

A review of wildlife crime court cases in Malawi 2017-2020

Assessing the impact of courtroom
monitoring and collaborative
prosecution on court outcomes



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Abbreviations

ACB	Anti-Corruption Bureau
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CIU	Criminal Investigation Unit
CoP	Conference of the Parties
CP&EC	Criminal Procedure and Evidence Code
CRM	Chief Resident Magistrate
DNPW	Department of National Parks and Wildlife
DPP	Director of Public Prosecutions
ETIS	Elephant Trade Information System
FGM	First Grade Magistrate
FIA	Financial Intelligence Authority
GoM	Government of Malawi
IACCWC	Inter-Agency Committee on Combatting Wildlife Crime
IHL	Imprisonment with Hard Labour
IUCN	International Union for the Conservation of Nature
IWT	Illegal Wildlife Trade
KIA	Kamuzu International Airport (Lilongwe, Malawi)
LWT	Lilongwe Wildlife Trust
MoJ	Ministry of Justice
MLA	Mutual Legal Assistance
MPS	Malawi Police Service
MRA	Malawi Revenue Authority
NACS-II	National Anti-Corruption Strategy II
NGO	Non-Governmental Organisation
NIAP	National Ivory Action Plan
NPWA	National Parks and Wildlife Act
PRM	Principal Resident Magistrate
SRM	Senior Resident Magistrate
SADC	Southern African Development Community
UNCAC	United Nations Convention Against Corruption
UNESCO	United Nations Educational, Scientific & Cultural Organisation
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organised Crime
WCIU	Wildlife Crime Investigation Unit
WiCIS	Wildlife Crime Information System database
WJP	Wildlife Justice Project
WorldWISE	UNODC World Wildlife Seizure database



Foreword

Extensive and notable progress has been made in Malawi on combating wildlife crime since the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of Parties in 2016 (CoP17) in South Africa.

At the CoP17, Malawi was identified as the principal ivory transit hub in Southern Africa, having been implicated in some of the biggest ivory seizures in the world.¹ Malawi was requested by CITES to develop a National Ivory Action Plan (NIAP) in recognition of the immediate need to improve law enforcement efforts. To address this concerning situation the Government of Malawi (GoM), through several government agencies, and in partnership with civil society actors, developed and implemented multiple legislative, law enforcement and public awareness programmes.

The National Parks and Wildlife amendment Act was passed in 2017, introducing a maximum penalty of 30 years in prison for offences against species such as pangolins, rhinos and elephants, which is amongst the highest in the world. Awareness campaigns have been delivered across the country targeting a range of audiences, from local communities living alongside protected areas to international travellers and the public. Law enforcement measures have been enhanced through extensive training, development of legal tools, and an increased collaboration between all agencies. Organised crime networks have been effectively disrupted through targeted, high-level investigations.

The change in the judicial response towards wildlife offences in recent years has been striking. Prior to 2016, offences against elephant or rhino (two of the most protected species as per Malawian law) were punished only with a small fine. However, following extensive high-level discussions, the development of legal tools and training and the development by the Malawian judiciary of sentencing guidelines for wildlife crime, custodial sentences are now the norm. For the period studied in this report, custodial sentences averaging 5.25 years were handed down in 94% of cases against 'Listed Species' (i.e., those with the highest level of protection such as pangolins, rhinos and elephants, amongst other species).

In 2016, Malawi was the entrepôt for ivory into Southern Africa. In 2020, custodial sentences of 11 years were handed down by the Lilongwe Magistrate Court to Chinese nationals reported to be leading a major wildlife organised crime group in Malawi, and the region, for at least a decade. It is an indication of significantly improved law enforcement efforts that no large confiscations of ivory originating from Malawi have been reported worldwide for over five years.

But the battle is not yet won. Despite a broad commitment to criminalise the ivory trade, including in some traditional demand countries, the International Union for the Conservation of Nature (IUCN) notes that African elephant population is still decreasing. According to the United Nations Office on Drugs and Crimes (UNODC), 11,215 elephants were illegally

¹ Report on the elephant trade information system (ETIS). CoP17 Doc. 57.6 (Rev. 1). Seventeenth meeting of the Conference of the Parties Johannesburg (South Africa), 24 September – 5 October 2016. <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1.pdf>

Executive summary

This is the second report completed by Lilongwe Wildlife Trust (LWT) that analyses available Malawi court case data on illegal wildlife trafficking (IWT).² This report takes stock of the past four years of courtroom monitoring activities that broadly aim to improve transparency and accountability inside courtrooms. It provides an evidence-based diagnosis of the evolving IWT situation in Malawi to help stakeholders tailor and prioritise wildlife crime prevention strategies.

The GoM has shown a strong commitment to combatting wildlife crime since Malawi was identified at the 2016 CITES CoP17 as being a country of “primary concern” for ivory trafficking.³ In recognition that Malawi was a hub for ivory trafficking, CITES requested Malawi to draw up a National Ivory Action Plan (NIAP). This action plan included a series of measures that a CITES Party must deliver, including legislative, enforcement and public awareness actions.

Malawi has implemented a range of initiatives since 2016, going even beyond those agreed in the NIAP. These include amending wildlife and forestry legislation; training multiple law enforcement agencies; the development of legal tools; support for investigations and prosecutions including co-prosecution; high-level judicial discussions; courtroom monitoring; awareness campaigns for multiple audiences and heightened media coverage of wildlife crime. Further detail on the major initiatives implemented to date is included in Annex 1.

LWT, in partnership with the DNPW and other government departments, has supported the development and implementation of many of these initiatives, through its Wildlife Justice Project (WJP). The WJP includes a comprehensive capacity building programme, national court monitoring for wildlife crime cases, and collaborative direct prosecution for the most serious crimes (private counsel granted consent to prosecute wildlife cases, together with the MPS and DPP). The WJP supports its government partners in ensuring that Malawi’s legal framework, including application of newly amended laws, is effectively (and fairly) enforced.

The WJP monitors wildlife crime cases from arrest through to court outcome; the data collated through the programme forms the basis for the analysis presented in this report. This report updates the first court case analysis report published in 2017 and includes data on court outcomes from 2017-2020.⁴ We also discuss which of the major initiatives discussed above may have had the most influence on court outcomes and provide recommendations for further strengthening the response to wildlife crime in Malawi. It is expected that the recommendations are applicable in other jurisdictions.

In 2019, Malawi updated its progress to the CITES Secretariat; it was observed that over 80% of the actions in the NIAP had already been implemented. The Secretariat recommended that Malawi exit from the NIAP process in recognition that it had

2 A review of wildlife crime court cases in Malawi, 2010-17 Assessing the impact of Court Room Monitoring and Private-Public Prosecution on Court Outcomes. Authors Victoria May, Laure Barthau, Susan Lukhere, Bertha Chipanda and Jonathan Vaughan.

3 Report on the Elephant Trade Information System (ETIS). CoP17 Doc. 57.6 (Rev. 1). Seventeenth meeting of the Conference of the Parties Johannesburg (South Africa), 24 September – 5 October 2016 <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1.pdf>

4 <https://www.lilongwewildlife.org/wp-content/uploads/Malawi.Wildlife.Justice.Report.2017.pdf>

made significant progress in tackling the illegal trade in ivory. The court outcomes data in this report support the assessment of the CITES Secretariat that significant improvements in law enforcement related to IWT have taken place since 2016, and that overall, these have translated into a stronger judicial response and deterrent-level sentencing.

A major development since 2016 was the passing of a new wildlife law. The National Parks and Wildlife (Amendment) Act, 2017 (Act no. 11 of 2017) provides for significantly increased penalties, including a maximum of 30 years in prison (with no option of a fine) for Listed Species offences.

LWT's 2017 report (most cases analysed were prosecuted under the 1994 law) highlighted that until September 2016, the most common sentence for Listed Species related crimes was a small fine. WJP's courtroom monitoring programme and co-prosecution model were initiated in July 2016. From September 2016 (i.e., following the court monitoring and co-prosecution but before enactment of the new law), imprisonment with hard labour (IHL) became the most common sentence for Listed Species offences, with a mean average prison sentence of around three years. For elephant-related offences, custodial rates rose from 2.6% to 84%, and to 100% where cases were co-prosecuted with private counsel. This suggests that courtroom monitoring and co-prosecution, in addition to other initiatives including training and awareness campaigns, may have been the drivers for stronger sentences even before the new Act brought in higher penalties. Courtroom monitoring increases the transparency of the criminal proceedings and co-prosecution has increased the knowledge, skills and capacity of the prosecuting teams in their application of law.

The conviction rate and average sentence has further increased during the period covered in this report. Between 2017-2020, the WJP recorded a total of 357 IWT sentences, 255 of which were for offences related to Listed Species (e.g.,

elephant, pangolin, rhino, leopard). Of the 255 sentences, 232 were custodial, i.e., a custodial sentence rate of 91%, with an average sentence between 2017-2020 of 4.8 years. It is noteworthy that in 2020, the custodial rate for Listed Species offences increased to 94%, with an average length of imprisonment of over five years.

It is also encouraging to note that elephant-related cases – and therefore ivory trafficking – have dropped by 44% during the period. Further, improved law enforcement at borders has made the illegal export of wildlife products through Malawi's international airports almost impossible (no illegal exporting/importing of wildlife products offences have been recorded since February 2019) and no major international IWT seizure has been linked to Malawi since March 2017.

Despite these impressive achievements, inevitably challenges remain and recommendations to address these are detailed in the Discussion and Recommendations section of this report. The WJP has long been concerned over gaps and inaccuracies in court data collection and case file management, legal mischarging (due to incorrect or incomplete investigation or prosecution) and a leniency in sentencing of non-African national offenders compared to Malawian nationals.

Positively, in the last couple of years, Malawian courts are no longer showing leniency to non-African nationals. This was clearly demonstrated in the sentencing of a Chinese syndicate in Malawi's most serious wildlife trafficking case to date. In May 2019, QinHua Zhang was arrested and later convicted and sentenced, together with eight co-accused, for coordinating a major organised criminal network responsible for trafficking wildlife products from Malawi and the region for more than a decade. In July 2020, Zhang was jailed for 11 years for illegally possessing rhino horn and an unlicensed firearm. In total, 56.5 years imprisonment was pronounced against the nine convicts, of which seven are Chinese nationals (including QinHua Zhang and his

son-in-law Li HaoYuan, both arrested while on bail for the prosecution of another ivory case which began in 2017) and two Malawi nationals.⁵

Lin Yun Hua, a Chinese national, Zhang's husband and the alleged kingpin of the criminal syndicate, was arrested in August 2019 following a three-month manhunt by the authorities. He has since been sentenced to 14 years for dealing in rhino horn, 14 years for possession of rhino horn and six years for money laundering, with the sentences to run concurrently. The magistrate (now Justice) presiding over the matter, Justice Violet Chipao, ordered the convict to be deported to China on completion of the jail term. In her statement, Justice Chipao highlighted as aggravating circumstances the evidence proving Lin Yun Hua's role as leader of the criminal syndicate and observed that traffickers deserve more severe punishment than poachers.⁶ This conviction was a major disruption to a deep rooted and inter-continental wildlife trafficking syndicate.

It is evident from this report that the Malawian Judiciary (and other members of the Inter-Agency Committee to Combat Wildlife Crime in Malawi, IACCWC) has demonstrated significant commitment to preventing organised wildlife crime in recent years.

KEY FINDINGS FOR 2017-2020

The overall conviction rate for wildlife crimes is high, most Listed Species convictions resulted in a custodial sentence in line with the law, but while ivory trafficking has decreased, the trade in pangolins has risen sharply.

Conviction rate and sentencing for Listed Species remains high

- **87% overall conviction rate for IWT offences:** WJP monitored 259 IWT court cases (519 individual cases as some had multiple defendants). Of the 519 individual cases, 428 judgments were handed down, including 372 convictions i.e., an 87% conviction rate.
- **91% custodial sentence rate for Listed Species offences:** 357 IWT sentences were pronounced; 255 were for offences against Listed Species (i.e., elephant, pangolin, rhino. or leopard). Of the 255 sentences related to Listed Species, 232 resulted in a custodial sentence, i.e., 91%, with an average of 4.8 years. In 2020, the custodial rate for Listed Species offences further rose to 94%, with an average of over five years.
- **Custodial sentences increased on average:** the mean custodial sentence for Listed Species offences increased by around seven months over the period (55 months in 2017, 63 months in 2020).
- **50% of convictions are for elephant related offences:** 255 of the total 519 defendants (49%) were involved in trade in African elephant specimens (mainly ivory), and 50% of total convictions for wildlife offences were for possession/trade of elephant specimens.
- **44% decrease in elephant cases:** 45 court cases involving 80 defendants in 2017 dropped to 25 court cases involving 40 defendants in 2020, i.e., a 44% decrease in number of court cases / 50% decrease in the number of defendants.
- **12-fold increase in pangolin trafficking:** three court cases (seven defendants in 2017) rose sharply to 38 court cases (84 defendants) in 2020 (a 12-fold increase in relation to number of defendants). In 2020, pangolin cases far exceeded elephant

5 <https://eia-international.org/news/wildlife-crime-syndicate-members-jailed-for-total-of-56-5-years-kingpin-due-up-later/>

6 <https://eia-international.org/news/yunhua-lin-notorious-kingpin-of-wildlife-crime-syndicate-is-jailed-for-14-years-in-malawi/>

cases (84 individual pangolin cases versus 40 individual elephant cases).

- **Higher sentences for elephant cases than pangolin cases:** despite having the same level of protection under the law, the average length of imprisonment for those convicted for elephant related offences is higher (average of 5.6 years) than for pangolin cases (average of 4.8 years).
- **Rhino cases remained low and stable:** there were two cases related to rhinos in 2017 and two in 2020.

Law enforcement actions at borders are proving effective

- **Zero illegal import/export:** illegal export of wildlife products through Malawi's international airports has become almost impossible, this is reflected in a significant reduction in import and export IWT offences in Malawi between 2017-2020.
- **Zero international IWT seizures:** no major international IWT seizure has been linked to Malawi since March 2017.

Reduction in foreign national cases and increased penal response

- **Lin-Zhang convictions disrupted foreign national networks:** since the prosecution of the Lin-Zhang syndicate in 2019, no cases involving nationals from outside the African continent were recorded by the end of 2020.
- **Increase in penal response to non-African foreign nationals:** a real change has taken place since 2019 regarding the penal response to non-African foreign nationals. The average length of prison sentences for this group (for sentences passed in 2019 and 2020) is now more than eight months longer than that of nationals. The issue of lower sentences for foreign nationals highlighted in the 2017 court data analysis has therefore been addressed.
- **No increase in African foreign national cases:** the involvement of non-Malawian

African nationals remained relatively stable over the period (nine individuals in 2017 and eight in 2020).

Ongoing challenges with case processing and sentencing discrepancies

- **Trial length regularly falls short of the judiciary standards:** at a national level, only 49% of trials involving Listed Species were concluded within 90 days (as per the judiciary standards) and 10% lasted more than 360 days. There was also a clear discrepancy between districts, for example, in Blantyre 1/3rd of all trials for wildlife offences lasted more than 360 days.
- **Granting bail leads to longer trials:** there is a positive relationship between the average number of days to conclude a case and the bail/remand rate for the ten districts with the highest prevalence of Listed Species cases i.e., when bail is granted, the case takes longer to conclude.
- **Granting bail is associated with higher acquittal rates:** the conviction rate is higher for cases where the defendant was remanded in custody during the trial (87%) than for those granted bail (60%). Conversely, the acquittal rate is 40% for individual cases on bail compared to only 13% for those remanded in custody, a 27% difference.
- **Concerning discrepancies remain in sentencing and application of the law:** there is significant variance in sentencing cases with similar facts and evidentiary circumstances falling under the same penalty section across court regions, within court regions, across magistrate grades as well as among magistrates of the same rank. For example:
 - The maximum sentences set under the same section of the NPWA vary between between 5 and 18 years.
 - For Listed Species offences, sentences handed down by Chief Resident Magistrates (CRM) varied from nine

years in the Eastern region down to 3.6 years in the Central region.

- Suspended sentences were used infrequently overall, but Blantyre court gave suspended sentences for Listed Species offences in 6 of 11 individual cases in the period.
- The average difference in length of imprisonment for sentences handed down by lay and professional magistrates is about two years – defendants appear to be given harsher sentences by lay magistrates.

Corruption is an ongoing threat to combatting wildlife crime

- **The scale of the operations of the Lin-Zhang syndicate indicates that corruption remains prevalent within wildlife crime in Malawi:** it would be impossible for such groups to operate without the explicit co-operation of public institutions. However, the conviction of this ‘kingpin’ case and the lengthy custodial sentences handed down show that there is integrity in the prosecution and courts.

Based on the findings and observations from the data collected, a series of recommendations have been developed. In summary, these proposed measures are expected to:

- Promote in-country and transboundary collaboration between all relevant stakeholders; encourage open judicial dialogue and case law review to drive transparency in the judicial process and reduce corruption.
- Improve access to data records and court documentation to facilitate the development of consistent jurisprudence.
- Promote the use of collaboratively developed legal tools to avoid procedural errors and to enhance effective prosecution.

- Encourage and support the sharing of skills through a collaborative prosecutorial approach, including increased engagement among the different prosecution authorities (DPP, MPS, DNPW, FIA).
- Improve access to legislation, provide seminars to cultivate a common application of sentencing principles, particularly with regard to proportionality in criminal law penalties applied to wildlife crime.
- Provide on-the-job prosecution mentoring and facilitate regional analysis/dissemination of court outcomes and prosecution strategies.



Introduction

Eastern and Southern Africa have an enviable 5,232 protected areas covering 2,120,112 km² of land and 473,815 km² of ocean.⁷ The region is home to the majority of elephants and rhinos on the continent.⁸ Malawi alone has 133 protected areas covering 27,190 km² and 192 mammal species, eight of which are considered threatened.⁹ Lake Malawi is on the UNESCO World Heritage List¹⁰ largely due to exceptional levels of cichlid endemism – all but five of the 350 cichlid fish in Lake Malawi are endemic.

Endangered wildlife and habitats in Malawi face a multitude of threats due to a challenging economic climate with an increasing, agriculture-dependent population reliant on natural resources. Widespread deforestation has led to fragmentation and loss of habitat. As a result of a combination of pressures, Malawi's wildlife has historically undergone devastating declines. For example, in 2018, Kasungu National Park was supporting just c. 40 elephants, down from over 2000 in the late 1980s.¹¹ There are currently an estimated 2,119 elephants in total in Malawi. A combination of efforts, including law enforcement strategies within and outside protected areas, have allowed for a slow population recovery for some species.

IWT is one of many factors, alongside habitat loss, which presents a threat to the survival of some species. In the past, Malawi was implicated in some of the world's largest wildlife trafficking seizures. Its central position between Eastern and Southern Africa and its reputation of leniency in enforcing the wildlife law made it a perfect transit hub to evade law enforcement and send wildlife products to demand countries. In 2016, the CITES CoP17 identified Malawi as a country of "primary concern" for ivory trafficking.¹²

The role of corruption in wildlife crime has been noted by several international bodies, including the UN General Assembly (UNGA). At its 73rd session in 2019, the UNGA called upon Member States 'to prohibit, prevent and counter any form of corruption that facilitates illicit trafficking in wildlife and wildlife products, including by assessing and mitigating corruption risks in their technical assistance and capacity building programmes related to wildlife, by strengthening their capacity to investigate and by prosecuting such corruption.'¹³

In 2020, Malawi was ranked 129 of 180 countries on the Corruption Perception Index, with a score of 30/100 i.e., it falls within the top third most corrupt countries in the world.¹⁴

7 IUCN State of protected and conserved areas in Eastern and Southern Africa, Nairobi, Kenya : IUCN ESARO, 2020 xviii, 240p. : ill., maps 2020 <https://portals.iucn.org/library/node/49133>

8 IUCN State of protected and conserved areas in Eastern and Southern Africa, page 23

9 IUCN State of protected and conserved areas in Eastern and Southern Africa, page 98, 99

10 <https://whc.unesco.org/en/list/289>

11 Illegal Wildlife Trade Review, Malawi, A technical assessment undertaken on behalf of the Department of National Parks and Wildlife of Malawi. *Shelley Waterland, Jonathan Vaughan, Professor Erica Lyman and Dr Ivana Jurisic.*

12 Following a report submitted by the Elephant Trade Information System (ETIS) in 2016.

13 UNGA Seventy-third session (2019). Agenda item 14 Tackling Illicit Trade in Wildlife. <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N19/275/93/PDF/N1927593.pdf?OpenElement>

14 Corruption Perceptions Index (2020). Transparency International www.transparency.org

Regulating the international wildlife trade

CITES is an international agreement between governments. The Convention has been in force since 1975 and Malawi acceded to it in 1982.¹⁵ Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.

CITES categorises endangered species in trade on three Appendices according to the degree of protection they require. Appendix 1 includes all species threatened with extinction (trade in their specimens is only allowed under exceptional conditions).¹⁶

IWT is a serious threat to the survival of the African savannah elephant (*Loxodonta africana*),¹⁷ Temminck's pangolin (*Smutsia temminckii*)¹⁸ and the black rhino (*Diceros bicornis*)¹⁹ which are all on Appendix 1. The trade in specimens of these species accounts for the vast majority of wildlife crimes in Malawi. Until recently, in Malawi offences related to ivory possession and trade predominated, however in 2020, pangolin cases far exceeded elephant cases.

Trends in elephant populations and ivory trafficking

The current population trend of both the African forest elephant (*Loxodonta cyclotis*) and the African savannah elephant (*Loxodonta africana*) is declining according to the 2020 IUCN Red List of threatened species assessment.²⁰ The UNODC World Wildlife Crime Report estimated that the number of elephants in Africa fell from

556,973 in 2006 to 413,242 in 2015, primarily due to poaching to meet the demand for ivory in Asia.²¹

In contrast, the ETIS shows that the total annual weight of ivory seizures began to decline in 2013 and, in the same period, the price of illicit raw ivory tusks in Asian countries is reported to be decreasing.²² Despite China announcing a ban on ivory trade in 2017, international seizures show that most illegally trafficked ivory is still destined for Asia (especially China, Vietnam and Thailand). It is suspected that the change in legislation and associated enforcement in some of the main legal ivory markets has affected the demand. However, this positive development has not yet removed the threat to the survival of elephants in some areas as the ivory trade continues.

This echoes the observations made in this report in relation to some IWT trends. Our analysis of Malawi's court case data also shows a decrease in records of ivory trafficking as noted more widely in UNODC's report. This finding highlights the interconnectedness of organised crime networks operating in Malawi and across continents.

Trends in pangolin trafficking

At the CoP17 in 2016, CITES Parties adopted Resolution Conf. 17.10 "Conservation of and trade in pangolins" where it recognised that "the illegal trade in pangolin specimens (...) has increased significantly to meet international demand"; and as a matter of recommendation, urged the Parties "to (...) implement comprehensive national legislation (...) that makes provision for deterrent penalties to address illegal trade

15 <https://cites.org/eng/disc/parties/chronolo.php>

16 <https://cites.org/eng/app/appendices.php>

17 Wittemyer et al. 2014, Thouless et al. 2016

18 Res Conf. 17.10 Conservation of and trade in pangolins

19 Emslie et al. 2019 http://www.rhinoresourcecenter.com/pdf_files/156/1560170144.pdf

20 <https://www.iucnredlist.org/>

21 UNODC World Wildlife Crime Report, Trafficking in protected species, 2020

22 Report on the Elephant Trade Information System (ETIS) to the Eighteenth meeting of the Conference of the Parties Colombo (Sri Lanka), 23 May – 3 June 2019 <https://cites.org/sites/default/files/eng/cop/18/doc/E-CoP18-069-03-R1.pdf>

in specimens of native and non-native pangolin species". More recently, in its World Wildlife Crime Report the UNODC determined that there has been a constant increase in seizures of pangolin specimens since 2014.²³ Most pangolin scales are destined for Asian traditional medicine, with the main markets being China and Vietnam. For example, in January 2019, 8.3 tons of pangolin scales originating from Nigeria and destined for Vietnam were seized in China (Hong Kong SAR). Three months later, another consignment of 12.9 tons of pangolin scales from Nigeria en route to Vietnam was seized in Singapore. The trade in pangolins in Malawi remains small in comparison to some African countries. Only three court cases related to pangolin trade involving seven defendants were recorded in 2017, but this increased to 38 court cases involving 84 defendants in 2020. In 2020, pangolin cases far exceeded elephant ones (84 individual pangolin cases versus 40 individual elephant cases). The details of the pangolin trade in Malawi requires further investigation; to date it appears to be domestic and almost entirely in live animals rather than scales.

Collaborative efforts to combat wildlife crime in Malawi

To mitigate IWT challenges, the GoM adopted a collaborative approach between government agencies, the private sector and civil society. This included establishing the Inter-Agency Committee on Combating Wildlife Crime in 2014. The Committee brings together law enforcement agencies, other relevant government agencies and NGOs to facilitate multi-agency investigations, share national and international IWT policy updates and to promote awareness of IWT at the highest levels across all member agencies.

