crime

To prevent corruption from eating away our rich wildlife flora and fauna, it is key that we develop appropriate measures to combat it. Such measures will inevitably if implemented to the letter, lower the levels of corruption associated with wildlife crime.

7.1 Training and Sensitization of Wildlife Personnel

Training of wildlife personnel is crucial for organizational development and success of the Service. Being economical with home truths concerning corruption as noted is a factor that inevitably propels the wheels of corruption. Thus, proper training on matters corruption- the civilization of the mind- may well deal a big blow to wildlife traffickers. This then means that sufficient budgetary allocations should be set aside for the sole purpose of training. Training should not be limited to the legal regime governing corruption but should extend to the provinces of personal ethos, professionalism and governance. Further, the training ought to be multi-agency in nature. It should extend to law enforcement officers, judicial staff and the community. Only then will we witness the corruption levels at its nadir.

7.2 Strict enforcement of the Laws against corruption and wildlife crime

It is not a far-fetched summation that the body of laws prohibiting corruption, both on an international level and municipal level, are adequate and there is no need pressing need to add to them. However, the Sisyphean task is the implementation of the rules. The treatment of laws as constitutional or statutory suggestions rather than ironclad fiats has been one of the failures of our law enforcement institutions. Enforcement of the law brings a deterrent effect on wildlife crime. Therefore, if wildlife traffickers are arrested, brought before the courts of law and justice meted out, panic buttons will be pressed among the traffickers. Albeit there being hefty fines and long-term sentences prescribed by the law, lack of enforcement has meant that traffickers don't feel the deterrent effect. Thus, if the law was strictly enforced and successful prosecutions published widely, the deterrent nature of the laws would be noted by all and sundry.

⁷¹ Ibid.

⁷² Lowenstein, A. K. (2013), *Letting the Big Fish Swim: Failures to Prosecute High-Level Corruption in Uganda*. Human Rights Watch.

⁷³ Eliason, S. L. (1999), 'The Illegal Taking of Wildlife: Toward a Theoretical Understanding of Poaching', *Human Dimensions of Wildlife*, 4: 27-39

Reward schemes should also be put in place. Officers who actively participate in the fight against corruption should be fairly rewarded. In turn, this incentivizes officers to raise red flags, resist the urge to receive bribes and intervene in cases of corruption.

7.3 Promoting Judicial integrity

The sanctums of justice are sometimes the only solace in times of great adversity and peril. Thus, maintaining high levels of integrity, independence and competence ultimately ensures that the law is interpreted and applied indiscriminately. The principle of separation of powers between the arms of government should be upheld and the boundaries clearly defined. Judicial officers should receive sufficient pay and given them carte blanche to make decisions without fear or favour.

Further, the Judicial Service Commission, the body tasked with investigating the conduct of judicial officers, should fearlessly deal with any reports made against them touching on judges or magistrates implicated in corruption and bribery.

7.4 Proper Maintenance of Records and Documentation

Inaccurate records and improper documentation allows corrupt activities to go undetected. Therefore proper maintenance of wildlife records makes it difficult for wildlife traffickers and corrupt officials to conceal corruption, escape prosecution and launder illegal wildlife.

The first step in ensuring the correctness of record and documents is enabling secure storage of data. This also extends to the documentation of court cases touching on corruption and wildlife crime in court registries. In the same vein, documents should be checked for their validity and have the data clearly and accurately recorded.

7.5 Provision of Adequate Resources

Sufficient resources are part and parcel of a good strategy aimed at combating corruption. The Service, therefore, should be adequately funded in terms of operational and human resource. Advanced computing systems for storing data, vehicles for patrolling camps, weapons and forensic equipment should be readily available. The service should also hire enough rangers and wardens to maximise camp security. This also means getting ahead of the curve and innovating new ways, such as drone technology, in wildlife protection zones to detect corruption risks.

8. Final Reflections on Corruption and Wildlife Crime

Humanity has a pivotal role to play in the fight against corruption in wildlife crime. And this role is not only in the best interest of wildlife but most critically in the best interest of ourselves and the generations to come. Many wildlife species are now extinct and the cause of this is largely due to our inability to strangle the corruption mammoth in the wildlife sector to death. We are also alive to the fact that the interaction between wildlife and humanity has caused so much harm to animals as it has had to humans. Epidemics such as the deadly Ebola in Congo which has a fatality rate of 50 per cent and the coronavirus that has made the world stand still are realities to the universe. How then will we prepare for the future? It is not befitting that we sit on our laurels. Humanity should act firmly and eliminate all acts of corruption in the wildlife sector.

Therefore, to prevent this bubonic plague from stifling the breathing organs of our wild flora and fauna, humanity should act in solidarity to end the vice. We should always remember the words of Charles Dickens in his magnum opus, *A Tale of Two Cities*, 'It was the best of times, it was the worst of times..''