The IWT progress report published in January 2019 issued a series of recommendations, including strengthening the IACCWC, continuing Parliamentary engagement and facilitating relations between Parliament, agencies, Non-Governmental Organisations (NGOs) and other stakeholders.²⁴

LWT's WJP, which includes courtroom monitoring and collaborative prosecution²⁵ activities, was initiated in 2016 following consultations between LWT, DNPW, MPS, DPP and the Malawian Judiciary. Its aim was to help build capacity and improve court outcomes. Since the WJP started, the judiciary has significantly increased the use of custodial sentences for serious wildlife crimes. Average sentences for Listed Species offences jumped from fines averaging USD \$40 to a custodial rate of 94% with an average sentence of 5.25 years' imprisonment. In comparison, a similar project in Kenya reported that from 2016 to 2019, out of 103 persons convicted of ivory trafficking, 83% were sentenced to a jail sentence (typically between one and five years) with the option of avoiding jail by payment of a fine.²⁶

The planned outcome of the WJP and court case data collection is to reduce IWT within Malawi (and surrounding countries) and strengthen awareness and resistance to the community-level threats associated with serious wildlife crimes. The enforcement of Malawi's IWT legal framework should be deterrent, leading to a reduction in the trafficking/trade of threatened species and an increase in the awareness and security of the population. We hope that this report can facilitate an open dialogue between the prosecution, judiciary and all involved in the effort to reduce wildlife crime and its ancillary, negative effects.

23 UNODC World Wildlife Crime Report, Trafficking in protected species, 2020

24 Illegal wildlife trade progress report 2015-18, Brighton Kumchedwa, Department of National Parks & Wildlife Dr Ivana Jurisic, GIZ

25 Private Counsel being granted consent by the DPP to prosecute under the NPWA or State Advocate joining MPS in prosecuting serious and particularly complex wildlife matters.

26 Crimes against Wildlife and the Environment Kenya's legal response to wildlife, forestry and fisheries crimes. Court monitoring report 2018-2019. Wildlife Direct.

Report Overview

This report presents the impact of the courtroom monitoring and co-prosecution model on wildlife crime court outcomes in Malawi over the four-year period between 2017-2020.

The methods adopted are presented in the **Methodology** section and the results of data analysis in the **Findings** section below; these results are subsequently analysed in the **Discussion of Findings and Recommendations** section.



Methodology

This is LWT's second report analysing Malawi's court case data on IWT.²⁷ This report takes stock of four years of courtroom monitoring activities (2017-2020) that broadly aim to improve transparency and accountability inside courtrooms. It provides an evidence-based diagnosis of the evolving IWT situation in Malawi to help stakeholders tailor and prioritise wildlife crime prevention strategies. Note that data from 2021 is not included in this report.

The Wildlife Justice Project team

The WJP team monitors wildlife cases across the country, a critical intervention that helps to identify gaps in knowledge and potential incitement of malpractice. The WJP facilitates ongoing analysis of the judicial process through regional case review meetings which identify solutions for an accurate, consistent application of the law as well as any training needs.

LWT is one of the only NGOs in Southern Africa to have secured government sanction to privately prosecute wildlife and forest crimes on behalf of the State. Private prosecution by LWT lawyers also allows for on-the-case mentoring of junior prosecutors. Along with the Head of the WJP, the team includes two Malawian lawyers who provide prosecutorial support through co-prosecution, pre-trial meeting preparation, case review meetings and training. The legal advisors are supported by four court monitors (based in the north, central and southern/eastern regions) who attend every wildlife (and forest) crime case in Malawi. The court monitors report on all happenings in each case, this data

is then transferred into the Wildlife Crime Information System (WiCIS). This report has been compiled by the WJP team with in-house support.

Data collection and compilation

In 2017, following a baseline study²⁸ on elephant and rhino crimes in Malawi, and with support from INL, a database hosted by LWT was created and used to record all data collected during courtroom monitoring activities, WiCIS. WiCIS is currently used as Malawi's national wildlife crime case management system, a centralised information system accessible by all relevant authorities and LWT. WiCIS served as the primary source of data used for analysis in this report.

WiCIS includes information from all wildlife and forestry related arrests and court cases monitored or co-prosecuted by LWT and its partners. The information is drawn from courtroom monitoring reports shared by LWT's and DNPW's legal team through an online data collection tool.²⁹ It also includes court rulings, prosecutors' submissions, domestic/international legislation, and subsidiary legislation. WiCIS is organised around four main forms connected to each other: arrest, defendant, hearing, and prosecution.

The report's findings presented below were made possible through WiCIS' predefined queries (queries on arrest data and on prosecution data, mapping tools and more). They build on the initial baseline study analysed in the first report.

27 (First report) A review of wildlife crime court cases in Malawi, 2010-17 Assessing the impact of Court Room Monitoring and Private-Public Prosecution on Court Outcomes" Authors Victoria May, Laure Barthau, Susan Lukhere, Bertha Chipanda and Jonathan Vaughan.

28 The baseline covered the period 1st January 2010 to 30th June 2017 i.e before the start of LWT's court monitoring project.

29 KOBO Tool Box. <https://www.kobotoolbox.org/>

Type of data collected

The statistics and trends presented in this report are mainly extracted from the court case data collected by court monitors as part of the courtroom monitoring activities. These data include:

Identification: police docket and court case number, magistrate name, court and grade of magistrate, court clerk, accused person's name(s)/surname, nationality.

Particulars of the offence as it appears on the charge sheet: the type, number, value and weight of the trophies; date of arrest/date of first hearing; officer in charge of the case; plea recorded; type of proceedings, type of prosecutor, i.e., private or public or both and whether accused is represented/legal aid.

Status/Result of proceedings: remand status (in custody/on bail); bail and bond terms given, (if any); trial outcome; aggravating and mitigating factors; sentence imposed, length of imprisonment/amount of fine sentenced, if fined, whether accused paid the fine(s); adjournments and reasons; appeal made and outcome; proceeds of crime applications; confirmation procedure completed; re-trial ordered and outcome of re-trial.

Scope of the research

The period analysed is from 1 January 2017 to 31 December 2020. The data on judgements corresponds to judgements that were passed between these two dates. The data on sentencing corresponds to sentences that were passed during this four-year period. All other findings are based on the date of the first hearing. This means that a case that started during the data collection period, but with a sentence passed after the period (for example on 1 January 2021), is analysed in the data overview, but is not counted in the calculation of the sentencing statistics. Further, if the first hearing of a case occurred before 1 January 2017, but the sentence was passed during the study period, the case will not appear in the data overview, but will be part of the sentencing data.

The geographical scope of data collection is in line with the scale of the WJP project intervention i.e., across Malawi's four regions (Northern Region, Central Region, Southern Region and Eastern Region). Only seven of Malawi's 28 districts – Chiradzulu, Likoma, Mwanza, Mulanje, Neno, Phalombe and Thyolo – have not reported any wildlife court cases.

Data analysed in this report was sourced from courtroom monitoring reports and prosecution files. Several geographical location findings (for example the distribution of cases per district) were made based on the court location (data 100% complete) rather than on the location of arrest (incomplete data). There are some data gaps on gender, age and nationality of the defendant, plea, remand status and defendant representation status (especially for the period before the implementation of WiCIS); however, the data is sufficiently comprehensive to furnish reliable trends. In the case of incomplete data, results are presented as percentages rather than raw data.

The data analysis is presented in the Findings section below. Note that this report focuses particularly on Listed Species related cases (e.g., elephant, pangolin, rhino) as these are deemed to be the most serious wildlife crimes by the Malawi Government. Finally, much of the court data presented originates from court cases heard before a magistrate court; wildlife court cases before the Supreme Court or High Court are rare or ongoing.



Findings

The results of the court case data analysis are presented across the following sections: data overview, defendant profile, conclusion rate, type of charges, plea, remand, conviction rate and sentencing of the convicts.

CASE ANALYSIS

Overview

This study covers 259 court cases and 519 individual cases. It is not an exhaustive study of all wildlife cases recorded nationwide³⁰; however, the large volume of data it does include ensures the reliability of the statistical results. Since we do not have access to all case data, we cannot deduce the exact proportion of cases covered in the study, but we estimate it covers close to 100% of Listed Species cases and around 30% of the Endangered/Game Species cases.

Table 1 shows the total number of court cases (259) and the total number of individual cases (519) by year relating to several species. Importantly, “court case” in this report may include several “individual cases”; every “individual case” refers to one single defendant under one specific court case.³¹ For example, the case 492/19 Qin Hua Zhang and 8 Others represents one court case and nine individual cases on the raw data.

First, we will look at cases involving African elephants (savannah *Loxodonta africana* and forest *Loxodonta cyclotis* – DNA analysis is not routinely necessary for prosecutions; therefore, cases do not specify the species), pangolins (Temminck's pangolin, *Smutsia temminckii*) and rhinoceros (black rhino,

Diceros bicornis). These species are all CITES Appendix 1 and classified as “Listed Species” by the National Parks and Wildlife (Protected, Endangered and Listed Species) (Declaration) Order 2017. Elephant-related cases (ivory trafficking cases – raw and carved – and, more rarely, bone and tail hair cases) predominate. They represent 54% of court cases recorded (141 of 259 court cases).

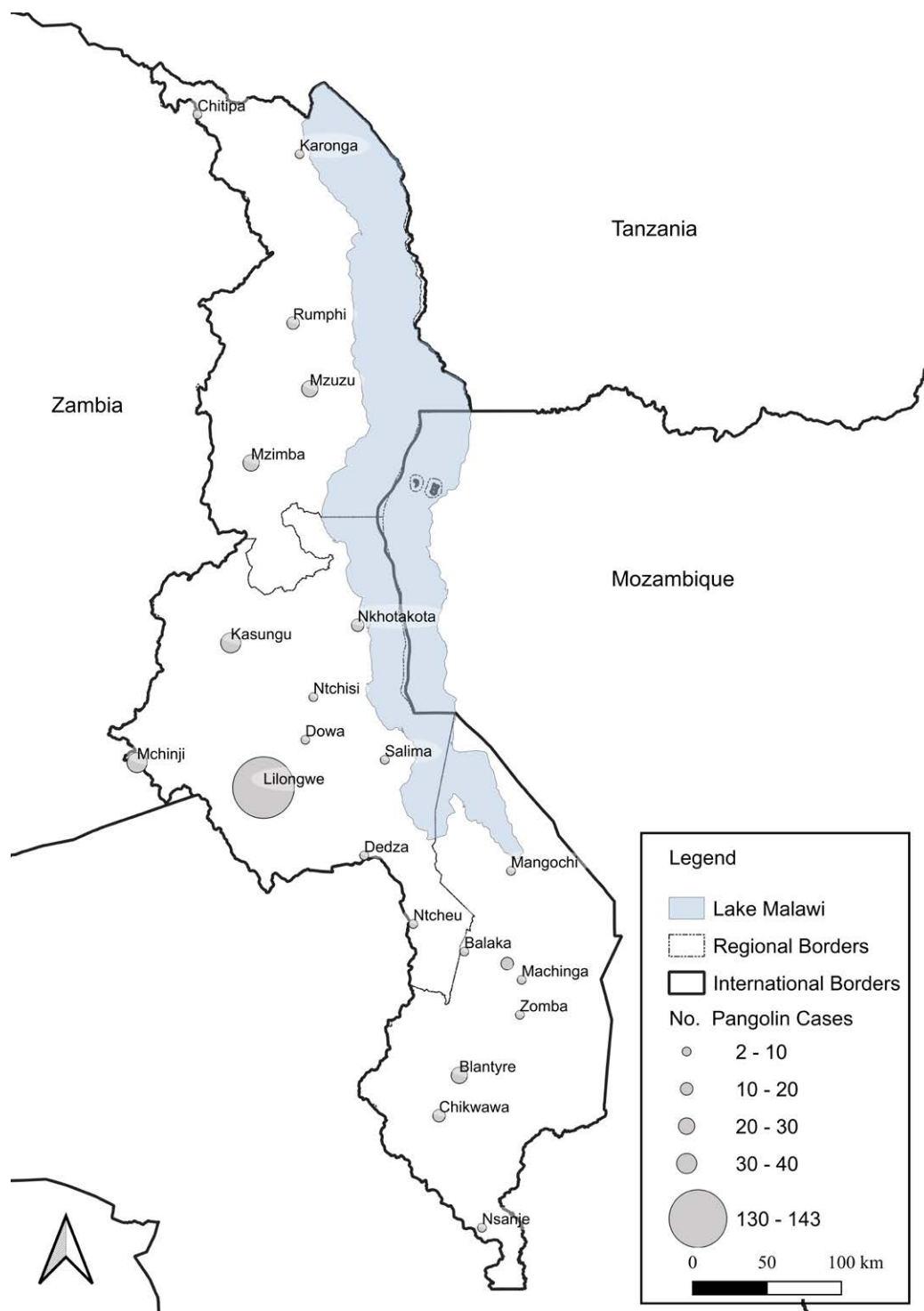
Pangolin cases are the second-most prevalent by species type (56 court cases in relation to pangolin charges, involving 121 defendants). In contrast to elephant cases, cases involving pangolins have risen dramatically from three court cases in 2017 to 38 court cases in 2020. In 2020, pangolin cases far exceeded elephant ones (84 individual pangolin cases versus 40 elephant cases).

There were far fewer rhino cases; one included the killing of a black rhino in Liwonde National Park (Malawi) and two other cases linked to the arrest and prosecution of the Lin-Zhang syndicate.

The “other species cases” category relates to all other cases involving criminal charges in relation to CITES species (Appendix I to III), the IUCN Red List and the National Parks and Wildlife (Protected, Endangered and Listed Species) (Declaration) Order 2017. This includes three individual cases concerning Listed Species (leopard, *Panthera pardus*), 81 cases concerning Endangered Species, including plants (*Bombax stolzii*, Mopani trees, Mphingo), mammals (common duiker, eland, grysbok, hippopotamus, impala, reedbuck, serval, civet, otter, hyena), reptiles (Bell's hinge-back tortoise,

30 Wildlife court cases data not recorded in LWT's database correspond to court cases not notified to the WJP team (occurring in districts with a low level of recorded cases where the prosecution is not in regular contact with the WJP team), arrests made by the police (other than the investigation units trained to track wildlife organised crime) or court cases related to species of lesser concern (e.g game species related court cases).

31 To note that one individual prosecuted under two separate court cases will count as two individual cases. For example, Qin Hua Zhang is recorded in two individual cases as she was prosecuted, alongside other defendants, for wildlife charges under the court case LL 1647/17 and the court case LL 492/19.



Map 1 Distribution of pangolin cases

Table 1 Overview of recorded wildlife cases across the period

Species cases	2017		2018		2019		2020		Totals	
	Cases	Defcs.	Cases	Defcs.	Cases	Defcs.	Cases	Defcs.	Cases	Defcs.
Elephants	45	80	30	68	41	67	25	40	141	255
Pangolins	3	7	2	5	13	25	38	84	56	121
Rhinos	2	5	0	0	2	6	0	0	4	11
Other species	10	47	7	11	7	11	26	50	50	119
Non-species	4	7	2	4	1	1	1	1	8	13
Totals	64	146	41	88	64	110	90	175	259	519

crocodile) and fish (Mbuna) and 8 cases involving Protected or Game species (bush pigs, warthog).

Finally, the “non-species” category relates to cases not involving protected species, i.e. criminal charges of illegal entry and/or conveying weapons into protected areas, illegal possession of firearms.

Trends in cases for ivory/pangolin/rhino and other species

Court Cases

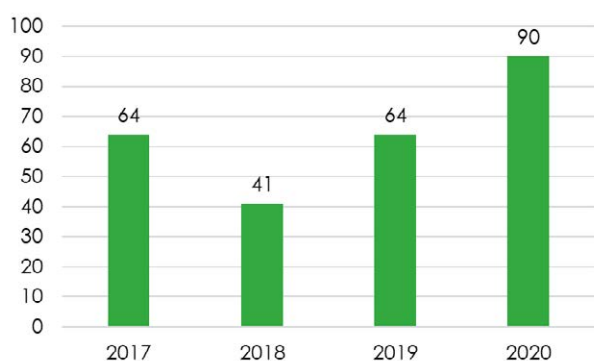


Figure 1 Total wildlife court cases per year

Figure 1 shows the trend in the total number of wildlife court cases per year. There was a drop in the number of cases recorded from the second quarter of 2017 – i.e. after the adoption of the new wildlife Act and the associated Sentencing Guidelines.

Then a constant increase from the fourth quarter of 2018 and a record number of cases was recorded in 2020 (90 court cases related to all species, or non-species related cases combined). This increase can be attributed to a number of factors depending on the species type.

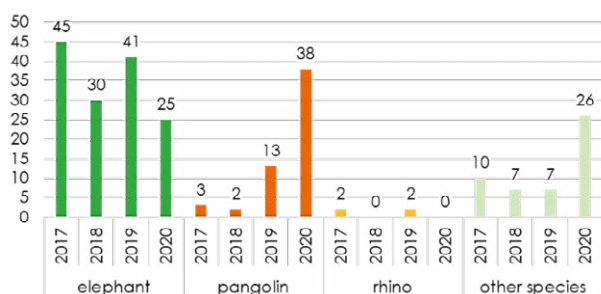


Figure 2 Court cases per species per year

Figure 2 shows the trend of court cases per species type (this excludes the non-species related cases). Here, data has been

isolated by species: elephant, pangolin, rhinoceros, and all other species (i.e., the three individual leopard cases, endangered species, protected species and game species). Although still high (25 court cases in 2020), elephant-related court cases – and therefore ivory trafficking – have dropped by 44% over the period. Inversely, pangolin related court cases have increased from three court cases in 2017 to 38 in 2020, i.e., an increase of 1167 % over the period. Rhino court cases rate remained low and stable (two cases in 2017 and two cases in 2020). Finally, the “other species” cases increased by 160% across the period with ten cases recorded in 2017 increasing to 26 cases in 2020, which for this specific category can be partially attributed to an increase in WJP efforts and staff allocations.

Individual Cases

From this section onwards the data analysis is presented on the individual cases.

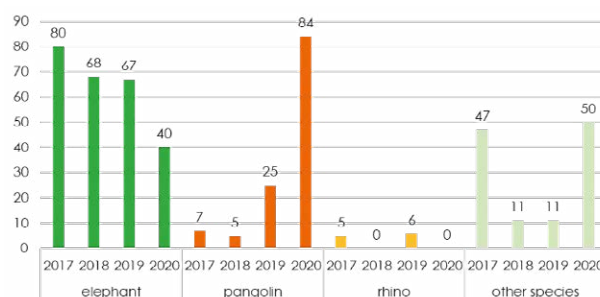


Figure 3 Individual court cases per year/species

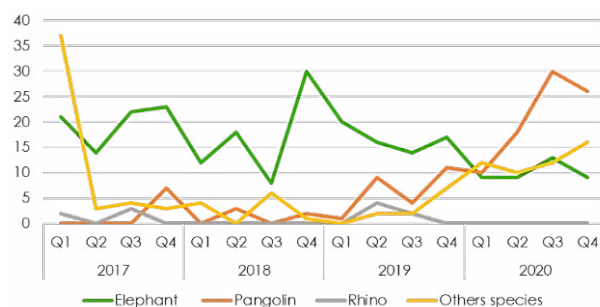


Figure 4 Individual court cases per quarter/species

In Figures 3 and 4 there is a steady decline in elephant individual cases beginning in 2019. In terms of the number of defendants, elephant cases have decreased by 50% over the period (80 defendants in 2017 versus 40 in 2020).

Table 2 Individual cases distribution per quarter

Species cases	2017				2018				2019				2020				Totals
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Elephant	21	14	22	23	12	18	8	30	20	16	14	17	9	9	13	9	255
Pangolin	0	0	0	7	0	3	0	2	1	9	4	11	10	18	30	26	121
Rhino	2	0	3	0	0	0	0	0	0	4	2	0	0	0	0	0	11
Other species	37	3	4	3	4	0	6	1	0	2	2	7	12	10	12	16	119
Non-species	4	2	1	0	1	3	0	0	0	1	0	0	0	0	1	0	13
Totals	64	19	30	33	17	24	14	33	21	32	22	35	31	37	56	51	519

In contrast, from the second quarter of 2019, pangolin cases increased dramatically. At defendant level this represents a 1100% increase.

Distribution of cases per district

Where do court cases take place? This is a proxy for where the offence was committed since trials are generally held in the competent court at the place of arrest. The data has been separated to compare Listed Species cases with those related to other species.

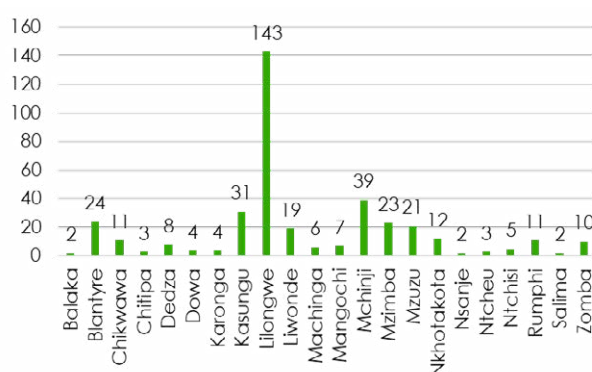


Figure 5 Total Listed Species per district

Figure 5 shows that the capital, Lilongwe, is the district with the highest number of Listed Species cases, in total (143 cases). This breaks down as elephant: 75 individual cases (29% of 255 elephant cases nationally); pangolin: 59 individual cases (49% of 121 pangolin cases nationally); rhino: 73% of the total of 11 rhino cases). Other hotspots for elephant cases are Blantyre (15 cases), Kasungu (31), Mchinji (24), Mzimba (23), Mzuzu (18) and Rumphi (11) and for pangolin cases Mchinji again (15 cases).

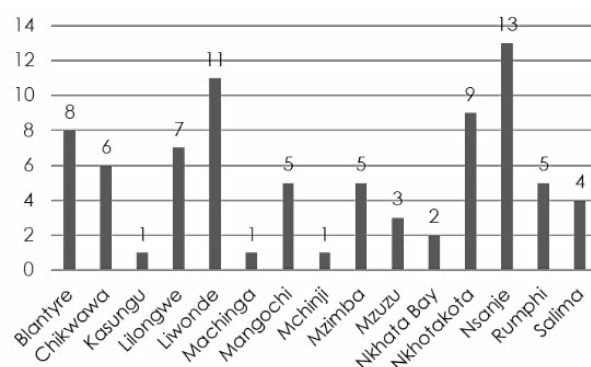


Figure 6 Total Listed Species per district

However, analysis of the incidence of cases for the non Listed Species cases as classified by Malawi law, reveals a different potential pattern of trafficking. Figure 6 shows that for this category involving mainly endangered, protected or game species cases (i.e lesser protected species), the three districts with the highest rate of cases are located in rural areas (Liwonde, Nkhosha, Nsanje).

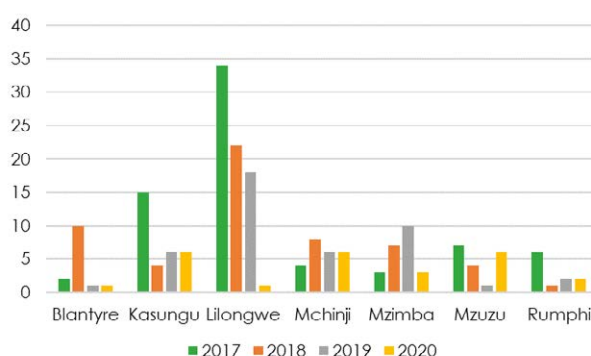


Figure 7 Elephant cases: trends in predominant districts

In districts where elephant cases are more common (more than ten cases over the study period), Figure 7 shows that the elephant case rate has decreased in almost all districts since 2017/18. This is particularly

true for Lilongwe district with a 97% decrease in cases (from 34 cases in 2017 to one case in 2020). Only in Mchinji district (Zambian border) is the elephant case rate relatively stable over the period.

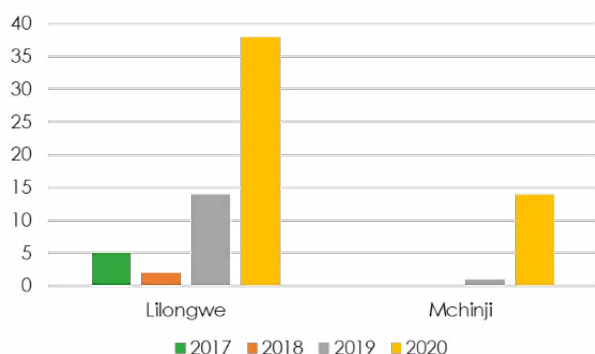


Figure 8 Pangolin cases: trends in predominant districts

In contrast, Figure 8 shows that the pangolin case rate has increased in both Lilongwe (rise of 600% between 2017 and 2020) and Mchinji (rise of 1,300% from 2019 to 2020).

DEFENDANT PROFILE

In this section, the profile of defendants is analysed, their nationality, age, gender as well as their mobility within the country.

Analysis of defendant profiles is intended to guide law enforcement responses and aid the targeting of public awareness campaigns on the criminal consequences of such offences or actions to reduce the demand for wildlife products.

Nationality

In Figure 9 we present the number of Malawi nationals (N), African nationals (not including Malawians – Foreigners) (FA) and non-African foreign nationals (FNA) involved in Listed Species cases (i.e., all elephant, pangolin, rhino and the three individual leopard cases). Defendants are overwhelmingly Malawian nationals (N), and this increases over the period.

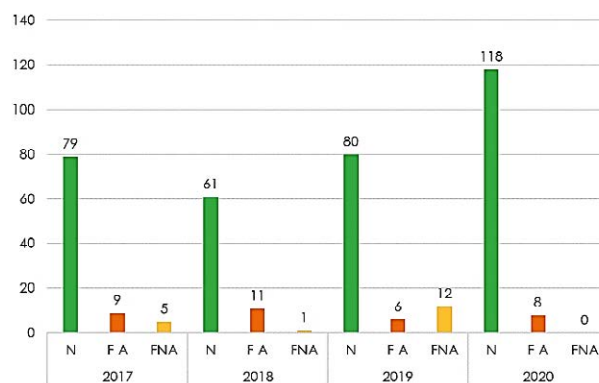


Figure 9 Distribution of defendant nationalities for Listed Species cases

Malawian nationals represent 94% of the total defendants in 2020 (118 out of 126 individuals), a 9% increase from 85% in 2017.

A total of 52 foreign nationals (all nationalities combined) have been involved in Listed Species cases across the period. The involvement of non-Malawian African (FA) nationals remained relatively stable over the period (from nine individuals in 2017 to eight in 2020). Regarding non-African foreigners, a peak can be observed in 2019. This reflects the arrests of the Lin-Zhang syndicate, which was mainly composed of Chinese nationals. Since then, no cases involving nationals from outside the African continent have been recorded, i.e., a decrease of 100%.

The impact of foreign nationals involved in serious wildlife crime necessitated analysis of the nationalities involved in Listed Species cases (excluding leopard cases).

Figure 10 Foreign nationals – distribution per defendant nationalities

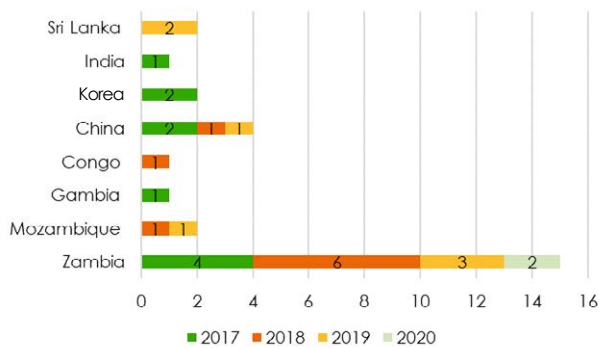


Figure 10 (a) Elephant cases



Figure 10 (b) Pangolin cases

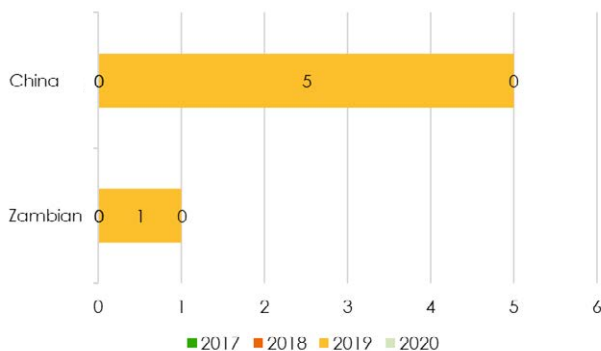


Figure 10 (c) Rhino cases

Figure 10 shows that for elephant cases, Zambian nationals (15/28 foreign nationals i.e., 54%) and Chinese nationals (4/28 defendants i.e., 14%) were the most represented. For pangolin cases, Mozambicans (14/19 foreign nationals i.e., 74%) and Chinese (4/19 i.e., 21%) were the two most common nationalities. However, no Chinese nationals were involved in any Listed Species cases in 2020, i.e., after the arrest of the Lin-Zhang syndicate.

Gender

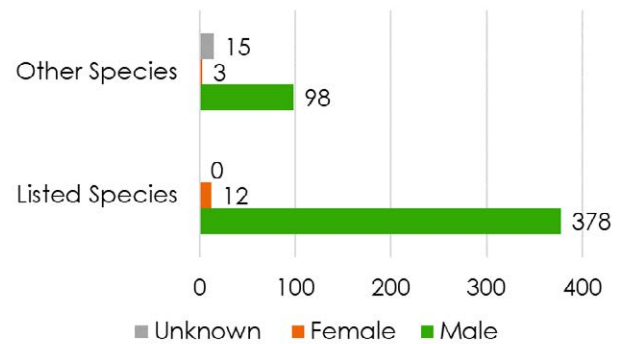


Figure 11 Defendant's gender in species cases

As expected, in line with our long-term data, when considering binary gender norms, defendants are predominately male. Figure 11 shows that, of the 506 defendants across multiple districts and including all specimens, only 15 were female. Of these 15 females, 12 were involved in Listed Species related cases (80%) and 5 of the 12 were foreign nationals (42%).

Only ten of the 422 Malawian nationals (i.e., 2%) involved in the species cases, are female; this compares to 5 of the 84 foreign nationals (all nationalities combined) (i.e., 6%).

Although the analysis of data related to offences under the Forestry Act are not the subject of this report, it seems important to make an interesting comparison here. Following the amendment of the Forestry Act in 2019, LWT has been engaged in monitoring and prosecuting forestry cases and has since collected a large amount of data. In 2020, 52 individual cases of alleged offences under the Forestry Act were recorded (production, possession of round wood and charcoal contrary to Section 68 and 73 of the Forestry Act). According to the data collected, 100% of the defendants were national and 27% of them were female.

Figure 12 Distribution of defendants by age

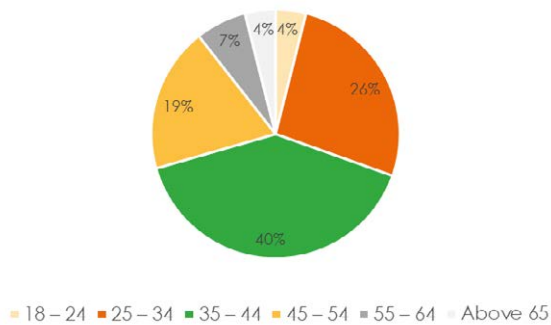


Figure 12 (a) Listed Species cases

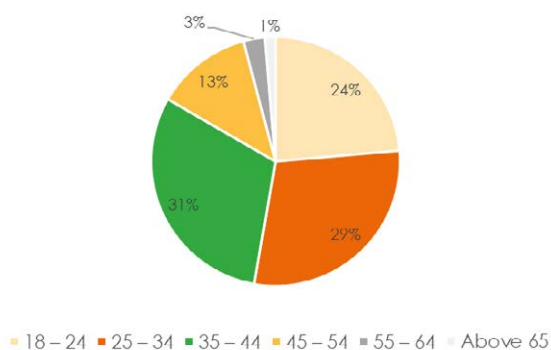


Figure 12 (b) Endangered, Protected and Listed Species

Age

Figure 12 represents the age range of defendants by percentage for species types. For Listed Species cases – Figure 12 (a) – the most common age of defendants is from 35-44 followed by the 25-34 age range. In cases relating to other species (mainly endangered, protected, game species), Figure 12 (b) shows a similar age distribution, but with a higher representation of the 18-24 range (24% of defendants versus 4% for the Listed Species category).

Location of offences and defendants' residence

Ninety-four percent of defendants in Listed Species cases in 2020 were Malawi nationals. Figure 13 shows the distribution of defendants per districts of residence for elephant, pangolin and others cases.

Figure 13 Distribution of defendant by district

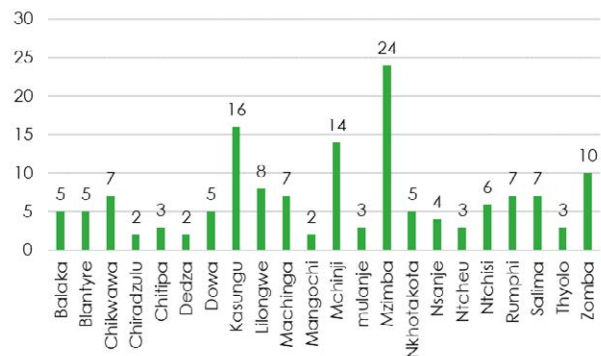


Figure 13 (a) Elephant cases

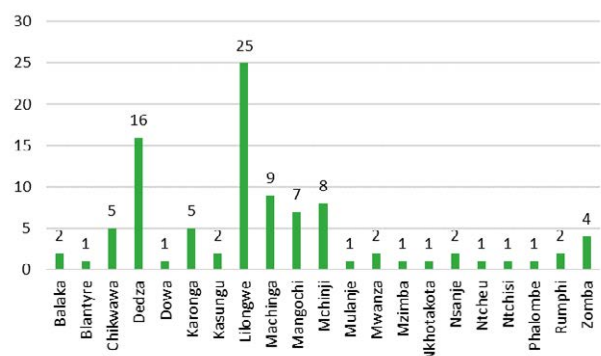


Figure 13 (b) Pangolin cases

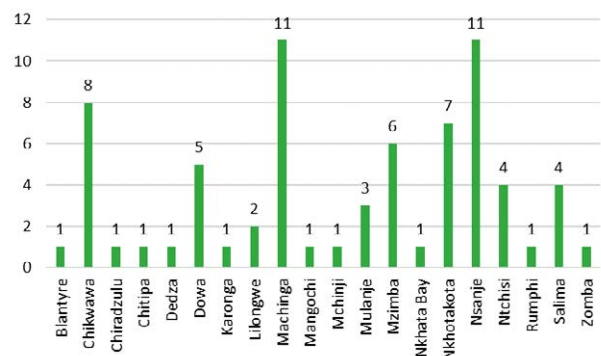


Figure 13 (c) Other species cases

At the time of arrest, over a third of the 148 defendants involved in elephant cases were residing in just three districts: Mzimba (16%), Kasungu (11%) and Mchinji (9%) (all large towns nearby to Malawi's Zambian border). For pangolin cases, over a third of the 97 defendants lived in just two districts Dedza (16%) (border town with Mozambique) and Lilongwe (26%) (capital city). For others species cases, defendants commonly live in Chikwawa (11%), Machinga (15%) and

Nsanje (15%) (all towns in the Southern Region relatively close to the Mozambican border).

We also looked for correlations between the location of potential offences and the place of residence of defendants to understand whether defendants are mainly operating close to home, or whether there is a significant mobility within the country.

Analysis per district (local level)

There was no correlation between the percentages of cases per district and the recorded residence of defendants; in other words the offences are, primarily, not committed in the districts where the defendants live.

Analysis per region (regional level)

However, for both elephant cases (Figure 14 (a)) and pangolin cases (Figure 14 (b)), there is a relationship between the prevalence of cases by region (Northern Region, Central Region, Eastern Region, Southern Region) and the defendant's residence.

Figure 14 Defendant's residence – occurrence per region

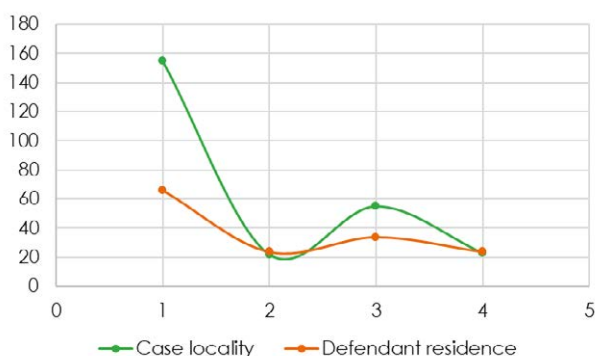


Figure 14 (a) Elephant cases

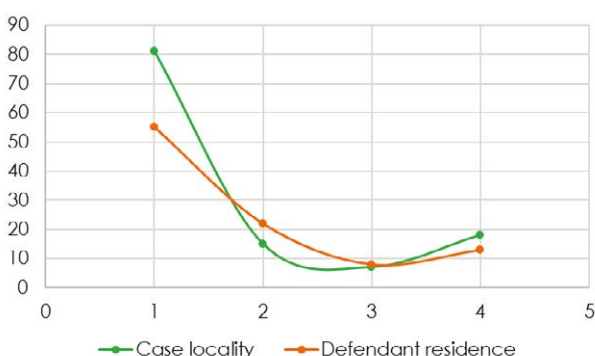


Figure 14 (b) Pangolin cases

For the Eastern, Northern and Southern Regions (respectively in position 2, 3 and 4 of the x-axis for both categories) the curve corresponding to the defendants' residence follows quite closely the curve corresponding to the prevalence of cases per locality, meaning that traffickers largely operate outside their *district* of residence, but within the *region* they live in. For the central region (position 1 of the x-axis for both categories), this relationship is less pronounced, which may suggest either a greater mobility of offenders residing in Lilongwe or different dynamics of illegal activities taking place in the capital.

CASE CONCLUSION RATE

According to the laws of Malawi, an accused person has the right to a fair trial within a reasonable length of time. Both the Malawi Constitution and the Criminal Procedure and Evidence Code (CP&EC) specify time limits that protect this right. For example, Section 261 of the CP&EC states that for offences punishable by imprisonment of less than three years, the trial must be completed within 12 months of commencement.

Notably, all offences readable with Section 110B of the National Parks and Wildlife Act, i.e., all offences related to Listed Species are liable to imprisonment for a term of up to 30 years and thus not falling under the terms of Section 261 of the CP&EC. However, the Malawi Judiciary Performance Standards of August 2006 state that "in straightforward cases the trial should be concluded within 30 days. In other cases, 90 days (the period is from plea to judgement/sentence)". Although our analysis did not directly measure it, COVID-19 preventive measures from March to December 2020, including shifts in magistrate's duty hours at court, re-scheduling of hearings and temporary closures, caused disruptions in the progress of ongoing trials.

Figure 15 below shows the conclusion rate and trial length for Lilongwe and elsewhere, demonstrating the effectiveness of Lilongwe courts in completing wildlife cases compared with the rest of Malawi.

All wildlife court cases



Figure 15 Conclusion rate trend 2017-2020

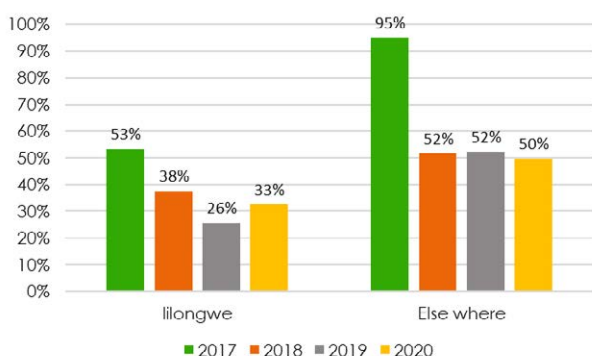


Figure 16 Conclusion rate trend in Lilongwe and elsewhere/per year

For the purpose of this report we define the conclusion rate according to the recommendations in the Malawi Judiciary Performance Standards – the percentage of cases concluded in 90 days or less. In Figure 15, the conclusion rate curve falls from the second quarter of 2018 onwards, and picks up – albeit irregularly – from the third quarter of 2019 onwards. When Lilongwe is separated out (Figure 16), the conclusion rate i.e. the percentage of cases concluded within the recommended 90 days is lower for Lilongwe (26% - 53% across the period) than for the other courts (50% - 95%). In the next section this conclusion rate is put into perspective in relation to the number of cases processed in different courts. However, it is clear that the percentage of cases concluded within 90 days has fallen significantly over the period (a 31% drop), a finding that applies to Lilongwe Court as well as the other courts. As stated above, this can partially be attributed to delays because of COVID-19 preventative measures.

Length of trial of Listed Species cases

National Level

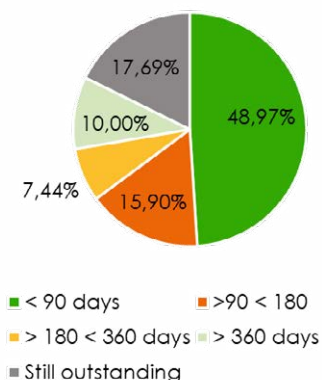


Figure 17 Length of trial for Listed Species cases – national average

Figure 17 shows the length of trials at the national level for Listed Species cases; these cases are often complex, which can extend trial length. In this section, trials were categorized into five ranges: those concluded in a) 90 days or less, b) 90 to 180 days, c) 180 to 360 days, d) > 360 days and e) cases still in progress.

Forty-nine percent of trials involving listed species were concluded within 90 days, (16% in 90 – 180 days, 7% in 180 – 360 days and 10% lasted more than 360 days, i.e. 51% of trials took longer to conclude than recommended in the judiciary performance standards.

Per District

We repeated the analysis for all districts where more than ten Listed Species cases were recorded during the period.

To understand the discrepancy between trial length recommendations in the Judiciary Standards and observed trial lengths for Listed Species cases, we examined which factors increased the length of trials in the three districts with the longest trial lengths: Lilongwe, Blantyre and Chikwawa.

In Lilongwe, the percentage of trials concluded in 90 days is lower than the national average (35% compared to 49% nationally) and the percentage of trials lasting more than 360 days is double that of the national average (20% in Lilongwe, 10%

nationally). In Blantyre 1/3rd of all trials lasted more than 360 days. Similarly, in Chikwawa, only 18% of cases were concluded within the recommended 90 days.

Average length of trial per district

In this section, we looked at the correlation between the volume of court cases and the average length of time it takes to process cases, i.e., is the volume of cases affecting court efficiency?

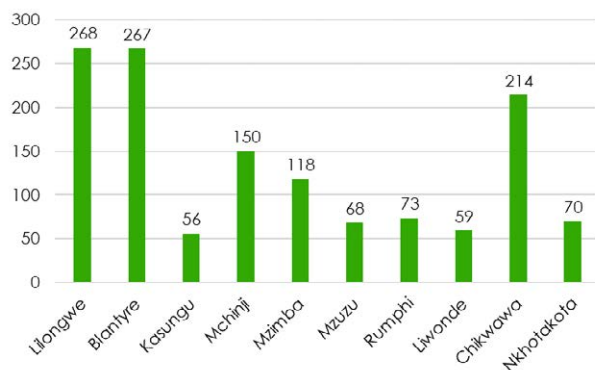


Figure 18 Average length of trial (in days) per magistrate court – Listed Species cases

Figure 18 shows the average time it takes to conclude Listed Species cases. The three districts of Lilongwe, Blantyre and Chikwawa have a case processing time of over 200 days.

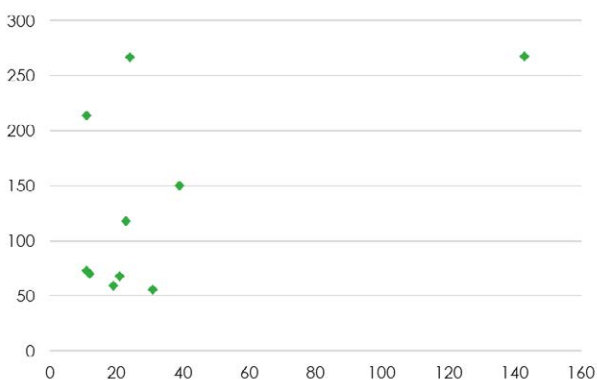


Figure 19 (a) Comparison of average length of trial/volume of cases processed

Figure 19 (a) shows the total number of Listed Species cases recorded in each district (and by extension the volume of cases to be handled by the courts) and the average length of proceedings. For some courts there is a clear increase in the average length of trials as volume of cases increases, but this does not hold across all courts.

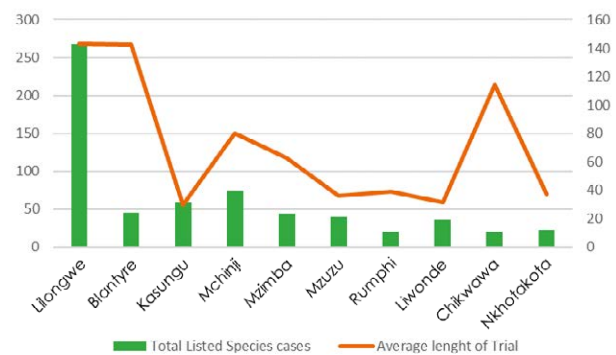


Figure 19 (b) Comparison of average length of trial/volume of cases processed

Figure 19 (b) shows the total number of Listed Species cases in each district (green histograms – right axis) and the average length of proceedings (orange curve line – left axis). When the line is equal to or lower than the top of the histogram, we could deduce that the court is performing efficiently (in terms of the length of time it takes to conclude cases in proportion to the volume of cases to be processed). This is precisely the case in Lilongwe or Kasungu. However, by this measure we could conclude that the efficiency of the Blantyre and Chikwawa courts is lower, i.e., the volume of wildlife cases in Blantyre and Chikwawa is not a factor in the length of trials. Other factors – discussed in the remand section – explain this rate.

TYPE OF CHARGES

According to the laws of Malawi and the prosecutor codes of conduct, there are several requirements prosecutors must meet prior to charging an individual. Among them, the prosecutor must ensure the availability of evidence to establish a prima facie case, the possibility to prove each element of the offence (including its mental element also known as *mens rea*) through this evidence, the potential of the offence to be proved at trial and to make sure that the prosecution of the individual for the particular charge will serve the public interest. Once these requirements are met, there is a variety of laws which may be used to bring to prosecute offences relating to wildlife. These include: the National Parks and Wildlife Act, the Forestry Act, the Firearms Act, the Penal Code, the

Corrupt Practices Act, the Customs and Excise Act, the Financial Crimes Act, and the Immigration Act.

To have a clear picture of the offences committed in Malawi in relation to wildlife, we need to analyse the range of charges used in the prosecution of wildlife crime cases.

Figure 20 Charges under the National Parks and Wildlife Act (NPWA), the Forestry Act (FA) and the Firearms Act (FAA) to prosecute wildlife cases/type of species

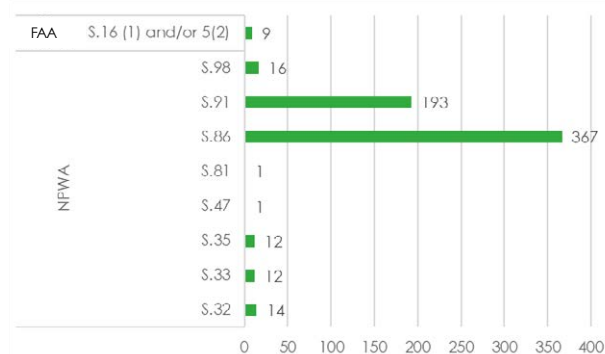


Figure 20 (a) Listed Species

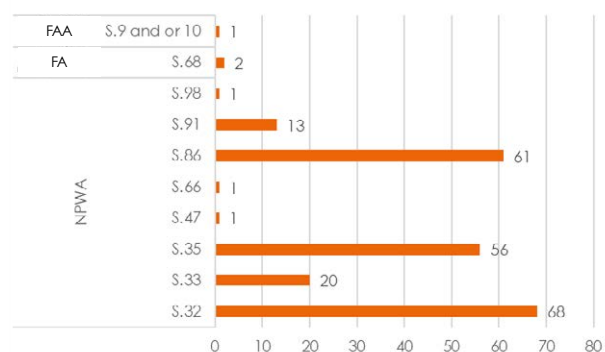


Figure 20 (b) Other species



Figure 20 (c) Non-species related charges

Charges according to species type

This section examines the frequency of the use of the three main Acts used for wildlife crime prosecutions (NPWA, FA and FAA) and which sections are most used to charge as a percentage of the total number of cases by species type.

For Listed Species cases, as shown in Figure 20 (a), Sections 86 and 91 of the NPWA are most used. Section 86 covers charges for "possession, sale and buying of protected, endangered and listed species" (367 charges i.e., 94% of the total charges recorded) and Section 91 refers to "dealing in government trophy" (193 charges, i.e., 48% of the total charges recorded).

Figure 20 (b) shows that for Endangered Species cases, Sections 86 and to a lesser extent 91 of the NPWA are used often, but most charges fall under Sections 32 to 35 i.e., charges concerning prohibited acts in protected areas ("entering or residing in protected areas without authority" (Section 32), "possession or use of weapons, traps, explosives or poisons in a protected area" (Section 33), or "hunting, taking, killing wild plant or animal (...)") (Section 35).

Figure 20 (c) shows charging for cases that do not involve any species-specific charge i.e., for prohibited acts in a protected area contrary to Sections 32 to 35 of the NPWA (for example illegal entry, conveying or using weapons, taking/killing a wild plant or animal into a protected area, etc.). It also refers to offences under the Firearms Act (carrying and possession of firearms and/or ammunition without permit or license contrary to Section 12 of the FAA, possession of prohibited weapons contrary to section 16 of the Firearm Act).

It should be noted that for the period studied, despite the potential to bring charges from multiple laws, only three laws were used: the NPWA, the FA and the FAA.

Trends in charges used for Listed Species cases

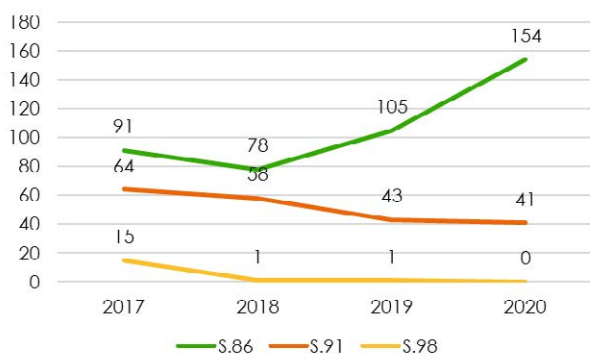


Figure 21 Charges under the NPWA – Listed Species cases

As previously noted, in 94% of cases involving Listed Species, the charge of possession was included on the charge sheet, as opposed to 48% for the charge of “dealing in government trophy”.

This trend has increased over the period (see Figure 21). Indeed, until 2018, the use of Sections 86 and 91 was almost equivalent.

It was common for an individual arrested in possession of ivory to be prosecuted for both possession and dealing. However, from 2019 onwards, the use of Section 91 (dealing) has fallen significantly (-36% over the whole period), while the use of Section 86 (possession) has increased significantly (+69%).

Although Section 98 of the NPWA Illegal Importation, Exportation and Re-Exportation of wildlife products has never been extensively used (15 charges recorded in 2017), a significant drop can be noted with only one charge under this section per year in 2018 and 2019 and none in 2020. Mkukula and Chileka courts (which are the two courts closest to the two international airports, near, respectively, Lilongwe and Blantyre) have registered 41 wildlife individual cases in total, but none since October 2017.

PLEA

Plea taking is one of the crucial stages of a trial and a compulsory trial fairness condition. A guilty plea may also be a factor in sentencing leniency. For example, in the

wildlife context, the Sentencing Guidelines provide that a plea of guilty (together with evidence of remorse) is a mitigating factor for offences under Sections 108-111 of the NPWA.

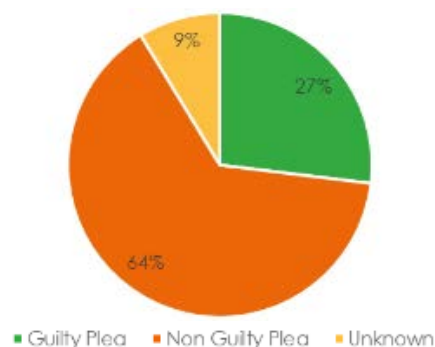


Figure 22 (a) Listed Species

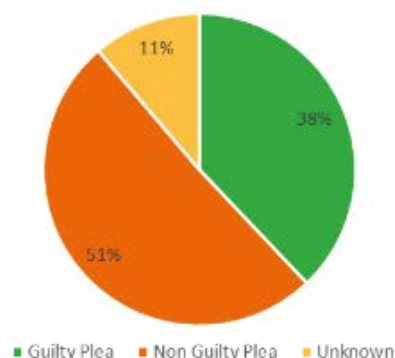


Figure 22 (b) Other species

Plea according to species

Figures 22 show that guilty pleas were entered more frequently in cases involving other species (38%) than for cases involving Listed Species (27%) but for both categories not-guilty pleas dominate (64% for Listed Species cases). Figure 23 shows a 30% decrease in guilty pleas over the period (23% in 2020 versus 33% in 2017) for Listed Species cases.

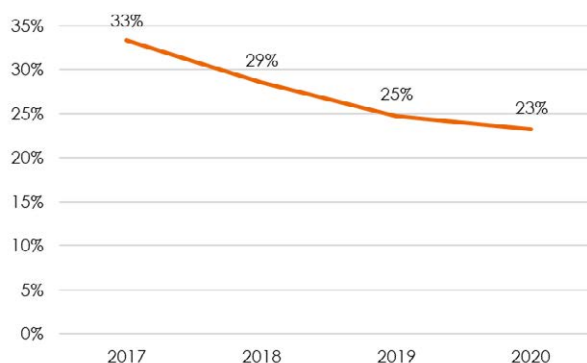


Figure 23 Trend in guilty pleas



REMAND RATE

Bail principles are well framed by Malawian law. The Constitution of Malawi states that “every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right (...) to be released from detention, with or without bail unless the interests of justice require otherwise (...)”.³² Therefore, the rights for a defendant to apply for bail during the hearing of the criminal proceedings is a right guaranteed by the Superior Law of Malawi.

The Bail Guidelines³³ provide rules to be followed by the police and courts when granting bail in criminal cases. The Guidelines list the principles which the court should take into account in deciding whether or not bail should be granted; they include: the likelihood that the accused, if released on bail, will attempt to evade his or her trial, considering “(...) (i) the nature and the seriousness of the offence for which the accused is to be tried; and (iii) the nature and the severity of the punishment which is likely to be imposed should the accused be convicted of the offence against him or her (...). The court should balance the interest of justice and the prejudice caused to the accused person by being detained in custody. The Criminal Procedure and Evidence Code lists the procedures and conditions for bail to be granted by a police officer or a subordinated court.”³⁴



Figure 24 Trend of remand rate – all wildlife cases

Remand rate for all cases

Figure 24 shows that the percentage of pre-trial detention (bail and remand) rates for wildlife cases varied considerably over the period.

There was a marked increase in pre-trial detention from the second and third quarters of 2017 – following the amendment of the NPWA in February 2017 – when the rate rose from 43% to 95%.

The rate then falls from the second quarter of 2018 to around 50% for about a year, before rising again and relatively stabilising at around 90% from the second quarter of 2019.

Impact of the bail/remand rate on trial length for Listed Species cases

We examined whether the remand rate has a direct influence on the length of time it takes to process court cases. To do this, we first compared two variables at the national level, for all type of cases across the period: the rate of cases concluded in less than 90 days and the rate of remand to verify whether the second parameter had a causal relationship with the first variable.

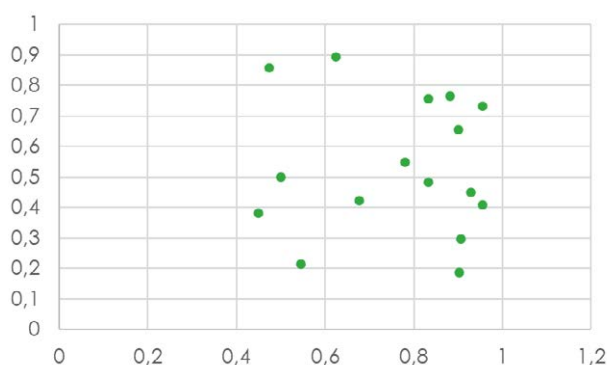


Figure 25 Causal relationship, bail rate/conclusion rate

Figure 25 shows no clear correlation, i.e., the rate of remand is not clearly associated with the conclusion rate. We then focused on courts with the highest number of cases and for the Listed Species cases only.

32 Constitution of Malawi CHAPTER IV HUMAN RIGHT [Ch0000s41] (2) (e)

33 Bail GUIDELINES ACT 2020 CHAPTER 8:05

34 Section 118 of the CP&EC

Impact of bail on trial at district level

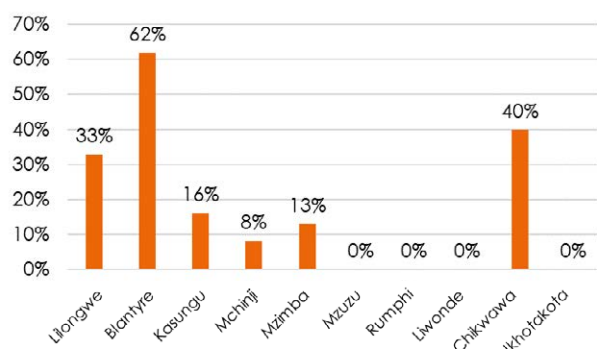


Figure 26 Bail rate per district (in % of the total Listed Species cases)

Figure 26 shows the percentage of cases where bail was granted by district. In Lilongwe, Blantyre and Chikwawa the bail rate for Listed Species cases exceeded 30%.

To determine if the bail rate has an influence on the length of trial (in days) we used a scatter graph and a combined graph.

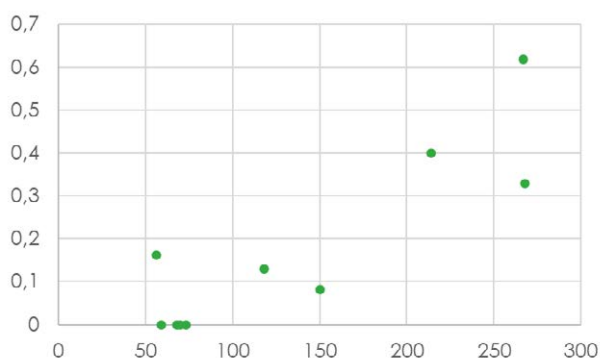


Figure 27 Causal relationship, bail rate/average length of trial

In Figure 27, the scatter graph shows a positive relationship between the average number of days to conclude a case against the bail/remand rate for the ten districts with the highest prevalence of Listed Species cases i.e., when bail is granted, the case takes longer to conclude.

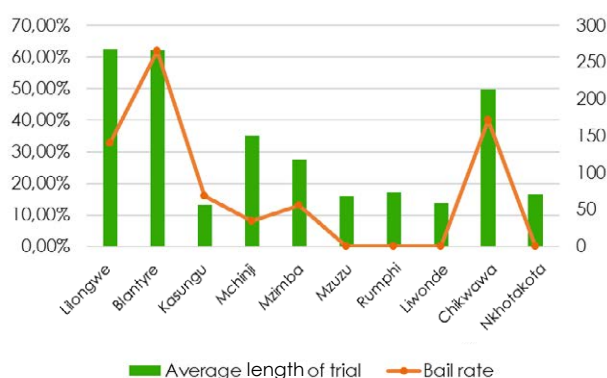


Figure 28 Comparison of the length of Listed Species trials bail rate per district

In Figure 28 we have compared the average length of trials by district (the green histograms - right axis) and the percentage of bail applications granted (the orange curve - left axis) in a combined graph. The result is particularly relevant for Blantyre and Chikwawa, where the average duration of cases exceeds 200 days, and the bail rate is 62% and 40% respectively. It will be recalled that for these two districts, the length of trials could not be explained by the volume of cases to process. It can be argued that the determining factor in the length of trial in these two districts is the high bail rate. There are several potential reasons why granting bail can lead to a longer trial, as analysed below.

Do defendants on lease honour the lease conditions?

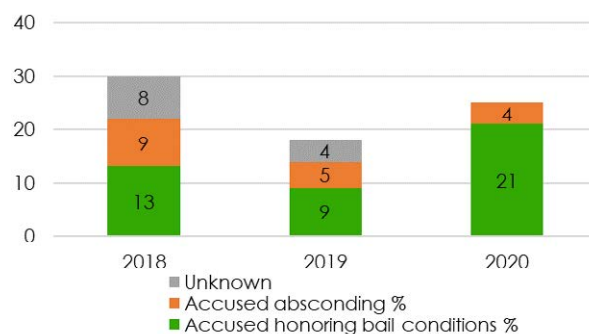


Figure 29 Comparison of bailed defendants honouring the bail conditions and defendants absconding – Listed and Endangered Species cases

Do defendants granted bail honour the bail conditions, such as appearing at the



hearings? The analysis covers both Listed and Endangered Species cases i.e., 73 defendants on bail in total. In 2018, nine out of 30 defendants on bail were on the run after being granted bail, or 30%. In 2020, by contrast, only 16% (four out of 25) defendants failed to attend court. In sum, it can be said that the problem of defendants facing Listed or Endangered species charges jumping bail has largely been regulated.

What is the trial status for defendants granted bail?

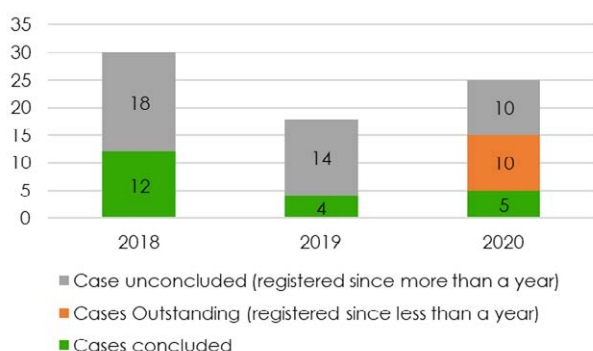


Figure 30 Trial status (concluded, outstanding, unresolved) for individual cases with bail granted

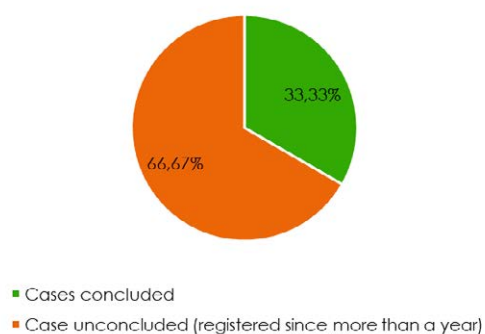


Figure 31 Trial status for 2018 – 2019 individual cases with bail granted

However, when we look at the status of cases in which the defendants have been granted bail (the 73 defendants), we see that a large majority of cases remain unresolved (Figure 30). For this report, a case is considered “not concluded” if there has been no “progress” for more than one year. Of the individual cases that were granted bail in 2018, 60% remained not concluded and this increased to 74% of cases in 2019.

In sum, for Listed Species cases in 2018 and 2019 where defendants were granted bail (48 defendants) the cases for 32 defendants i.e., 67% remained “unresolved”.

CONVICTION RATE

Before February 2017, and the amendment of the NPWA, the conviction rate for wildlife charges was already high (94%). The notable difference in recent years, following the initiation of the WJP, is therefore the sentencing trend.

We repeated the statistical analysis for this period, attempting to determine whether specific factors (type of case, courts, nationality of defendants, bail status or representation of defendants) had an influence on the percentage of acquittals and convictions.

Table 3 shows the number of convictions and acquittals for all types of cases (Listed Species/other species cases/non species related cases) as well as the percentage of convictions by quarter. Note that for the purposes of this report, acquittals also include discharges under Sections 254 (1), 270 and 313 (1) of the CP&EC as well as dismissals under CP&EC sections 83 (5) and 351.

Conviction rate for Listed Species and Other Species

Across the whole period, the conviction rate was 84% for Listed Species cases (263 convictions / 313 judgements), 95% for other species cases (95 convictions / 100 judgements) and 93% for the non-species related cases (14 convictions / 15 judgements). The total conviction rate for the non-listed species cases is therefore higher than for the Listed Species.

Of the 263 convictions for Listed Species offences, 185 were related to elephant and 67 were related to pangolin cases. Elephant related convictions account for 50% of the total wildlife crime convictions and 70% of the Listed Species convictions over the reporting period. Pangolin convictions account for 18% of the total wildlife crime convictions and 25% of the Listed Species convictions over the reporting period.

Table 3 Convictions/Acquittals records per quarter

C = Conviction A = Acquittal % = Percentage conviction

2017	Q1			Q2			Q3			Q4		
	C	A	%	C	A	%	C	A	%	C	A	%
Listed Species	17	2	89%	12	0	100%	7	0	100%	38	2	95%
Others Species	36	0	100%	3	0	100%	4	0	100%	3	0	100%
Non species related	5	1	83%	2	0	100%	1	0	100%	0	0	–
Total	58	3		17	0		12	0		41	2	

2018	Q1			Q2			Q3			Q4		
	C	A	%	C	A	%	C	A	%	C	A	%
Listed Species	12	3	80%	17	0	100%	7	0	100%	11	2	85%
Others Species	3	0	100%	0	0	–	0	0	–	4	0	100%
Non species related	0	0	–	0	0	–	0	0	–	0	0	–
Total	15	3		17	0		7	0		15	2	

2019	Q1			Q2			Q3			Q4		
	C	A	%	C	A	%	C	A	%	C	A	%
Listed Species	13	17	43%	6	0	100%	8	0	100%	26	5	84%
Others Species	0	2	0%	1	0	100%	0	0	–	6	0	100%
Non species related	4	0	100%	0	0	–	0	0	–	0	0	–
Total	17	19		7	0		8	0		32	5	

2020	Q1			Q2			Q3			Q4		
	C	A	%	C	A	%	C	A	%	C	A	%
Listed Species	17	3	85%	15	4	79%	31	7	82%	26	5	84%
Others Species	4	0	100%	8	1	89%	9	2	82%	14	0	100%
Non species related	0	0	–	0	0	–	0	0	–	2	0	100%
Total	21	3		23	5		40	9		42	5	

Totals	Convictions	% Conviction	Acquittals	% Acquittal
Listed Species	263	84.03%	50	15.97%
Others Species	95	95.00%	5	5.00%
Non species related	14	93.33%	1	6.67%
Total	372	86.92%	56	13.08%

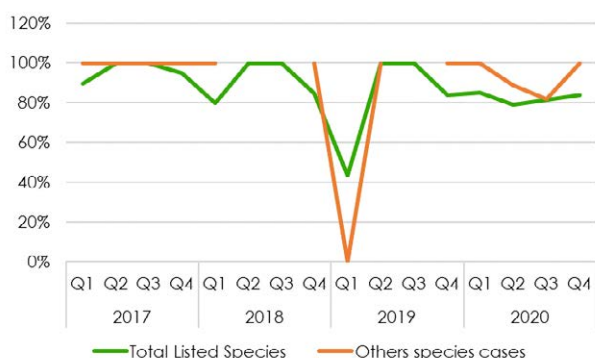


Figure 32 Conviction rate (in % of the total judgements passed) for Listed Species and other species cases

Figure 32 shows the trend in convictions for cases involving Listed Species (green curve) and those involving other species (orange curve) over the period. Both curves show a high and relatively steady conviction rate, close to 100%, except for a sharp drop in the first quarter of 2019.

There were 30 individual Listed Species cases tried in that quarter, 17 of which resulted in an acquittal (or a discharge following a no case to answer or a dismissal). Of these 17 acquittals, 15 involved just two court cases: a) case is 729/17 Republic v Madi Conteh and 6 Others before Lilongwe SRM Court which started in March 2017 and included 422 pieces of raw ivory weighing 330 kg seized in Bangkok International Airport; b) criminal court case 375/18 Sammy Bakali and seven Others before CRM Zomba Court which included eight accused persons, including seven Malawi nationals and one foreign national, arrested in October 2018 in Zomba after being found in possession of 12 pieces of raw ivory weighing 27.57 kg.

Regarding the Endangered Species category, the drop in the conviction rate to 0% in the first quarter of 2019, is linked to two acquittals. These were cases 140/18 Republic v Odney Nkhoma and 1 other tried by CRM magistrate court sitting in Chikwawa; charges were possession and dealing in 15 pieces of hippo ivory. After being granted bail, both accused persons were acquitted in January 2019.

Conviction rate for Listed Species cases across magistrate courts

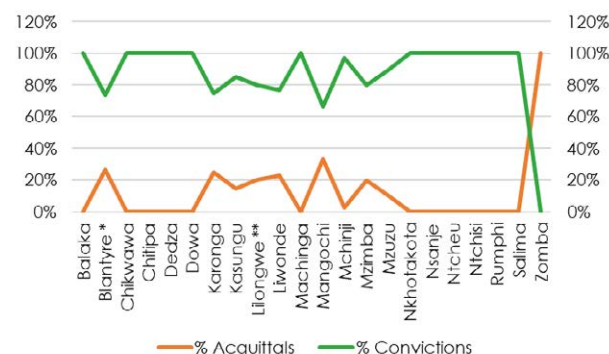


Figure 33 Percentage of convictions and acquittals for Listed Species cases per magistrate court

If we concentrate the analysis on Listed Species cases, only three districts have a conviction rate below 75%: Blantyre (26% conviction rate), Mangochi (33% conviction rate) and Zomba (0% conviction rate).

For Mangochi, this rate is difficult to interpret because it concerns only three individual cases, two of which resulted in a conviction.

Case 375/18 of Sammy Bakali, as above, was the only case relating to Listed Species tried in Zomba during the period and resulted in eight acquittals, therefore a 100% acquittal rate.

The 26% conviction rate for Blantyre is mainly due to the criminal case 787/18 Republic v Fred Thom Mugabe and three Others before the CRM Blantyre arrested in Blantyre in June 2018 in possession of four pieces of ivory weighing 10.64 Kg. The four accused, on bail, absconded before being rearrested in November 2019. In December 2020, the court convened for a ruling on case to answer and the four accused were discharged. An appeal was filed by the prosecution, but it was reported that the court case file was missing.

In total, 19 individual cases were tried at Blantyre magistrate court during the period, 5 of which resulted in acquittal and 4 of these acquittals relate to the Fred Thom Mugabe matter.

Conviction rates for nationals and foreign nationals

Figure 34 Percentage of convictions and acquittals according to defendant's nationality – includes all types of species cases

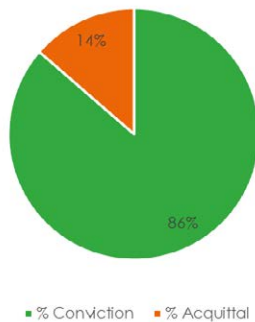


Figure 34 (a) Malawi nationals

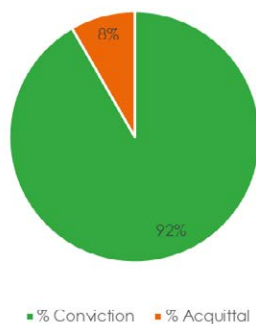


Figure 34 (b) African nationals (FA)

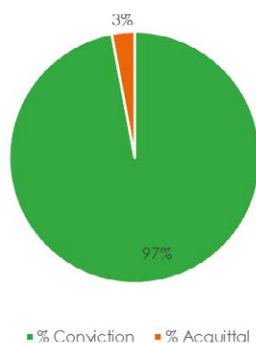


Figure 34 (c) Non-African foreign nationals (FNA)

Does the conviction rate vary for nationals and foreigners? In this section we have considered all cases, whether they are Listed Species cases or other species cases. Looking at Figure 34, the conviction rate is lower for nationals (86%) compared to 92% for foreigners of one of the nationalities of the

African continent and 97% for nationals of a non-African country. Non-African country nationals are therefore proportionally more rarely acquitted (in 3% of cases) than nationals (in 14% of cases).

Impact of remand status or representation status on convictions

We have observed previously that 'pre-trial detention' i.e., bail and remand may influence the length of a trial; is the same observed for the conviction rate? The teams in charge of monitoring wildlife cases have noted that with the evolution of the penal response, there has been an upward trend in the use of legal counsels by the defence. From a human rights and justice fairness principles, this is clearly desirable and to be encouraged. It should be noted that the data on the representation of accused persons are limited, and the trend analysed here will therefore have to be supplemented by a more in-depth study.

Figure 35 Conviction and acquittal percentage according to remand status

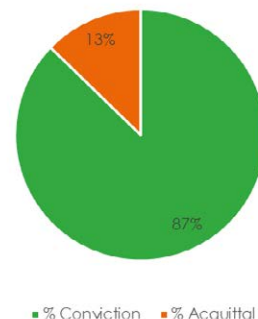


Figure 35 (a) Remanded in custody

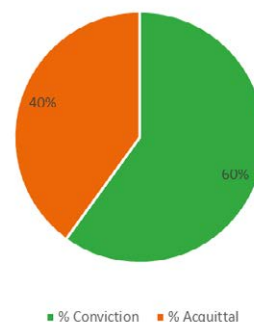


Figure 35 (b) Granted bail

Figure 35 shows that the percentage of convictions is higher for individual cases where the defendant was remanded

in custody during the trial (87%) than for those granted bail (60%). Conversely, the acquittal rate is 40% for individual cases on bail compared to only 13% for those remanded in custody, a 27% difference.

Figure 36 Conviction and acquittal according to representation status

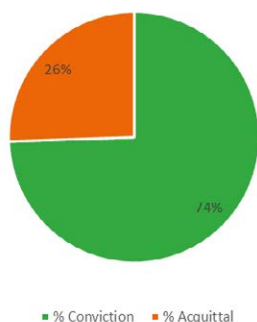


Figure 36 (a) Defendant represented by lawyer

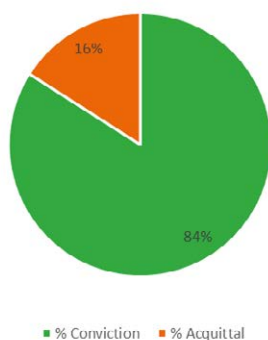


Figure 36 (b) Defendant acts as own representation

Figure 36 shows that 74% of represented defendants were convicted, compared to an average of 84% for all types of representation combined i.e. during the period studied, a represented defendant would have a 26% chance of being acquitted, 10% higher than a defendant without professional representation.

SENTENCING

Background

In most legislative systems, the interpretation and therefore application of the law builds up through its jurisprudence. To understand case law positioning on important points of law, it is important to analyse the case facts,

aggravating and mitigating factors and sentencing principles laid out in the court's rationale in the ruling. This will increase consistency in wildlife related jurisprudence and application of the legislative framework.

In the 2017 court case data analysis report, it was observed that sentencing of wildlife related offences dramatically changed following the introduction of the court monitoring and co-prosecution project in July 2016. For example, custodial sentences passed for elephant related crimes rose from 3% before July 2016 to 84% of the cases monitored from July 2016 onwards. The amendment of the NPWA, particularly the increase in penalty provisions, strengthened this trend. The custodial rate for offences of possession and/or dealing in protected species rose from 69% before the Amended Act came into force on 8 February 2017, to 90% after that date.

However, some variance in trends were observed. One of the main observations made was the obvious influence of nationality on sentencing; before July 2016 100% of foreign nationals convicted for elephant or rhino related crime were fined versus 72% of nationals. Moreover, the average fine for foreign nationals was MWK 78,938 i.e., around five times less than the average fine for Malawi nationals (MWK 393,400).

In October 2017, the Chief Justice adopted the Sentencing Guidelines for Wildlife Crimes. The Sentencing Guidelines recall the principles in sentencing and the main stages to consider when determining a sentence for a convict. They also propose starting points for sentences for each of the six penalty provisions under the NPWA. These Guidelines should aid the judiciary in determining appropriate sentences for wildlife related offences and ensure the development of consistent jurisprudence.

In this section the 2018-2021 data have been analysed taking into consideration all factors that may have influenced the trends in sentencing.

Table 4 Sentencing data across the period

	Total sent.	# of IHL	% IHL	Min IHL	Max IHL	Ave. IHL	# of fines	% of fine	Min fine	Max fine	Ave. fine	# of SSO	% SSO	# of IHL & fine	% IHL & fine	# of SSO & fine	% of SSO & fine
2017																	
Listed Species	74	69	93%	6	216	55	4	5%	65,000	2,250,000	939,000	0		0		1	1%
Other species	46	43	93%	24	144	36	2	4%	200,000	250,000	225,000	1	2%	0		0	
Non species related	8	7	88%	18	120	45	1	13%	60,000	60,000	60,000	0		0		0	
2018																	
Listed Species	46	35	76%	12	168	51	3	7%	210,000	22,792,000	7,784,000	8	17%	0		0	
Other species	7	1	14%	24	60	43	2	29%	50,000	856,000	587,000	0		4	57%	0	
Non species related	0	0					0					0		0		0	
2019																	
Listed Species	49	47	96%	12	233	58	0					1	2%	0		1	2%
Other species	7	1	14%	66	66	66	6	86%	10,000	3,250,000	2,172,000	0		0		0	
Non species related	4	0		6	24	19	0		20,000	1,500,000	1,130,000	0		4	100%	0	
2020																	
Listed Species	86	81	94%	18	180	63	0					4	5%	1	1%	0	
Other species	28	12	43%	15	72	38	8	29%	100,000	1,000,000	217,778	7	25%	0		1	4%
Non species related	2	1	50%	36	36	36	1	50%	250,000	250,000	250,000	0		0		0	
Total	357	297	83%	6	233		27	8%	10,000	22,792,000		21	6%	9	3%	3	1%

Summary of sentencing data

This section covers all individual cases that resulted in a conviction. The length of time between judgement and sentence and the type of sentence passed for each type of case were analysed.

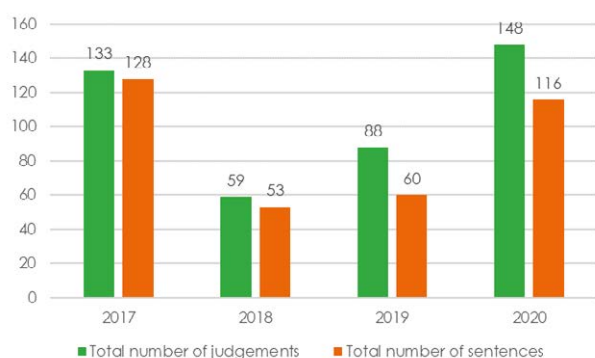


Figure 37 Total number of judgements and sentences passed for all types of cases

In total and for all types of cases, 357 sentences were passed in relation to wildlife charges across the four years. This included 306 custodial sentences (297 custodial sentences and 9 custodial sentences and fine), 27 fines (or custodial in default of payment of the fine) and 24 suspended custodial sentences (or suspended custodial sentence and fine).

As shown in Table 1, there were fewer cases registered in 2018. Subsequently, as shown in Figure 37, there were fewer judgements and sentences pronounced in 2018 and 2019.

Total sentences passed per species type

Figure 38 Type of sentences following convictions (whole numbers)

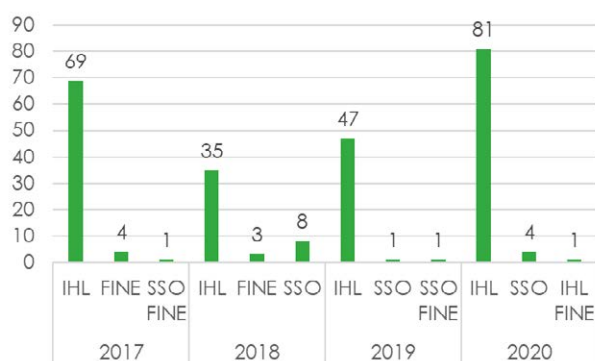


Figure 38 (a) Listed Species cases

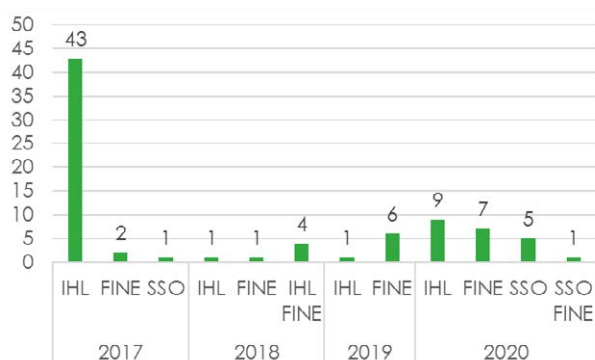


Figure 38 (b) Endangered Species cases

Figures 38(a) and (b) show the types of sentences handed down for each year of the period for individuals convicted of Listed Species and Endangered Species cases.

Figure 38(a) shows that apart from a drop in 2018 (35 custodial penalties/46 total sentences i.e a 76% custodial rate), the percentage of prison sentences has remained relatively stable over the period (69/74 sentences i.e 93% in 2017 versus 81/86 i.e 94% in 2020). This represents a custodial rate of 91% across the period.

In 2018, when the amended NPWA was already in effect which provides no option

of a fine (i.e. only custodial sentences) for Listed Species offences, 7% of sentences were non-custodial (three fines). In two of these cases, the mitigating factor in substituting a fine for a prison sentence was the health condition of the offenders. The third case was 504/17 Republic v Sanjay Vachan tried by Blantyre SRM court in which the defendant was passed a fine of of MWK 22,792,000 for the unlawful possession of 14.8kg of raw elephant ivory found at his home.

Suspended prison sentences, (also not provided for in the new Act for Listed Species cases) were handed down by some courts in the year after the new Act was in force. Eight suspended sentences, i.e 17% of the total sentences relating to Listed Species, were passed in 2018, but this rate dropped to 2% in 2019 and 5% in 2020.

Suspended sentences included the Criminal Case 137/18 Republic v Qi Zang Lilongwe SRM Court (a foreign national arrested at Lilongwe airport with 16 pieces of carved ivory weighing 160 grams, which she was attempting to export) and the criminal court case 731/18 Republic v Foster Milward and 4 others at Blantyre Magistrate Court³⁵.

The suspended sentences in 2019 and 2020 for Listed Species related offences were cases involving: 1 foreign national (Chinese) arrested at Chileka airport attempting to export 0.50 kg of ivory; 1 foreign national (Sri Lankan) arrested in Lilongwe with elephant ivory, tortoise (live), hippo, kudu and reedbuck products; 1 national arrested in Chikwawa in possession of 1 live pangolin; 2 individual cases involving the possession of leopard skins in Nkhotakota and 1 case of possession of pangolin tried in Liwonde³⁶.

Finally, Figure 38 (b) shows that the rate of prison sentences for offences involving Endangered Species fluctuates greatly and

³⁵ 14 pieces of raw ivory weighing 17.2 kg were found in the warehouse of a foreign national resident in Malawi, five of its employees were prosecuted; they were finally convicted and sentenced to 12 months IHL suspended for 24 months for possession of specimen of listed species and 12 months IHL suspended for 24 months for dealing in government trophy.

³⁶ Criminal Case No 99/19 Rep v Zyou Yong Fei. Blantyre PRM Court; Criminal Case 65/19 Rep v Mohammed Al Mazri Lilongwe SRM Court; Criminal Case 351/20 Rep v Amos Davie Mangiza CRM Court sitting at Chikwawa; Criminal Case 92/20 Rep v Nefali Williams and & other SRM Court sitting at Nkhotakota; Criminal Case 355/20 Rep v Charles Dickson Khumbanyiwa SRM Court sitting at Liwonde

has fallen sharply over the period (93% in 2017, 84% in 2018 including 'IHL and Fine' sentences, 14% in 2019 and 41% in 2020; i.e a fall of 56% between 2017 and 2020).

Average custodial sentence per species type

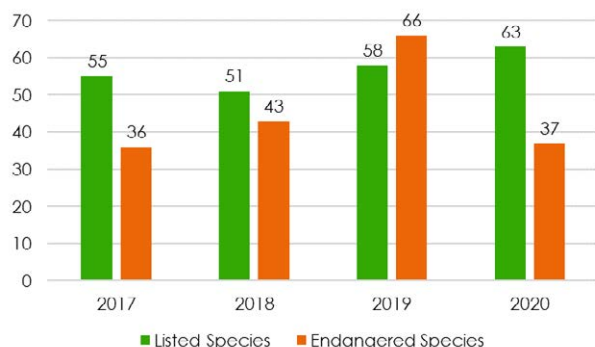


Figure 39 Average length of custodial sentence passed for Listed Species and Endangered Species related offences



Figure 40 (a) Comparison of average length of custodial sentence passed for Listed Species offences and the Sentencing Guidelines starting point for penalties related to **Listed Species**

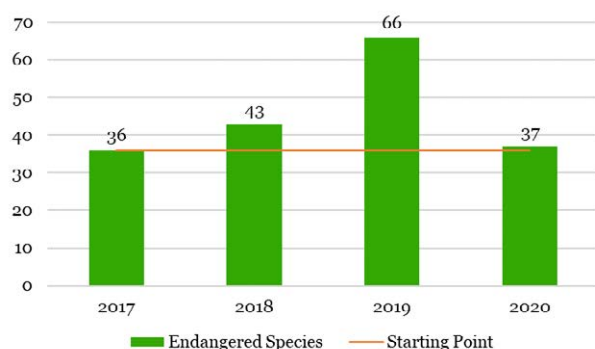


Figure 40 (b) Comparison of average length of custodial sentence passed for Endangered Species offences and Sentencing Guidelines starting point for penalties related to **Endangered Species**

In this section we looked at the average prison and fine sentences for cases involving Listed and Endangered Species. Figure 39 shows that prison sentences are longer for Listed Species (green) convictions than for convictions related to Endangered Species (orange). This finding is not surprising given the sentencing provisions for each type of offence. For Listed Species, the average length of imprisonment increased from 55 months in 2017 to 63 months in 2020. For the entire period the average sentence for Listed Species related offences was 58 months, i.e, 4.8 years. For Endangered Species, the average in 2017 was 36 months imprisonment and 37 months in 2020 (38 months, i.e., 3.2 years across the period).

However, if we consider the average sentence in proportion to the maximum penalty under the Act, or to the starting point proposed by the Sentencing Guidelines, we see that prison sentences for offences involving Endangered Species are in fact more severe. In Figure 40, the green histograms represent the average sentences for cases involving Listed Species (Figure 40 (a)) and Endangered Species (Figure 40 (b)); the orange curve represents the starting point proposed by the sentencing guidelines for each type of sentence.

It can be seen that, in all years, the average sentences for cases involving Endangered Species (36 to 66 months) are equal or above the starting point (36 months) for that type of offence. On the other hand, the average sentences for cases involving Listed Species (51 to 63 months) are always lower than the starting point proposed by the Sentencing Guidelines (72 months). This might be partially due to the magistrate grade: lay magistrates, who mainly hear Endangered Species court cases, passing stiffer sentences than the professional magistrates³⁷. It reveals a variance – among magistrates - in the calculation of the ratio of mitigating/aggravating factors and its application to the determination of the severity of the sentence.

When we look at the average fine handed out, given the data available, we have

37 Section "Sentencing between magistrate grades"

concentrated on sentences passed for offences related to Endangered Species. Figure 41 shows that the average fine is very inconsistent over the years. If we compare with the starting point proposed by the Sentencing Guidelines (orange line), we can see that the sentences handed down are mostly well below this level.

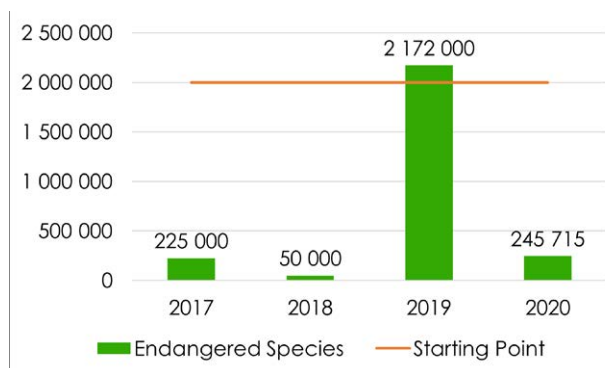


Figure 41 Comparison between average fine imposed for Endangered Species cases and the relevant starting point in the Sentencing Guidelines

Variance in sentencing: Listed Species related offences

The custodial rate for Listed Species offences remained high and relatively stable over the period. However, case law is not always consistent across the type of case, the court hearing the case, etc. This is examined in the following sections.

Average, minimum and maximum sentence: all Listed Species combined

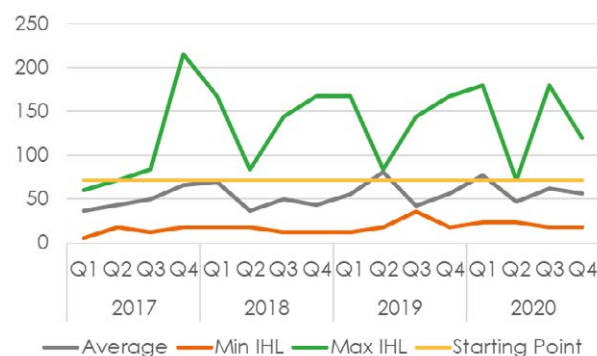


Figure 42 Mean, minimum and maximum custodial sentences and Sentencing Guidelines starting point per quarter for Listed Species

The mean custodial sentence for Listed Species offences increased by around 7 months over the period (55 months in 2017, 63 months in 2020). Figure 42 shows this evolution by quarter throughout the period.

To assess consistency in jurisprudence, we looked at the variance between the minimum and maximum sentences and average sentence imposed under the same section of the wildlife law, in this instance Section 110B of the NPWA for offences committed against Listed Species. The analysis of judgements shows that a number of aggravating and mitigating factors are taken into consideration in determining the sentence (plea, records of previous convictions, nature and commercial scale of the offence, degree of planning and offender's level of involvement in the commission of the crime, degree of harm to the species, age of offender etc.). The Sentencing Guidelines also provide support for judges by listing a series of aggravating and mitigating factors that can deviate the sentence from the starting point and thus obtain a reasoned judicial decision.

Figure 42 shows that while the minimum sentence for Listed Species cases is relatively stable across the period (orange line, between 6 and 36 months), there is a huge variation in the maximum sentence (green line) set under the same section of the Act between 5 and 18 years. However the mean average sentence (grey line) follows, albeit slightly lower, the Sentencing Guidelines starting point (orange line in Figure 42) for that type of offence.

Average, minimum and maximum sentence: elephant/pangolin cases

We further analysed the data to determine any variance between different Listed Species (where the same sentencing provisions apply); here we are looking at the two species most targeted by traffickers in Malawi, elephants, and pangolins. The comparison of minimum and maximum sentences requires the analysis of a significant amount of data to be relevant. For pangolin cases, 75% of sentences were handed down in 2020; we therefore focused the comparative analysis on 2020.

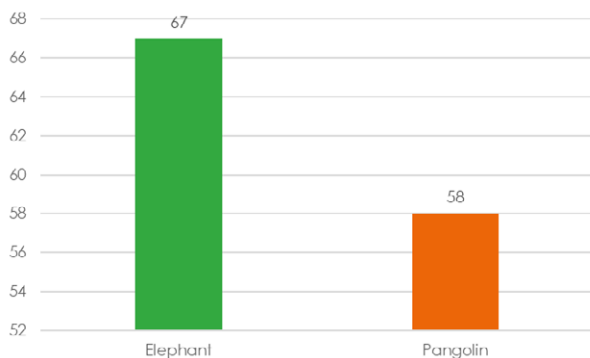


Figure 43 Average length of imprisonment for elephant and pangolin offences in 2020

Figure 43 shows the average length of imprisonment is significantly higher for the elephant cases (67 months i.e., over 5.6 years) than for pangolin cases (58 months i.e., 4.8 years). We have also observed that for elephant cases, the variance between the minimum and maximum sentence within a quarter can be as much as 13 years, while for pangolin cases, it does not exceed 9 years.

Variance in sentence according to defendant nationality

As noted above, prior to the NPPWA amendment, there was considerable variance in convictions against nationals and non-African nationals. We repeated the analysis over the 2017-2020 period for convictions of Listed Species offences.

Figure 44 shows sentences recorded for Malawi nationals (N), African nationals (not including Malawians) (FA) and non-African foreign nationals (FNA) for Listed Species offences. Sentence type is shown as a percentage of the total sentences recorded for each category. For offences involving Listed Species, 92% of Malawians (44 (a)) received a custodial sentence and this rises to 96% for foreign nationals from the African continent (44 (b)), and none were fined. For non-African foreign nationals (44 (c)), 13% of convictions for a Listed Species offence resulted in a suspended sentence (SSO) (this refers to four individuals; for three of the four the court based its reasoning on the low quantity of Listed Species products involved in the commission of the offence i.e., less than 0,600 kg). The other foreign nationals found guilty of a Listed Species offence were fined (13%) or passed a

Figure 44 Type of sentences across nationalities

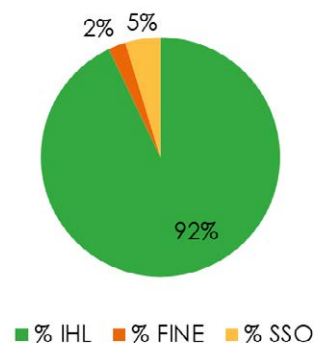


Figure 44 (a) Malawian nationals

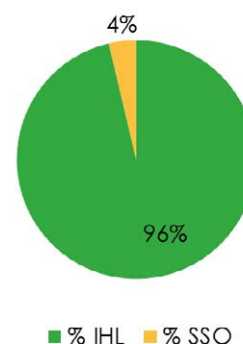


Figure 44 (b) African nationals

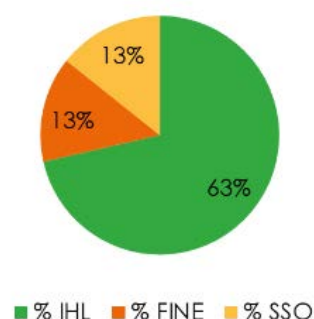


Figure 44 (c) Non-African foreign nationals

prison sentence (63%). The imprisonment rate for foreigners from outside Africa (63%) is therefore significantly lower than for nationals (92%) and nationals of another country on the African continent (96%) for offences punishable under the same legal provision.

Of the 16 non-African nationals convicted of Listed Species offences over the period, none received a prison sentence before 2019. Two received prison sentences in 2019 and 8 in 2020 (as part of the Lin-Zhang syndicate earlier described).

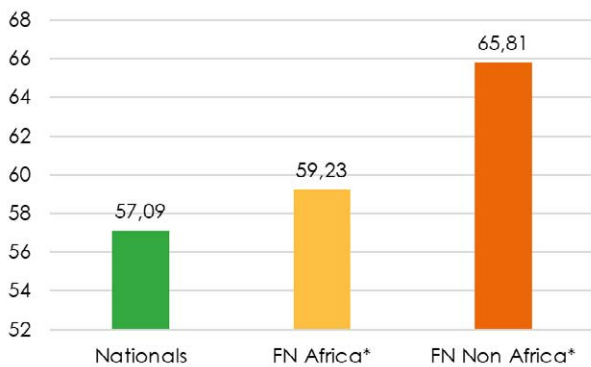


Figure 45 Average custodial sentence per defendant nationality

Finally, Figure 45 details the average length of imprisonment for the three nationality categories for Listed Species cases. The average sentence for non-African nationals is longer (66 months) than African nationals from outside Malawi (59 months) and Malawian nationals (57 months).

Non-Malawians from African countries (Congo, Mozambique, Rwanda, Zambia, Zimbabwe) are punished slightly more severely than Malawians (custodial rate slightly higher than nationals, average length of imprisonment two months higher).

In 2019 and 2020, the average length of prison sentences for foreign nationals from outside Africa was more than eight months longer than that of Malawian nationals.

Court case monitoring can provide insights into variations in sentencing between courts or magistrates. Below we compare sentences for Listed Species offences and the average length of imprisonment in different districts.

Non-custodial sentences passed for Listed Species offences

Since the NPWA Amendment Act came into force in 2017, Section 110B 9 (for Listed Species offences) no longer has the option of a fine. Despite this, financial penalties (Figure 46) were handed down in three districts: in Kasungu in 2017 and 2018, in Lilongwe in 2017 and 2019, and in Blantyre in 2018. However, it is encouraging to note that no financial penalties were handed down in 2020 for offences involving Listed Species.

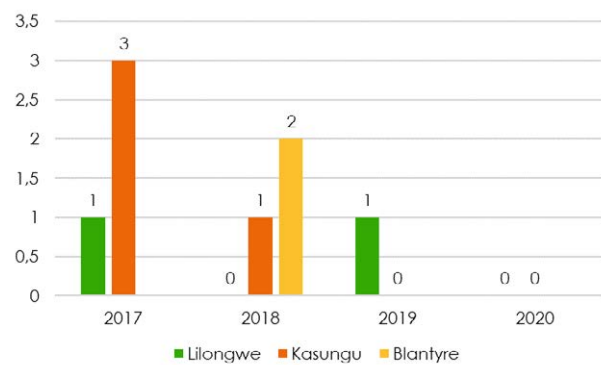


Figure 46 Distribution of fines for Listed Species offences across courts

Suspended sentences (Figure 47) were used by more courts, but very infrequently, only Blantyre court handed down more than two suspended sentences across the period. Blantyre court gave suspended sentences for Listed Species offences in six out of 11 individual cases over the four years.

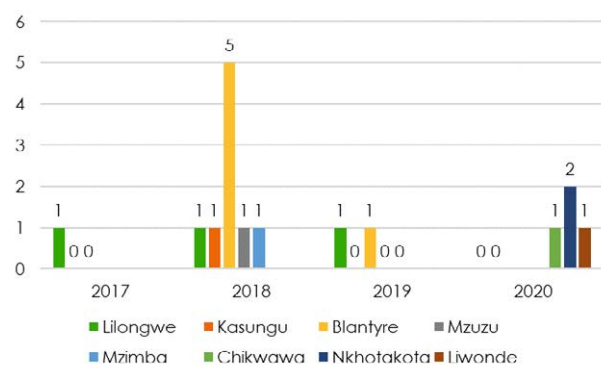


Figure 47 Distribution of suspended custodial sentences for Listed Species offences across courts

Average length of imprisonment across courts for Listed Species offences

Figure 48 shows a very heterogeneous approach to the length of prison sentences for Listed Species offences across regions. In the Eastern region, for example, this offence was punished by an average of 99.4 months in prison, compared with 53.1 months in the Central region, i.e., a difference of 46 months or almost four years.

Similarly, within the same region there are disproportionate differences in the treatment of similar cases (Figure 49). For example, in Lilongwe the average length of imprisonment for Listed Species cases is 43 months, while in Nkhonkhotakota it is 88 months, a difference of 45 months or 3.75 years.

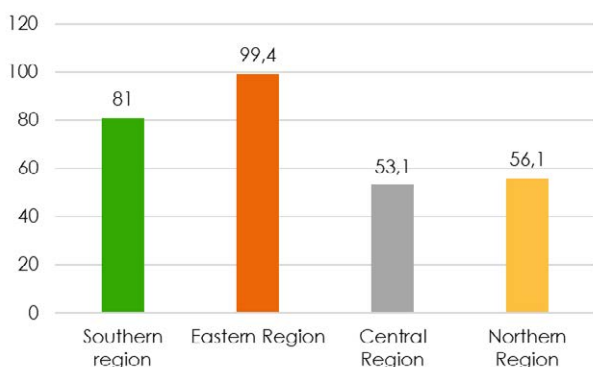


Figure 48 Average length of imprisonment for Listed Species offences per region

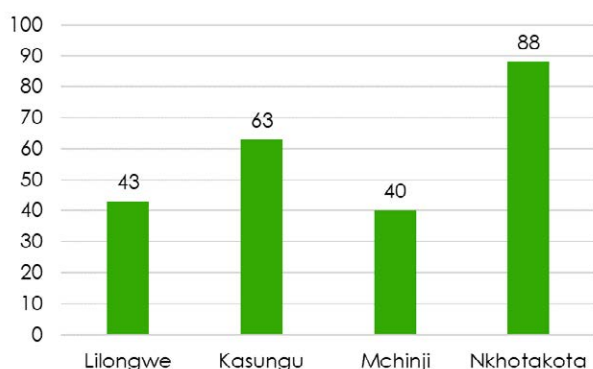


Figure 49 Average length of imprisonment for Listed Species offences within the Central Region

Case distribution across magistrate grade

This section examines case distribution across different grades of magistrates.

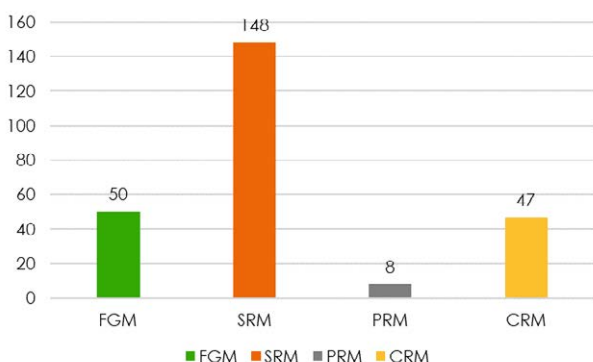


Figure 50 Distribution of individual Listed Species cases across magistrate grades

It is important to note that 64% (148 of 253 sentences) of Listed Species cases were presided over by Senior Resident Magistrates³⁸. Prior to the reported period, most wildlife cases, including for Listed Species offences, were tried by First Grade Magistrates (FGMs, i.e., lower grade courts). During the launch phase of the Wildlife Justice Project (July 2016 to June 2017) 75% of Listed Species cases were tried by Chief Resident Magistrates (the highest grade of magistrate court).

During the period 2017-2020 the situation changed again, with only 20% of cases being dealt with by CRMs and most cases heard by SRMs. This is mainly due to a restructuring of the judiciary in Malawi with the recruitment of many SRMs in several local courts to preside over criminal cases, including serious cases related to the NPWA.

Sentencing by magistrate grade

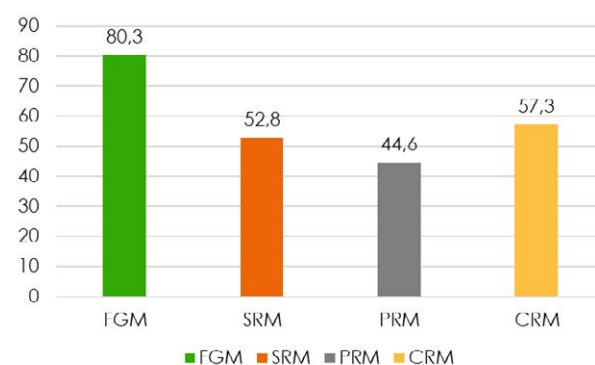


Figure 51 Average length of imprisonment per magistrate grade

Figure 51 shows that the average prison sentence given by FGMs for Listed Species offences is 80 months (i.e., >6 years and therefore eight months longer than the Sentencing Guidelines starting point), compared with 57 months for those given by CRMs (4.75) and 52 months average sentence given by SRMs (4.4 years). The

38 Magistrates court are constituted in accordance with Section 34 of the Courts Act (Part IV Subordinate Courts). The magistrate criminal jurisdictions is ruled by the section 58 of the Courts Act and the sections 13 and 14 of the CP&EC. According to the section 14 of the CP&EC the Resident Magistrate's court (Chief Resident Magistrates and Senior Resident Magistrates) may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term exceeding twenty-one years, authorized by the Penal Code or any other written law. A court of a magistrate of the first grade (FGM) may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term not exceeding fourteen years, authorized by the Penal Code or any other written law. From the higher to lower jurisdictions magistrates are ranked as follow : CRMs, PRMs, SRMs, FGMs.

average difference in length of imprisonment for sentences handed down by FGMs and professional magistrates (i.e., SRMs and CRMs) is about two years i.e., defendants appear to be given harsher sentences by lay magistrates. This difference cannot be simply explained by the nature of cases presided over by the FGMs, as the trial of complex cases with serious aggravating factors (e.g., cases related to the arrest of the Zhang-Lin syndicate) are heard by SRMs and CRMs.

Data is not available to determine how many of the higher FGM sentences are changed by the High Court through the confirmation process. Further research in this area would be valuable to determine whether the HC is supporting the decisions in the lower courts.

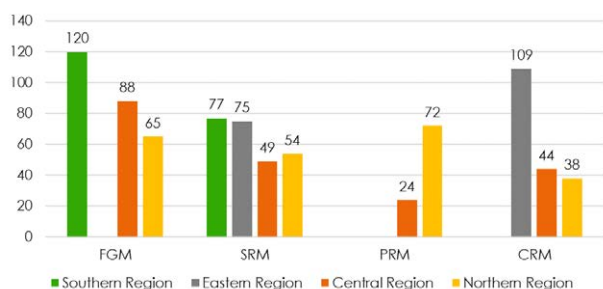


Figure 52 Average length of imprisonment per magistrate grade and per region

In the previous section, we observed a disparity in the average length of imprisonment by region (Eastern and Southern regions with a more severe case law than the courts in the Northern and Central regions). However, we note that there is also a disparity among magistrates of the same rank (Figure 52). For example, there is a difference of four years between the average length of imprisonment handed down by the Principal Resident Magistrate North (six years) and that of the Central region (two years) for offences related to Listed Species³⁹. In the Eastern region, CRMs handed down an average of nine years custodial sentences, but this falls by five years to 3.6 years on average for CRMs in the Central region.

³⁹ In order for the analysis to be meaningful, we have excluded from the study presented in Figure 52, all courts/grades having pronounced less than 3 individual sentences.

⁴⁰ Page 18 to 23 of the Sentencing Guidelines for Wildlife Crimes in Malawi Courts

Although aggravating and mitigating factors specific to each court case have influenced the statistics, they do not explain these variations, which reveal a high discrepancy in the severity of sentencing of similar criminal facts and factors.

Does the defendant plea status at trial have an impact on the sentencing?

Figure 53 Sentencing trend according to defendant plea status

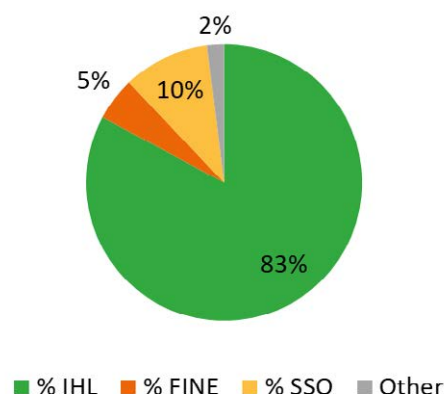


Figure 53 (a) Sentencing following a guilty plea

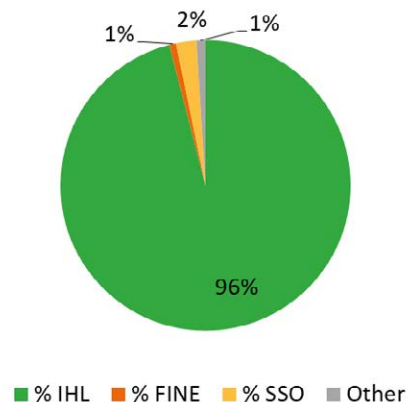


Figure 53 (b) Sentencing following a not-guilty plea

The Sentencing Guidelines for Wildlife Crimes in Malawi 2017 considers the guilty plea as a mitigating factor that may be considered when determining the appropriate sentence of an offence. Indeed, the guilty plea is perceived as evidence of remorse⁴⁰.

Thus, for those cases where information was available, we compared the sentencing statistics of individual cases where the defendants pleaded guilty to at least one of the charges and those where the defendants denied all charges. The analysis is limited to Listed Species cases.

Figure 53 (a) examines the type of sentence, i.e., whether pleading guilty had an effect on the type of sanction determined. Defendants who pleaded guilty to at least one of the charges, were less likely to receive a custodial sentence (83%) compared to those who denied all charges (96%).

The individuals who pled guilty include the five defendants in the Foster Milward case, who plead guilty to the offences of possession of specimen of Listed Species, and were convicted and sentenced to 12 months imprisonment suspended for 24 months (the same sentence on the dealing in government trophy charges). In April 2020, in case 351/20 Republic v Amos Davie Mangiza, before Blantyre CRM, the accused was arrested in possession of a pangolin, pleaded guilty to the offence of possession of specimen of Listed Species and was sentenced to seven years imprisonment, suspended for two years.

However, when it comes to the length of a prison sentence, a guilty plea appears to have little effect. As shown in Figure 53 (b), defendants who pleaded guilty to at least one of the charges and were subsequently sentenced to prison for at least one of the charges, received an average of 57.91 months in prison compared to 56.53 months for those who denied all charges (1.4 months' variance).

Does the defendant representation status at trial have an impact on the sentencing?

In this study, defendants with legal representation had on average a 10% higher chance of being acquitted compared to those unrepresented/representing themselves. So, how does legal representation affect sentencing i.e., does legal representation increase the chances of a more lenient sentence?

Legal representation has very little effect on whether a defendant convicted for a Listed Species offence receives a custodial sentence. Custodial sentences were given to 94% of represented defendants and 91% of unrepresented defendants. As shown in Figure 54, legal representation only resulted in a moderate reduction in average sentence (average of 54.3 months for represented defendants and 58.5 months for those unrepresented).

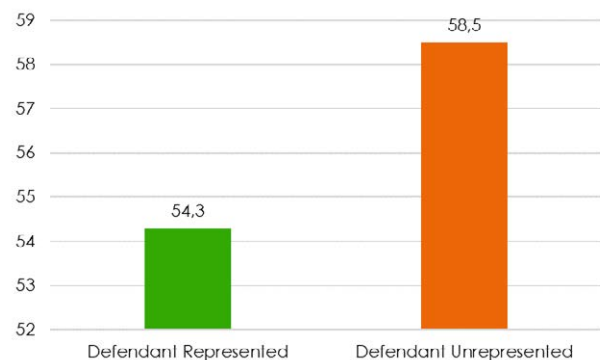


Figure 54 Length of custodial sentence according to representation status



Discussion and recommendations

TRENDS IN LISTED SPECIES CASES

Of a total of 519 defendants recorded in our 2017-2020 study, 255 defendants were charged with offences related to possession and/or trade of elephant specimens. Trade in elephant specimens represented 49% of all cases and 50% of the total convictions for wildlife offences.⁴¹ The number of elephant cases clearly remains of concern; 40 individual cases were recorded in 2020. However, it is encouraging to note that elephant trafficking cases have dropped by 44% from 2017 to 2020. This is most likely to be a direct result of the disruptive law enforcement action undertaken against the Lin-Zhang syndicate.

Pangolin trade in this period shows the inverse of the ivory trade; there was a dramatic increase of 1100% from 2017 to 2020. There are several potential causes. Firstly, the spike may be partially explained due to a notable increase in deforestation in neighbouring Mozambique (most pangolins seized in Malawi originate from Mozambique), which has negatively affected their natural habitat and made the animals more exposed and vulnerable to capture. Secondly, counter wildlife trafficking enforcement in Malawi has proven to be very effective. The arrest of multiple members of the Lin-Zhang criminal syndicate in 2019 had a significant disruptive effect on the wildlife trafficking supply chain in Malawi, with previously trusted in-country buyers/consumers of pangolin meat became cautious and ceasing to trade. This may of inadvertently led to a greater exposure of potential offenders to the law enforcement as local pangolin poachers/traders sought to find new markets. We assume that the level of supply of pangolins by the low-level traffickers remained constant, while the

demand has significantly decreased at a time when COVID-19 was having negative effects on rural income. Thirdly, the spike in pangolin trade may be, in part, a result of increased law enforcement effort and market influence.

The significant increase in “other species” cases in 2020 (26 court cases in 2020 versus seven in 2019) could also be explained in part by the COVID-19 crisis, which has exacerbated household poverty in rural areas, potentially causing an increase in game hunting in protected areas. That said, LWT has expanded its team in charge of monitoring and prosecuting cases and collecting data, so cases that were previously not covered because they were considered non-priority are now monitored and registered in the database. Thus, the increase in these cases may simply reflect increased monitoring rather than an increase in poaching of other species.

The main legislative change affecting cases during the period was the gazetting of the amendment to the NPWA in 2017, which provided for much stronger penalties and removed the option of a fine for the most serious offences. In 2018, the adoption of the Sentencing Guidelines for Wildlife Crime developed by the judiciary with NGO support aimed to raise the awareness of the judiciary of the seriousness of wildlife crimes and present guidance to promote consistent and fair sentencing.

Despite having the same level of protection under the new Act, average custodial sentences for pangolin cases are lower (4.8 years) than for elephant cases (over 5.6 years). There is a large variance in the maximum custodial sentences handed

41 185 convictions related to elephant crime out of 372 wildlife crime convictions.

down in both elephant cases (13 years) and pangolin cases (9 years) and notable discrepancies in sentencing across regions, within regions and among magistrate grades as presented under the Case Trends section below. This suggests that further high-level discussions between judicial officers and sharing of jurisprudence may be helpful to improve consistency of sentencing both across protected species types and also across courts.

DEFENDANT PROFILE

In the absence of socio-economic data, determining the profile of defendants is a difficult exercise. However, data collected as part of court monitoring activities provides an outline of some trends which may be used to tailor development programmes towards the exposed population.

Nationality, gender, age and location

The majority of defendants profiled were Malawian; for example, 94% of the total defendants in 2020 were Malawian. The involvement of non-Malawian African (FA) nationals (mainly Zambian and Mozambican) remained relatively stable over the period. Regarding the non-African foreigners, a peak connected to the arrests of the Zhang-Lin syndicate (mainly composed of Chinese nationals) was recorded in 2019. However, no cases involving nationals from outside the African continent was recorded in 2020. This may reveal the central role the syndicate was playing in the disrupted market and the deterrent effect of their arrest on potential consumers and buyers.

While the majority of male nationals throughout the period were aged between 25 to 54, it should be noted that trade in species with a lower market value (species in Appendix II or III of CITES) involved a significant number of younger people (under 25 years of age) and that unlike wildlife cases, the offences committed against the Forestry Act involved many women.

Linking the incidence of cases by locality to the defendants' data showed that the

higher the market value of the species, the more intermediaries will be involved in the trade and the greater their mobility. The high prevalence of cases in Lilongwe, and to a lesser extent in Blantyre, Kasungu, Mchinji, Mzimba, Mzuzu and Rumphi, are unsurprising and may be explained by the nature of the wildlife trade. This transnational trade is organised in a network requiring centralised purchasing in the capital to coordinate the illegal marketing of products sourced from intermediaries across the country.

The arrest of the Lin-Zhang syndicate has shed light on part of the supply chain, from the actors operating at source (poaching) to the main buyers (in the capital) via a series of traders and intermediaries involved at different levels. For other cases, it is difficult to trace the exact origin of the products seized; however, given the species census information in Malawi (with few pangolins recorded in Malawi so far) and the high number of arrests, it is anticipated that a large proportion of the wildlife products seized in Malawi come from neighbouring countries (Mozambique for pangolins; Zambia, Tanzania, Mozambique, etc. for ivory). The trade route requires crossing land borders, which explains the incidence of cases in neighbouring districts including border points such as Rumphi, Mzimba, Kasungu or Mchinji.

The prevalence of cases involving endangered, protected and game species in rural locations (Liwonde, Nkhosachota, Nsanje) is influenced by the nature of a more local demand for bushmeat.

Recommendations

- 1.1 Strengthen public awareness-raising actions, differentiated by type of trafficking, among communities vulnerable to wildlife crime and localities identified as "hotspots" and especially among the younger generation.
- 1.2 Involve local authorities in awareness-raising and regional law enforcement actions to capture the movement of wildlife products from one district to another within the same region.

CASE TRENDS

Case conclusion delays

The excessive length of time taken to conclude trials (due in part to adjournments) was identified in 2017 to be a result of corruption, tampering of evidence, witness fatigue and absconding of the accused. The Malawi Performance Standards state that in straightforward cases the trial should be concluded within 30 days or within 90 days for more complicated cases. Adjournments should not be granted as a matter of course and reasons for adjournments should be recorded.

However, analysis of the data in this period shows that actual practice is far from adhering to these Standards. Moreover, although court congestion can sometimes explain the slowness of the judicial system (in Lilongwe, for example), this justification does not apply everywhere. Indeed, it has been shown that in the districts of Blantyre and Chikwawa, the disproportionate length of time it takes to process wildlife cases cannot be explained by the volume of wildlife cases to be processed. Instead, it may be explained by the bail rate granted to defendants prosecuted for Listed Species offences. In 2018 and 2019, for Listed Species related charges involving a total of 48 people across Malawi, 67% remained unresolved after a year. The failure to re-arrest the accused who has absconded bail is a common issue in delayed cases. In some cases, the accused may not be located after absconding bail, so the failure to affect a re-arrest causes delays and leaves cases open for years. Since these are serious offences, commanding up to 30-year custodial sentences, it is disconcerting that so many defendants are bailed and are therefore theoretically able to continue committing wildlife offences, as well as not facing justice if found guilty.

Another observation relates to the length of time it takes for the sentence to be passed following conviction in cases involving Endangered Species; in 40% of cases the

sentence is not handed down until three to six months after the judgment.

Finally, it may be noted that while the Judiciary Performance Standards recommend the appeal hearing in the High Court should take place within 21 days of receipt of the file from the magistrate's court and that the judgment should be delivered within 14 days, this time limit was not honoured in any of the wildlife appeal cases recorded in the data during the period.

Recommendations

- 2.1** The Judiciary, and any other relevant authorities, should consider revising the Malawi Judiciary Performance Standards which were adopted in August 2006.
- 2.2** Carry out further research on the compliance of the bail conditions given by the court to defendants prosecuted for wildlife offences.
- 2.3** The Judiciary, and any other relevant authorities, should audit the court cases remaining unresolved after more than a year when they involve Listed Species charges and defendants on bail.
- 2.4** The Judiciary, and any other relevant authorities, should evaluate the performance of the courts based on the available data; perform audits and provide support to courts where the length of conclusion of the wildlife court cases far exceeds the national rate.
- 2.5** The Judiciary should provide further training to magistrates on the implementation of the Bail (Guidelines) Act. Case law which has applied the Bail (Guidelines) Act should be disseminated.

Charges used for wildlife crime cases

The 2017 report established that until mid-2017, most wildlife offences were charged under the NPWA, despite the potential to charge under offences from other

legislation (for example charges of money laundering offences can be brought under the Financial Crimes Act).^{42 43}

The situation has changed very little from 2017 to 2020; the NPWA remains the primary legislation for prosecuting illegal activities related to wildlife trafficking.

The National Parks and Wildlife Act

Prosecutions for Listed Species offences are almost exclusively prosecuted under Section 86 ("possession, sale and buying of protected, endangered and listed species") and Section 91 ("dealing in government trophy") of the NPWA, whereas offences against other species involve the use of a wider variety of charges (prohibited acts in protected areas, possession of firearms, etc).

This is an important indicator of the role of potential offenders in the commission of offences. For Listed Species cases, most offenders are acting at various stages of the commercial level (collectors/traders/intermediaries/traffickers) and are based far from protected areas and poaching activities. Inversely, for Endangered Species cases, the offenders are poachers or traders and sometimes both. It is assumed from the literature and knowledge of the trade in Malawi, that the supply chain of Listed Species products includes more stages (and therefore more actors) than the trade of Endangered Species. It is also presumed that the main source of Listed Species specimens is outside of Malawi, while lesser value species (hippo, antelopes, etc.) are less represented in the international trade.

While Malawi's law enforcement authorities – park rangers, police, or investigative units – aim to largely tackle the supply chain for lower value species, their actions to

disrupt the trade in high value species are more fragmented. It is therefore essential to enhance regional collaboration to promote more efficient monitoring and enforcement of the trade in high value species across borders.

It was also observed that the charge of possession (Section 86) was used more frequently than the charge of "dealing in government trophy" (Section 91), especially since 2018. Section 86 refers to the prohibition of the possession, sale and buying of Protected, Endangered and Listed Species specimens without a valid license or certificate of ownership, while Section 91 prohibits the possession, buying, selling, transferring or dealing in a government trophy. Two observations can be made in relation to this trend:

- This result may reveal a peculiarity in terms of obtaining evidence in the context of criminal investigations for this type of case. For almost half of Listed Species cases, the evidence collected by the investigators and available to the prosecution can reasonably be used to prove a possession offence but is not sufficient to bring a "dealing" charge (Section 91).
- The terminology "government trophy" is defined in Section 90 of the NPWA as any specimen of any Protected, Endangered or Listed Species of which the ownership hasn't passed to any person. Both Sections 86 and 91 refer to the illegal possession and selling of species specimens. However, in practice, it was observed that Section 86 was preferred to charge the offences of possession and Section 91 to charge the offences of dealing. Notably, the language in the NPWA may have been confusing for prosecutors who started referring to Section 86 for both

42 Section 42 of the Financial Crimes Act

43 Financial crime offences are rarely charged in connection to wildlife crime in Malawi. As of December 2021, there is one ongoing case not included in this report as the date falls out of scope. Lin Huxin, a Chinese national, suspected to be a member of the Zhang-Lin syndicate, was arrested on 21 December 2020 on account of money laundering and charged under the Financial Crimes Act. This report only covers cases where the first hearing occurred between 2017 and 2020; however, Lin Huxin was granted bail on 24 December, i.e., 3 days following her arrest and no hearing has occurred since then.

possession and unlawful acts of buying/selling wildlife products.

Finally, the fall in the use of Section 98 of the NPWA (to charge offences of illegal importation, exportation and re-exportation of wildlife products) is a positive sign since no illegal import/exports were recorded due to the effect of preventative (i.e., public awareness campaigns) and enforcement (i.e., the Wildlife Detection Dog Unit) measures implemented at border points over several years and strengthened during the period of this report.

Recommendations

- 3.1** Promote collaboration among investigative authorities in-country to enhance collection of evidence for offences connected to IWT and penalised under a wider range of legislation (Penal Code, Financial Crimes Act, Corrupt Practices Act, Customs and Excise Act, etc.). For example, collaborative investigation on the acquisition of property which may represent the proceeds of a predicate offense (for potential charge under the Financial Crimes Act).
- 3.2** Experiment with prosecution-led investigations for suspected high-profile offences.
- 3.3** Promote the use of the Model Charges and Wildlife Crimes guide developed by the MPS. This Guide provides a quick reference to the sections of the law that are relevant to prosecuting wildlife cases, including those cited above.

It also comprises advice on drafting the statement and particulars of the offence.⁴⁴

Sentencing

The fundamental purposes and goals of criminal sentencing are recognised by Malawi Case Law and Judiciary Guidelines and the Sentencing Guidelines for Wildlife Crimes in Malawi Courts. These include retribution⁴⁵, deterrence⁴⁶, incapacitation (protection of society)⁴⁷, rehabilitation or reformation of the offender, restitution or restoration⁴⁸, and, in wildlife cases, conservation of wildlife and ecosystems.⁴⁹

With regards to the (UNTOC) definition (see footnote 58) and the NPWA (Listed Species offences are liable to be punished by 30 years of imprisonment as per section 110B) there is no doubt that elephant or pangolin related crimes are serious offences on the same level as robbery (which is liable to be punished with 14 years imprisonment as per section 301 of the Penal Code).⁵⁰

The data showed a 91% rate of custodial sentences without the option of a fine and an average custodial length of close to five years for Listed Species related offences.⁵¹ This data shows that Malawi has delivered one of the most severe penal responses to wildlife offences in the region. In Kenya, a report recently published showed that among 103 persons convicted of ivory trafficking, 83% were sentenced to a jail sentence (typically between one and five years) with the option of avoiding jail by payment of a fine.⁵²

44 At a recent workshop, the National Director of Police Prosecutions, indicated that the examples and technical advice on document preparation and prosecution strategy in the model charge sheet for wildlife crime would be “a key tool to guide prosecutors and should be widely used”.

45 Rep v Maria Akimu, Revision Case No. 9 of 2003

46 Rep v Chilemba Elias Conf. Case, No. 354 of 1999; Hope Kapalamula and Others v Rep, Crim. Appeal No. 187 of 2016; Republic v John Sakala and Others, Conf. Case No. 2451 of 2016

47 Rep v Brown and Others [1995] 1 MLR 212.

48 Sentencing Guidelines for Wildlife Crimes in Malawi Courts

49 Rep v Maria Akimu, Revision Case No. 9 of 2003

50 Section 301 of the Penal Code

51 2017-2020 data

52 Crimes against wildlife and the environment. Kenya's legal response to wildlife, forestry and fisheries crimes. Court Monitoring report 2018-2019. Wildlife Direct.

However, the high imprisonment rate and average custodial sentence can shield strong inconsistencies in the wildlife case law. By comparing the sentencing range and the average sentence for Listed and Endangered Species cases with the proposed starting points in the sentencing guidelines, we note that the sentencing for Endangered Species cases was stiffer than for Listed Species offences. This reveals a misconception in the understanding of both trades within the criminal syndicate as well as their impact on biodiversity. Within the Listed Species cases, the quantum of pangolin related offences sentencing seems to be more constant than for elephants.

There is a large discrepancy in sentencing across regions (99.4 months' average sentence for Listed Species related offences in the Eastern Region versus 53.1 months in the Central Region), within regions (average sentence of 43 months in Lilongwe and 88 months in Nkhosakota), among magistrate grades (two years difference between average sentence passed by lay magistrates and professional magistrates) as well as among magistrates of the same rank.

Finally, the average custodial sentence for those who pled guilty was slightly higher (57.91 months) than for those who denied all charges (56.53 months) which raises questions about whether guilty pleas are really considered a mitigating factor in sentencing.

The large variation in sentencing offences falling under the same penalty section reflects the latitude in magistrates' decision-making in determining the sentence. Through research on court rulings for similar offences and factors, we have observed that similar aggravating or mitigating circumstances have an unequal impact on the determination and quantum of the sentence depending on the magistrate. For example, decisions made by lay magistrates being more severe than professional

magistrates; or sentencing tougher in the Eastern and Southern Regions than in the Northern and Central Regions.

Further, this discrepancy is no longer associated with the defendant nationality factor. Indeed, while it was shown in the previous report that foreign nationals were less seriously sentenced by the Malawian courts for the same crimes than Malawian nationals, a real change has taken place since 2019. The severity of the penal response now concerns all offenders without distinction of nationality. Furthermore, the average length of custodial sentences for foreigners outside Africa is higher than for nationals, which shows that the degree of implication of those leading illegal trafficking in Malawi has effectively been considered as an aggravating factor and been reflected in the sentence.

The quantum of the sentence and the proportionality principle

As in many other jurisdictions the principle of proportionality is recognised as a fundamental principle in determining the appropriate quantum of the sentence.

In its confirmation case *Republic v Keke*,⁵³ Mwaungulu J. declared that "*the Court must pass a sentence commensurate with the crime committed*", positioning the proportionality principle as the primary principle to guarantee fairness and justice in determining the appropriate sanction. In *Republic v Phiri*⁵⁴ the High Court concluded that regardless of the goal in sentencing (for example, the reformation of the convict), the sentence must be proportionate in relation to the seriousness of the crime and surrounded factors. Also, in *Republic v Nkhoma*⁵⁵ the court stated: "*normally the purposes of sentencing do not assist the court in arriving at the appropriate quantum of a sentence. An appropriate sentence must achieve proportionality, equality, and restraint. The sentence must be equal to the crime committed, ensure that offenders*

53 Rep v. Keke Confirmation Case No 404 of 2010.

54 Rep v. Phiri [1997] 2 MLR 92 (HC).

55 Rep v. Nkhoma Confirmation Case No 3 of 1996

of equal culpability are treated alike (...)"'. Other court decisions confirmed this position.⁵⁶

Recommendations

- 4.1. This data analysis is primarily based on the data collected from magistrate courts; relevant agencies should ensure that High Court confirmations of wildlife court cases are published in a timely manner.
- 4.2. The Judiciary should consider creating a working group gathering the Chief Resident Magistrates of each region to meet on regular basis and report on the concluded cases and progressively homogenise the jurisprudence.
- 4.3. All prosecution authorities should work in concert in the prosecution of high-profile court cases.⁵⁷
- 4.4. The Judiciary, through a state case, should establish a clear position about the admissibility of evidence obtained via an agent provocateur/entrapment. For example, is entrapment a cause of non-admissibility of the evidence or does it apply as a mitigation?
- 4.5. Given the nature of serious wildlife offences, sentences of confiscation and forfeiture of the proceeds of crime may be appropriate for high profile offenders and should be enhanced in Malawi wildlife case law. Prosecution should be encouraged, when necessary, to include forfeiture in their sentencing submissions presented to the court. The legal basis for demand of forfeiture is supported by several pieces of legislation (NPWA, Penal Code, CP&EC...).
- 4.6. The Judiciary should hold an internal

conference led by High Court Judges on the principle of proportionality and best practices in determining the quantum of the sentence for wildlife offences. It should also involve reviewing selected wildlife court cases and discussing current case law in reference to the fundamental purposes of sentencing and the sentencing principles and all relevant Sentencing Guidelines. NGOs, civil society representatives, legal practitioners and experts should be invited as observers.

NATIONAL INVESTIGATIVE AND PROSECUTORIAL COLLABORATION

Pre-trial meetings

One of the recommendations made in the previous report was to increase the cooperation between investigation and prosecution authorities to avoid mischarging and to improve the prosecution strategy throughout the trial. One of the identified vectors was holding pre-trial meetings for investigators, prosecutors, and expert witnesses to ensure that the prosecution docket is complete, including the investigation report, all recorded witness statements, expert report (if necessary), exhibits and all available evidence. Both investigation and prosecution authorities have implemented these recommendations over the past four years. Data records and empirical observations show that pre-trial meetings are now commonly held at an early stage – ideally before plea taking – for all monitored wildlife court cases.

Recommendations

- 5.1 The following recommendations are based on input gathered over the past four years. Pre-trial meetings should include a basic pre-charge verification for the following purposes:

56 Rep v. Nangwiya Confirmation Case No 608 of 1997 ;. Also see the article from Esther Gumboh, postdoctoral Fellow at the University of Cape Town, South Africa, " A Critical Appraisal of the Role of Retribution" in Malawian Sentencing Jurisprudence".

57 One good example is the prosecution of the QinHua Zhang court case which assembled the prosecution expertise of one senior prosecutor from the Malawi Police Services (Superintendent Charles Panyani), one senior advocate from the Directorate of Public Prosecutions (Linness Chikhankeni) and one Private Counsel on behalf of the Directorate of Public Prosecution (Andy Kaonga). This model of collaborative strategy should be encouraged.

- To seek disclosure of evidential information from the investigation (source and method of acquisition of the evidence).
- To evaluate the reliability and credibility of all evidence as well as its admissibility in court.
- To ensure that the evidence has been legally obtained.
- To establish a *prima facie* case i.e., ensure that every element of the offence (including both *mens rea* and *actus reus*) can be established by available evidence to avoid risk of malicious prosecution that the suspect may be considered criminally responsible for the act or omission.
- To ensure that there are reliable and credible factual witnesses.
- To ensure that, in commencing criminal proceedings, the public interest is satisfied.

Regional Prosecutor Case Review Meetings

The progress of outstanding wildlife, and recently forestry, court cases are reviewed quarterly during regional meetings which gather relevant prosecutors and are presided over by the National Director of the Police Prosecution. Recommendations and, if necessary, changes in strategy are issued to ensure the smooth development of court case prosecution. Court cases recently concluded are also discussed and, if required, proposals for appeal are made to the DPP.

Recommendations

- 6.1** Incorporate training sessions during the case review meetings to address common issues that affect successful prosecution of cases, including case studies on best practices in proportionality (mitigating/aggravating) factors, for example, and refreshers on the legal tools listed below (legal tools section).

- 6.2** Invite one representative from the DPP to attend the quarterly case review meetings organised by MPS (mentioned above). DPP presence would provide further legal expertise in general and specifically for court case outcomes that should be appealed.

Interagency meetings

The IACCWC is a forum for coordinating in-country authorities. The committee gathers members from both government institutions and NGOs on a regular basis to discuss IWT matters and deliver a collaborative and coordinated response. The current Chair is the FIA, and the Vice Chair is the Judiciary. The IACCWC has power to establish a working group or taskforce for a specific mission.

Recommendations

- 7.1** To help strengthen the role of the IACCWC on wildlife crime cases, it is recommended that each directive, measure, or recommendation adopted by the Committee at its quarterly meetings be accompanied by a roadmap detailing the timetable and the institutions or persons responsible for their implementation. This roadmap (as well as regular reminders) should be shared with the Committee members and the persons concerned within a reasonable period after its adoption. Management of the roadmap may be assigned to the chairperson of the Committee or may rotate among the committee members.

- 7.2** Where an IACCWC guideline requires coordinated action by several actors, it may be beneficial to establish working groups to implement such actions within a timeframe and budget determined by the committee.

TRANSBOUNDARY AND INTERNATIONAL COOPERATION

Illegal and transnational trade of high monetary value wildlife specimens impacts species survival and the preservation of biodiversity in protected areas, but also

threatens the safety of global civil society. Unlawful possession, buying and selling of elephant or pangolin specimens are uncontestably serious crimes⁵⁸ made possible through the logistical support of organised criminal groups.⁵⁹

Given the transnational nature of IWT, collaboration among authorities should not only occur nationally but also, critically, at a regional scale. Data on defendants' nationality, incidence of court cases in neighbouring districts, information about species being seized in Malawi, etc. all show that despite an extremely low level of exporting/importing offences recorded in this study, Malawi is still a transit hub for regional wildlife products obtained illegally. To tackle this trade there is therefore a necessity to track criminal syndicates across Malawi's borders and to co-operate with neighbouring countries to stop criminal activity originating from Malawi. This can only be achieved by recognising the sovereignty of each state and its domestic law and procedures. There are several avenues Malawi can take to facilitate such cooperation:

- **International agreements:** Malawi is a Member of the SADC and is part of the Malawi-Zambia Transfrontier Conservation Area. Malawi ratified UNTOC⁶⁰ and UNCAC⁶¹ - the two main

international agreements providing a legal basis for international collaboration in the investigation or prosecution of wildlife crime. Finally, the Malawi Mutual Assistance in Criminal Matters Act provides provisions with respect to the mutual assistance in criminal matters between Malawi and Commonwealth countries.⁶²

- **Mutual Legal Assistance:** through collaboration with the authorities of neighbouring countries (Zambia, Tanzania) several cross-border and Mutual Legal Assistance (MLA) workshops/meetings have been organised in recent years. For example, in December 2019, a sub-regional MLA workshop gathering prosecution authorities from Tanzania and Zambia was held in Malawi and another is scheduled for mid-2022.

Recommendations

- 8.1 Encourage the use of investigative techniques allowing evidence collection for further prosecution of individuals leading or at least coordinating criminal organised groups (for example, controlled delivery⁶³ or any special investigations techniques as supported by the UNTOC).⁶⁴

58 "Serious crime" is defined by the UNTOC as a "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty".

59 "Organised criminal group" is defined by the UNTOC as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes (...) in order to obtain, directly or indirectly, a financial or other material benefit.

60 The United Nations Convention against Transnational Crime (UNTOC) was ratified by Malawi on the 17th March 2005. Under certain conditions (Article 3(3.2) must be "transnational in nature" and involves an "organized criminal group" (definition in article 2) UNTOC allows for the prevention, investigation, and prosecution of offences such as laundering of proceeds of crime, corruption, obstruction of justice or any serious crime as defined by the Convention. Alongside obligations such as adoption of legislative measures, the UNTOC also provides a series of legal processes which may be used by the State Parties to efficiently address transnational crimes (extradition, transfer of sentenced persons, mutual legal assistance, joint investigations, transfer of criminal proceedings etc).

61 The United Nations Convention against Corruption (UNCAC) was ratified by Malawi on the 4th December 2007.

62 Mutual Assistance in Criminal Matters Act chapter 8:04 [1st April, 1994]

63 "Controlled delivery" is defined by the UNTOC as a "(...) technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

64 UNTOC. Article 20. Special investigative techniques

CORRUPTION PREVENTION

It has been recognised that corruption risks concern all bodies at every stage of Malawi administration.⁶⁵ In the delivery of justice, corruption may have disastrous implications. Among others it may affect the basic principle of equity of the criminal response delivered by the judicial system.

In the wildlife justice context, deliberate disappearance of court case files, unnecessary delays in processing trials, granting of bail despite knowledge of risk of abscondment of the defendant, bribes for handing down lenient sentences, and theft of evidence have been reported internationally and undermine the deterrence effect of legislative measures.

In its Resolution 17.16,⁶⁶ CITES noted that *“corruption can play a significant role in facilitating activities conducted in violation of the Convention at all points of the trade chain, in source, transit and market countries”*. UNCAC is the only legally binding universal anti-corruption instrument; it obliges Parties to adopt preventive and legislative measures but also supports them in using legal instruments such as international cooperation or asset recovery. UNCAC covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, laundering of proceeds of crime etc.

To support the enforcement of its domestic legislation (Corrupt Practices Act), Malawi also recently adopted its second National Anti-Corruption Strategy II (NACS-II). The NACS-II aims to enhance the rule of law, improve service delivery to the public and promote a culture of integrity. The Malawi ACB, which is mandated to lead the fight against corruption, will provide technical guidance for the implementation of the

NACS-II. Its recently appointed Director General Martha Chizuma has pledged to combat all forms of corruption which facilitate the illicit wildlife trade activities in Malawi.

Recommendations

- 9.1 The IACCWC, of which the ACB is a member, should take a leading role in the promotion, coordination and monitoring and evaluation of the NACS-II for the wildlife crime sector.
- 9.2 A recent report, ‘The Role of Corruption in Enabling Wildlife and Forest Crime in Malawi’⁶⁷ has been published with oversight from by the Director General of the ACB. Agencies involved in the prevention of IWT should work with the ACB to implement the recommendations in the report and effect internal institutional change where necessary.

LEGAL SUPPORT AND CAMPAIGNS

Legal tools

Alongside the legal expertise provided to the Malawi Police Prosecution during actual court cases, various legal tools have been developed to strengthen the capacities of investigators and prosecutors in addressing wildlife crimes. The lead representatives of the MPS, DPP and DNPW, as well as members of the Judiciary, have been actively involved in the development of these tools together with the support of the civil society.

These tools include:

- **Sentencing Guidelines for Wildlife Crimes in Malawi Courts**

These were developed through a participative process including Supreme

65 “There is no Government Ministry, Department, or Agency where the culture of impunity for wastage, misappropriation, and theft is not entrenched...we cannot afford to deal with corruption selectively by focusing on the tip of the iceberg. It is the whole system that is corrupt and therefore it is the whole system we must clean up” Head of State, H.E. Lazarus McCarthy Chakwera

66 Resolution 17.16 “Prohibiting, preventing, detecting and countering corruption, which facilitates activities conducted in violation of the Convention”.

67 The Role of Corruption in Enabling Wildlife and Forest Crime in Malawi . Bacarese, A., Chilima, C., Kumchedwa, B., Moore, K., Musopole, I., O’Connell, D., Parker, L., Tembo, D. (2021).

and High Court Judges, wildlife experts and members of the DNPW, and were signed by the Chief Justice. The Guidelines outline the purpose of sentencing and provide a detailed process (including a list of potential aggravating and mitigating factors for wildlife offences) to determine the appropriate sentence as per the penalty provisions contained under the NPPA 2017.

- **Putting the Tools to Good Use, 2019**

This report provides a comprehensive analysis of the legislation that is available to be used to combat wildlife crime in Malawi. It also provides recommendations for further strengthening the legislative framework to fully implement best practices and standards.

- **Mutual Legal Assistance Guidelines Handbook**

This handbook (developed with US INL funding) supports Malawian authorities to gather evidence and legal assistance from foreign jurisdictions. This guide notes that MLA is a formal multi-step process which involves, firstly, evaluating the necessity of utilising the formal MLA process, considering that informal cooperation may suffice (for example if the information obtained is unlikely to be evidence at trial). It also helps to identify the relevant legislation supporting the MLA (domestic, bilateral treaty, etc.), the various types of assistance which may be requested and the legal requirements (requirement of dual criminality, form, and content of the request) of countries known to be affected by wildlife crimes.

- **Wildlife Legislation Handbook**

This handbook was developed to consolidate Malawi's most important wildlife legislation (acts and regulations) and legal tools (sentencing guidelines) into a single document. It also references international legislation ratified by Malawi, such as CITES).

- **Model Charges for Wildlife Crime**

The model charges for wildlife crime includes the model statements and particulars of offences for a large range of laws relating to wildlife and forestry crimes (NPPA,

Forestry Act, Firearms Act, Penal Code, Corrupt Practices Act, Customs and Excise Act, Financial Crimes Act and Immigration Act). It also offers guidance on expert testimony and sentencing submissions. The introductory discussion covers important criminal procedure elements such as *mens rea*, attempts and conspiracy.

- **Criminal Trial Procedures Guide**

The purpose of this Guide is to identify procedural issues central to wildlife cases in Malawi and offer guidance for prosecutors and magistrates considering national law and leading international best practices.

- **Court Case Reporter**

The case reporter – currently in prep – is a collection of precedents in wildlife (and forestry) crime cases from the Malawi High Court and Supreme Court which aims to clarify points of law essential for the prosecution of wildlife related proceedings.

Recommendations

10.1 Use of these legal tools by the prosecution during pre-trial meetings and whenever necessary at every stage of the trial is recommended.

10.2 Training and orientation on the use of these legal tools to junior prosecutors by senior prosecutors and legal practitioners is encouraged; short training sessions may be proposed during review meetings organised by MPS on a quarterly basis (or any other combination of event).

Courtroom monitoring

The allocation of courtroom monitors to observe court proceedings of regular wildlife court cases and the deployment of a collaborative prosecution between MPS prosecution and DPP prosecutors (including private counsel having been granted consent by the DPP) for most serious and complex cases, is a strategy known to have helped strengthen the judicial response, even before the amendment of the NPPA. It is a strategy supported by the DNPW and implemented in other countries in the

region.⁶⁸

This strategy continued over the past four years and permitted the collection of data used to develop the findings of this report. The collaborative prosecution by MPS/DPP prosecutors has been expanded and has proven its effectiveness on several court cases.⁶⁹

Recommendations

11.1 A collaborative prosecution approach (MPS prosecutor, DPP prosecutor, private counsel having been granted consent to prosecute under the NPWA and any other relevant legislation, DNPW prosecutor, FIA prosecutor, etc.) should be used for complex cases.⁷⁰ To strengthen the jurisprudence and resolve the procedural issues central to wildlife cases in the long term, this collaborative approach should be adopted in various courts, not only in Lilongwe.

11.2 Counsels, legal practitioners and State Advocates should participate in pre-trial meetings, provide guidance to the Malawi Police Prosecutors in drafting applications and submissions throughout the trial (including via remote support).

Data collection and publication

A database called WiCIS, hosted by LWT, has been developed to provide a comprehensive and centralised system designed to gather data on wildlife/forestry court cases monitored or co-prosecuted by LWT and its Government partners. It

also contains the corresponding case law (court rulings) documentation, prosecutors' submissions, domestic/international legislation, and subsidiary legislation. Queries have been created to allow quick access to users including magistrates, prosecutors, and other decision makers. A mapping system to document the location of arrests and trial data is included in the queries. Guiding documentation and other support services (e.g., a dedicated social media group and helpline) have also been created and provided to government partners.

Recommendations

12.1 During the launch phase, it is recommended that LWT's M&E staff who host the database regularly visit the Regional Prosecution Offices (as well as courts according to demand) to facilitate the use of the tool.

Sensitisation

Alongside educational activities for communities and schools, the Malawi Government and civil society have combined their efforts to deliver an efficient campaigning and advocacy programme. In 2014, Malawi launched its first campaign to "Stop Wildlife Crime". Both of Malawi's international airports⁷¹ were provided with posters, billboards, and videos to sensitise staff and passengers on the implications of trafficking wildlife products by air. The "30 Years" campaign following the amendment of the NPWA in February 2017 was widely disseminated on national TV, social media, and radio and to rural communities through

⁶⁸ Crimes against Wildlife and the Environment Kenya's legal response to wildlife, forestry and fisheries crimes. Court monitoring report 2018-2019. Wildlife Direct.

⁶⁹ Criminal Court case no 475/19 James Mkwezalamba and 1 other before Lilongwe Principal Magistrate Court; Criminal Court Case 492/19 QinHua Zhang and 8 others before Senior Resident Magistrate Court; Criminal Court Case 374/19 Quiang Cheng before the Senior Resident Magistrate Court.

⁷⁰ Complex cases include: court cases comprising multiple charges including charges under a legislation the MPS prosecutor is not familiar with, seriousness of the offence (exceptional aggravating factors), alleged level of criminality of the suspect, procedural issue which requires some extended support, suspicion of corruption, component requiring the development of a precedent from a superior court (for example forfeiture of the proceeds of crimes on a forestry case or entrapment, etc.).

⁷¹ Kamuzu International Airport and Chileka

a pedal power cinema roadshow. This campaign was supported by H.E. President Peter Mutharika as well as Ambassadors, High Commissioners and Honorary Consuls of various countries. More recently a sensitisation campaign on preventing the consumption of bushmeat was distributed nationally through videos and posters.

Recommendations

- 13.1** To use information from the data analysis to guide awareness campaigns. This information includes, among other things, IWT trends per type of species, the occurrence of trade per locality and statistics on the defendants' districts of residence. This data should help to target or strengthen existing campaigns to prevent the commission of offences and to limit recruitment attempts by criminal networks.
- 13.2** Use of social media tools (e.g., Whatsapp/Signal groups) to coordinate a specific court case has proven efficient and is recommended for all high-profile court cases. It helps to remind all stakeholders involved in a trial of the trial and pre-trial dates, required documentation or disclosure to be made before a specific date, strategies for the following hearing etc.

Annexes

Annex 1: Summary of major initiatives to combat wildlife crime in Malawi since 2016

1. Legislation and policy

1.1 New wildlife and forestry laws

The National Parks & Wildlife (Amendment) Act was passed in 2017. The maximum penalty for offences against 'Listed Species' i.e. those with the highest level of protection was increased to 30 years with no option of a fine, making it one of the strongest wildlife laws in the world. Thirteen Regulations under the Act were passed between 2017 and 2019. The CITES Secretariat assessed Malawi's new Act as Category 1, i.e., the highest level and defined as "legislation that is believed generally to meet the requirements for implementation of CITES".

In 2020, the Forestry Act Amendment Bill was passed, and Regulations followed to increase the protection for forests and increase penalties for illegal logging, charcoal production etc.

1.2 Sentencing Guidelines for wildlife crime

In October 2017, the Sentencing Guidelines for Wildlife Crimes in Malawi Courts⁷² were developed through a participative process including Supreme and High Court Judges, wildlife experts and members of the Department of National Parks and Wildlife.

1.3 Adoption of the LEAP Strategy

Malawi adopted the Southern African Development Community (SADC) Law Enforcement and Anti-Poaching Strategy (LEAP) in 2017; a regional convention that aims to reduce poaching and the illegal wildlife trade and improve law enforcement in Southern Africa.

2. Law enforcement training and development of legal tools

Since 2015, DNPW, LWT and others have delivered extensive training at a national level to multiple law enforcement agencies (police, customs, immigration, financial and corruption units) and the judiciary to raise awareness of the seriousness of wildlife crime, the connections to other crimes and criminal networks and to deliver agency-specific skills training. Legal tools have been developed on writing model charges, handling Mutual Legal Assistance requests, guides to Criminal Procedures, guidelines and affidavits for court processes involving pangolins as exhibits amongst others.

3. Establishment of specialised wildlife crime units

The Wildlife Crime Investigation Unit was established in 2016 with a combination of DNPW and MPS officers. The Unit investigates wildlife and forest crime and has led to a significant increase in the capacity of these agencies to investigate and prosecute these cases. WCIU officers testify as expert witnesses in court to identify confiscated wildlife products. The Wildlife Detection Dog Unit was set up to improve the detection of wildlife products initially at Malawi's main international airport, and has since expanded its scope to include border points and intel-led operations.

4. Court monitoring and co-prosecution

LWT's court monitoring programme monitors wildlife and forest crime cases at a national level. The programme adds to the transparency of court processes and facilitates the tracking of cases from arrest through to case outcome. Co-prosecution with private lawyers is a relatively novel approach for wildlife crime prosecutions

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in southern Africa and provides legal guidance and support to investigators and prosecutors.

5. Landmark prosecutions of criminal syndicates

In 2021, Malawian courts sentenced a Chinese national to 14 years for dealing in rhino horn, 14 years for possession of rhino horn and six years for money laundering. In total, 14 members of the Lin-Zhang syndicate including ten Chinese and 4 Malawian nationals were convicted for a variety of offences related to the possession of firearms and protected or listed species, including pangolins, rhino horns, hippo teeth and elephant ivory. These landmark cases led to the jailing of the first non-African nationals for wildlife offences in Malawi.

6. Ongoing multi-agency collaboration

The Inter-Agency Committee to Combat Wildlife Crime, initiated in 2014 continues to meet several times a year to discuss developments in illegal wildlife trade cases and related policy and to advocate on the seriousness of wildlife crime within its member agencies.

7. Media training and support

LWT and partners have worked closely with media houses to provide training and support to encourage more accurate and regular reporting of wildlife crime to raise awareness amongst the public and to increase the accountability and transparency of these cases.

8. Financial support for combating wildlife crime

A significant amount of funding has been provided through various grants to support the work of LWT's Wildlife Justice Project, the operations of the WCIU and other LWT programmes led by LWT and other organisations. Substantial, long-term donor funding is essential to maintain the current successes in combating wildlife crime in Malawi since the Government of Malawi budget for this work through DNPW and other agencies is limited.

9. Public awareness campaigns and high-level political support

DNPW and LWT's Stop Wildlife Crime campaign has delivered multiple events for a variety of audiences and produced awareness posters that are displayed for example at the airport highlighting the illegality of importing/exporting prohibited wildlife products. The campaign has received the highest level of support from the former President of Malawi and multiple ambassadors.

Annex 2: National Parks and Wildlife (Protected, Endangered and Listed Species) (Declaration) Order, 2017

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GOVERNMENT NOTICE No.70

NATIONAL PARKS AND WILDLIFE ACT

(Cap 66: 07)

NATIONAL PARKS AND WILDLIFE (PROTECTED, ENDANGERED AND LISTED SPECIES) (DECLARATION) ORDER, 2017

IN EXERCISE of the powers conferred by section 43, 43A and 43B of the National Parks and Wildlife Act, I, Aggrey C. Masi, Minister of Natural Resources, Energy and Mining, make the following Order—

1. This Order may be cited as the National Parks and Wildlife (Protected, Endangered and Listed Species) (Declaration) Order, 2017. Citation

2. The species of wild plants, fungi and wild animals specified in the Schedule hereto are hereby declared to be protected species, endangered species or listed species, for the purposes of the Act. Species declared as protected, endangered or listed

3. The National Parks and Wildlife (Protected Species) Declaration Order 1994 is revoked. Revocation GN89/1994

SCHEDULE

PROTECTED, ENDANGERED AND LISTED SPECIES

PART I: PROTECTED SPECIES OF WILD PLANTS, FUNGI AND ANIMALS

A. Plant and Fungi Species

Any plant or fungi species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

B. Mammal Species

Any mammal species whatsoever in a protected area that is not already defined as either a game species, endangered species or a listed species within this Order.

C. Reptile Species

Any reptile species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

D. Amphibian Species

Any amphibian species whatsoever in a protected area that is not already defined as either endangered species or a listed species within this Order.

E. Fish Species

Any fish species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

F. Bird Species

Any bird species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

G. Invertebrate Species

Any invertebrate species whatsoever in a protected area that is not already defined as either an endangered species or a listed species within this Order.

PART II: ENDANGERED SPECIES OF WILD PLANTS, FUNGI AND ANIMALS

A. Plant and Fungi Species

(1) Any plant or fungi species categorised as endangered in the International Union for Conservation of Nature (IUCN) Red list of Threatened Species.

(2) Any plant or fungi species listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

(3) Any of the plant or fungi species listed below—

BOTANICAL NAME	COMMON NAME
<i>Adina microcephala</i>	Mwenya, Chongo, Mgwenya, Mung'oma, Mwina, Mungwira.
<i>Afzelia quanzensis</i>	Mkongomwa, Msokosa, Mangaliondo, Msambamfumu, Mkongwa, Chifuuda, Ipapa, Mpapa, Mpapandende.
<i>Borassus aethiopum</i>	Mvumo, Mdikwa
<i>Bridelia micrantha</i>	Makoma, Mulala, Msopa, Chisopa, Mpasa, Mlewezi, Msongamino, Mwisya
<i>Burkea Africana</i>	Mkalakati, Kalinguti, Kawidzi, Kawidzu, Nakapanga
<i>Colophospermum mopane</i>	Tsanya, Sanya, Ntsano, Mopani, Mpani
<i>Cordyla Africana</i>	Mtondo
<i>Hyphaena recrinata</i>	Mgwalangwa, Mkomakoma, Makoma, Mulala
<i>Khaya anthotheca</i>	Mbawa, Muwawa, Bulamwiko, African White or Red, Mahogany
<i>Pterocarpus angolensis</i>	Mlombwa
<i>Tarminalia sericea</i>	Naphini, Mpini, Nalinsi, Mkondani Mpululu, Njoyi
<i>Pericopsis angolensis</i>	Muwanga, Mbanga
<i>Phyllanthus nyikae</i>	Jade Plant
<i>Indigofera hiliaris</i>	Red indigo bush, Gale of the wind, Seed-under-Leaf

<i>Ceropegia</i>	Chain of hearts, collar of hearts, String of hearts species
<i>Pimpinella nyasica</i>	Milkweed
<i>Glossostelma nyikense</i>	Nyika Orchid
<i>Brachythrrix malawiensis</i>	Asterids
<i>Glossostelma nyikense</i>	Sonchus
<i>Brachythrrix pawekiae</i>	Brachythrrix of Malawi
<i>Brachythrrix sonchiodes</i>	Brachythrrix
<i>Helichrysum tithoniodes</i>	Sonchus
<i>Osteospermum nyikensis</i>	Sonchus
<i>Vernonia fractiflexa</i>	African Daisy
<i>Vernonia kawoziensis</i>	Bitterleaf
<i>Impatiens rubromaculata</i>	Bitterleaf
<i>Crassula nyikensis</i>	Impatiens, Touch-Me-Not;
<i>Dalbergia melanoxylon</i>	Mphingo
<i>Orchidaceae species</i>	Any orchid species
<i>Cactaceae species</i>	Any cacti species
<i>Cycadaceae species</i>	Any cycad species

B. Mammal Species

(1) Any mammal species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any mammal species listed in Appendix II of the CITES.

(3) Any of the mammal species listed below—

SCIENTIFIC NAME	COMMON NAME
<i>Canis adustus</i>	Side-striped Jackal
<i>Caracal caracal</i>	Caracal
<i>Felis silvestris</i>	Wild Cat
<i>Leptailurus serval</i>	Serval
<i>Crocuta crocuta</i>	Spotted Hyaena
<i>Aonyx capensis</i>	African Clawless Otter
<i>Lutra maculicollis</i>	Spotted-necked Otter
<i>Nandinia binotata</i>	African Palm Civet, Two-spotted Palm Civet
<i>Civettictis civetta</i>	African Civet
<i>Aepyceros melampus</i>	Impala
<i>Alcelaphus lichtensteinii</i>	Lichtenstein's Hartebeest
<i>Cephalophus harveyi</i>	Harvey's Duiker, Harvey's Red Duiker

<i>Cephalophus natalensis</i>	Red Forest Duiker
<i>Hippotragus equinus</i>	Roan Antelope
<i>Hippotragus niger</i>	Sable Antelope
<i>Kobus ellipsiprymnus</i>	Waterbuck
<i>Kobus vardonii</i>	Puku
<i>Neotragus moschatus</i>	Suni
<i>Oreotragus oreotragus</i>	Klipspringer
<i>Ourebia ourebi</i>	Oribi
<i>Philantomba monticola</i>	Blue Duiker
<i>Raphicerus sharpie</i>	Sharpe's Grysbok
<i>Redunca arundinum</i>	Reedbuck
<i>Syncerus caffer</i>	African Buffalo
<i>Tragelaphus angasii</i>	Nyala
<i>Tragelaphus oryx</i>	Eland
<i>Tragelaphus strepsiceros</i>	Greater Kudu
<i>Hippoposideros gigas</i>	Commerson's Leaf-nosed Bat
<i>Otomops martiennesseni</i>	Large-eared Free-tailed Bat
<i>Eidolon helvum</i>	African Straw-coloured Fruit Bat
<i>Hipposideros gigas</i>	Giant Leaf-nosed Bat
<i>Rhinolophus deckenii</i>	Decken's Horse-shoe Bat
<i>Rhinolophus sakejiensis</i>	Sakeji Horseshoe Bat
<i>Rousettus lanosus</i>	Long-haired Rousette Bat
<i>Tadarida aegyptiaca</i>	Egyptian Free-tailed Bat
<i>Tadarida ventralis</i>	African Giant Free-tailed Bat
<i>Myosorex gnoskei</i>	Nyika Burrowing Shrew
<i>Elephantulus fuscus</i>	Dusky Sengi
<i>Rhynchocyon cirnei</i>	Checkered Giant Sengi
<i>Equus burchelli</i>	Burchell's Zebra
<i>Cercopithecus mitis</i>	Blue Monkey
<i>Galagoides species</i>	All Bushbaby species
<i>Otolemur crassicaudatus</i>	Thick-tailed Bushbaby
<i>Anomalurus derbianus</i>	Lord Derby's Flying Squirrel or Anomalure
<i>Graphiurus johnstoni</i>	Johnston's Dornouse
<i>Hystrix africaeaustralis</i>	Cape Crested Porcupine
<i>Otomys lacustris</i>	Lake Vlei Rat, Tanzania Vlei Rat
<i>Paraxerus lucifer</i>	Black and Red Bush Squirrel

Orycteropus afer

Aardvark, Antbear

Mellivora capensis

Honey Badger

C. Reptile Species

(1) Any reptile species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any reptile species listed in Appendix II of the CITES.

(3) Any of the reptile species listed below—

SCIENTIFIC NAME

COMMON NAME

Crocodylus niloticus

Nile Crocodile

Geochelone pardalis

Leopard Tortoise

Kinixys belliana

Bell's Hinged Tortoise

Cycloderma frenatum

Zambezi Soft-shelled Terrapin

Pelusios sinuatus

Serrated hinged Terrapin

Python (sebae)natalensis

Southern African Python

Dispholidus typhus

Boomslang

Dendroaspis angusticeps

Green Mamba

Dendroaspis polylepis

Black Mamba

Elapsoidea semiannulata

Half-banded Garter Snake

Prosymna ambigua

East African Shovel Snout

Naja haje

Egyptian (Banded) Cobra

Naja melanoleuca

Forest Cobra

Naja mossambica

Mozambique Spitting Cobra

Bitis arietans

Puff Adder

Bitis gabonica

Gaboona Viper

Causus rhombeatus

Rhombic Night Adder

Causus defilippii

Snouted Night Adder

*Proatheris superciliaris*Peter's Domino-bellied Swamp Viper,
Lowland, Swamp Viper*Eumecia johnstonii*

Johnston's Skink

Platysaurus mitchelli

Mitchells Flat Lizard

Varanus exanthematicus

Rock or White-throated Monitor

Varanus niloticus

Nile or Water Monitor

Agama mossambica

Mozambique Agama

*Chamaeleonidae species*All species of Chamaeleon
(including all Chamaeleo,
Rhampholeon, Rieppeleon,
Trioceros species)

Nadzikambia mlanjensis

Mulanje Forest Chamaeleon

Lygodactylus rex

King Dwarf Gecko

D. Amphibian Species

(1) Any amphibian species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any amphibian species listed in Appendix II of the CITES.

(3) Any of the amphibian species listed below—

SCIENTIFIC NAME -

COMMON NAME

Arthroleptis francei

France's squeakers

Arthroleptis reichei

Reiche's squeaker

Bufo kisolensis

Kisolo Toad

Bufo lindneri

Lindner's Toad

Bufo nyikae

Nyika Dwarf Toad

Afraxalus brachycnemis

Lesser Banana Frog

Hyperolius pictus

Variable Reed Frog

Hyperolius puncticulatus

Spotted reed frog

Hyperolius spinigularis

Spiny-throated Reed Frog

Afrana johnstoni

Johnston's river Frog

Phrynobatrachus rungweensis

Rungwe puddle Frog

Phrynobatrachus stewartae

Stewart's puddle Frog

Ptychadena broadleyi

Broadley's ridged Frog

Strongylopus cuelleborni

Fulleborn's stream Frog

Changamwe caecilian

Boulengerula changamwensis

E. Fish Species

(1) Any fish species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any fish species listed in Appendix II of the CITES.

(3) Any of the fish species listed below—

SCIENTIFIC NAME

COMMON NAME

Abactochromis, Cyathochromis, Cynotilapia,

Mbuna, Cichlids

Genyochromis, Gephyrochromis, Idotropheus,

Labeotropheus, Labidochromis, Maylandia,

Melanochromis, Petrotilapia, Pseudotropheus,

Tropheops species

F. BIRD SPECIES

(1) Any bird species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any bird species listed in Appendix II of the CITES.

(3) Any of the bird species listed below—

SCIENTIFIC NAME	COMMON NAME
<i>Ardeola idea</i>	Madagascar Squacco Heron
<i>Egretta vinaceigula</i>	Slaty Egret
<i>Ciconia episcopus</i>	White Stock
<i>Ciconia episcopus</i>	Woolly necked Stork
<i>Phoeniconaias minor</i>	Lesser Flamingo
<i>Ana sparsa</i>	African Black Duck
<i>Oxyura maccoa</i>	Maccoa Duck
<i>Accipiter rufiventris</i>	Red-breasted sparrowhawk
<i>Aquila nipalensis</i>	Steppe Eagle
<i>Aquila nipalensis</i>	Lesser Spotted Eagle
<i>Aquila nipalensis</i>	Tawny Eagle
<i>Aquila nipalensis</i>	Black (Verraux's) Eagle
<i>Aquila nipalensis</i>	Wahlberg's Eagle
<i>Buteo oreophilus</i>	Forest Buzzard
<i>Circaetus cinerascens</i>	Westen-banded snake Eagle
<i>Circaetus cinereus</i>	Brown Snake Eagle
<i>Circaetus gallicus</i>	Short-toed (Black-breasted) Snake Eagle
<i>Circus macrouris</i>	Pillid Harrier
<i>Haliaeetus vocifer</i>	African Fish Eagle
<i>Hieraaetus ayresii</i>	Ayre's Hawk Eagle
<i>Hieraaetus fasciatus</i>	African Hawk Eagle
<i>Hieraaetus pennatus</i>	Booted Eagle
<i>Lophaetus occipitalis</i>	Long-crested Eagle
<i>Polemaetus bellicosus</i>	Martial Eagle
<i>Sagittarius serpentarius</i>	Secretary Bird
<i>Stephanoaetus coronatus</i>	Crowned Eagle
<i>Terathopius ecaudatus</i>	Bataleur Eagle
<i>Gypohierax angolens</i>	Palm-nut Vulture
<i>Torgos tracheliotus</i>	Lappet-faced Vulture
<i>Pandion haliaetus</i>	Osprey
<i>Falco concolor</i>	Sooty Falcon

<i>Falco fasciinucha</i>	Taita Falcon
<i>Falco naumanni</i>	Lesser Kestrel
<i>Falco vespertinus</i>	(Western) Red-footed Falcon
<i>Balearica regulorum</i>	Southern Crowned Crane
<i>Grus carunculatus</i>	Wattled Crane
<i>Neotis denhami</i>	Stanley's (Denjam's) Bustard
<i>Francolinus levaillanti</i>	Red-winged Francolin
<i>Numida meleagris</i>	Helmeted Guinea fowl
<i>Gallinago media</i>	Great Snipe
<i>Numenius arquata</i>	Curlew
<i>Rynchops flavirostris</i>	African Skimmer
<i>Agapornis lilianae</i>	Lilian's (Nyasa) Lovebird
<i>Poicephalus cryptoxanthus</i>	Brown-headed Parrot
<i>Poicephalus meyeri</i>	Meyer's Parrot
<i>Poicephalus robustus</i>	Brown-necked (Cape) Parrot
<i>Tauraco livingstonii</i>	Livingstone's Turaco
<i>Tauraco porphyreolophus</i>	Purple-crested Turaco
<i>Tauraco schalowi</i>	Schalow's Turaco
<i>Tyto alba</i>	Barn Owl
<i>Tyto capensis</i>	Grass Owl
<i>Bubo lacteus</i>	Giant Eagle Owl
<i>Bubo africanus</i>	Spotted Eagle Owl
<i>Bubo capensis</i>	Cape Eagle Owl
<i>Glaucidium capense</i>	Barred Owlet
<i>Glaucidium perlatum</i>	Pearl-spotted Owlet
<i>Otus leucotis</i>	White-faced Owl
<i>Otus senegalensis</i>	African Scops Owl
<i>Scotopelia peli</i>	Pel's Fishing Owl
<i>Strix woodfordii</i>	Wood Owl
<i>Asio capensis</i>	Marsh Owl
<i>Apaloderma narina</i>	Narina Trogon
<i>Apaloderma vittatum</i>	Bar-tailed Trogon
<i>Coracias caudata</i>	Lilac-breasted Roller
<i>Coracias garrulous</i>	European Roller
<i>Coracias naevia</i>	Purple Roller
<i>Coracias spatulata</i>	Racket-tailed Roller
<i>Eurystomus glaucurus</i>	Broad-billed (Cinnamon) Roller

<i>Bucorvus leadbeateri</i>	Southern Ground Hornbill
<i>Dendropicos stierlingi</i>	Stierling's Woodpecker
<i>Mesopicus griseocephalus</i>	Olive Woodpecker
<i>Hirundo atrocaerulea</i>	Blue Swallow
<i>Alethe choloensis</i>	Cholo Alethe
<i>Cossypha anomala</i>	Olive-flanked Robin
<i>Zoothera guttate</i>	Spotted Ground Thrush
<i>Acrocephalus griseldis</i>	Basra Reed-Warbler
<i>Apalis chariessa</i>	White-winged Apalis
<i>Apalis thoracica flavigularis</i>	Yellow-throated (Bar-throated) Apalis
<i>Sheppardia gunning</i>	Gunning's Akalat, East Coast Akalat
<i>Nectarinia afra whytei</i>	Greater Double-collared Sunbird
<i>Ploceus olivaceiceps</i>	Olive-headed Weaver
<i>Agapornis</i>	Love Bird
<i>Accipiter rufiventris</i>	Red-breasted Sparrowhawk
<i>Apaloderma narina</i>	Narina Trogon
<i>Apaloderma vittatum</i>	Bar Tailed Trogon
<i>Alethe fuelleborni</i>	White-chested Alethe
<i>Andropadus masukuensis</i>	Shelley's Greenbul
<i>Andropadus nigriceps</i>	Eastern Mountain Greenbul
<i>Apalis cinerea</i>	Grey Apalis
<i>Anthus caffer</i>	Bushveld Pipit
<i>Apalis ruddi</i>	Rudd's Apalis
<i>Ardeola goliath</i>	Goliath Heron
<i>Ardeola rufiventris</i>	Rufous-bellied Heron
<i>Batis fratum</i>	Woodward's Batis
<i>Batis mixta</i>	Forest Batis
<i>Bias musicus</i>	Black-and white Flycatcher
<i>Bradypterus cinnamomeus</i>	Cinnamon Bracken Warbler
<i>Bycanistes brevis</i>	Silvery-cheeked Hornbill
<i>Centropus cupreicaudus</i>	Coppery-tailed Coucal
<i>Cercococcyx montanus</i>	Barred Long-tailed Cuckoo
<i>Chloropeta similis</i>	Mountain Yellow Warbler
<i>Ciconia abdimii</i>	Abdim's Stork
<i>Ciconia nigra</i>	Black Stork
<i>Cisticola nigriloris</i>	Black-lored Cisticola
<i>Cisticola njombe</i>	Churring Cisticola

<i>Columba delegorgei</i>	Bronze-naped Pigeon
<i>Coracina caesia</i>	Grey Cuckoo-shrike
<i>Corythaixoides concolor</i>	Grey Lourie
<i>Crex crex</i>	Corn Crake
<i>Egretta vinaceigula</i>	Saddlebill (Saddle-billed Stork)
<i>Euplectes psammochromius</i>	Mountain Marsh Whydah
<i>Glareola nuchalis</i>	Rock Pratincole
<i>Corythaixoides personatus</i>	Bare-faced Go-away Bird
<i>Gorsachius leuconotus</i>	White-backed Night Heron
<i>Guttera pucherani</i>	Crested Guinea-fowl
<i>Illadopsis pyrrhoptera</i>	Mountain Illadopsis
<i>Leptoptilos crumeniferus</i>	Marabou Stork
<i>Malaconotus viridis</i>	Gorgeous Bush Shrike
<i>Indicator meliphilus</i>	Eastern Least Honeyguide
<i>Mirafra africana</i>	Rufous-Naped Lark
<i>Modulatrix stictigula</i>	Spot Throat
<i>Mycteria ibis</i>	Yellow-billed Stork
<i>Nectarinia johnstoni</i>	Scarlet-tufted Malachite Sunbird
<i>Nectarinia outstaleti</i>	Oustalet's White-bellied Sunbird
<i>Nectarinia veroxii</i>	Grey Sunbird
<i>Nettapus auratus</i>	Pygmy Goose
<i>Onychognathus tenuirostris</i>	Slender-billed (Chestnut-winged) Starling
<i>Onychognathus walleri</i>	Waller's (Red - winged) Starling
<i>Oriolus chlorocephalus</i>	Green-headed Oriole
<i>Otus senegalensis</i>	African Scops Owl
<i>Pelecanus onocratulus</i>	White Pelican
<i>Pelecanus rufescens</i>	Pink-backed Pelican
<i>Phoenicopterus roseus</i>	Greater Flamingo
<i>Phyllastrephus flavirostris alfredi</i>	Yellow-streaked Bulbul
<i>Pinarornis plumosus</i>	Boulder Chat
<i>Pitta angolensis</i>	African Pitta
<i>Platalea alba</i>	African Spoonbill
<i>Plegadis falcinellus</i>	Glossy Ibis
<i>Plocepasser rufoscapulatus</i>	Chestnut-mantled Sparrow-weaver
<i>Ploceus baglafecht</i>	Baglafecht Weaver
<i>Podica senegalensis</i>	African Finfoot
<i>Pogoniulus simplex</i>	Eastern Green Tinkerbird

<i>Pseudoalcippe abyssinica</i>	African Hill Babbler
<i>Pterocles bicinctus</i>	Double-banded Sandgrouse
<i>Quelea cardinalis</i>	Cardinal Quelea
<i>Serinus citrinpectus</i>	Lemon-breasted Canary
<i>Sheppardia sharpeisharpe</i>	Sharpe's Akalat
<i>Stactolaema olivacea</i>	Green Barbet
<i>Sylvia lugens</i>	Brown Parisoma
<i>Tockus leucomelas</i>	Southern Yellow-billed Hornbill
<i>Threskiornis aethiopicus</i>	Sacred Ibis
<i>Turdus olivaceus</i>	Olive Thrush

G. Invertebrate Species

(1) Any invertebrate species categorized as endangered in the IUCN Red list of Threatened Species.

(2) Any invertebrate species listed in Appendix II of the CITES.

PART III: LISTED SPECIES OF WILD PLANTS, FUNGI AND ANIMALS

A. Plant and Fungi Species

(1) Any plant or fungi species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any plant or fungi species listed in Appendix I of the CITES.

(3) Any plant or fungi species listed below—

BOTANICAL NAME	COMMON NAME
<i>Widdringtonia whytei</i>	Mulanje Cedar, Mulanje Cedarwood, Mulanje Cypress
<i>Encephalartos gratus</i>	Mulanje Cycad

B. Mammal Species

(1) Any mammal species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any mammal species listed in Appendix I of the CITES.

(3) Any of the mammal species listed below—

SCIENTIFIC NAME	COMMON NAME
<i>Lycaon pictus</i>	African Wild Dog, Cape Hunting Dog
<i>Acinonyx jubatus</i>	Cheetah
<i>Panthera leo</i>	African Lion
<i>Panther pardus</i>	Leopard
<i>Diceros bicornis</i>	Black Rhinoceros

<i>Ceratotherium simum</i>	white Rhinoceros
<i>Smutsia (manis) temminckii</i>	Ground Pangolin, Cape Pangolin, Scaly Anteater
<i>Loxodonta africana</i>	African Elephant
<i>Giraffa</i>	Giraffa
<i>Connochaetes taurinus</i>	Nyasa Wildebeet

C. Reptile Species

(1) Any reptile species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any reptile species listed in Appendix I of the CITES.

D. Amphibian Species

(1) Any amphibian species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any amphibian species listed in Appendix I of the CITES.

E. Fish Species

(1) Any fish species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any fish species listed in Appendix I of the CITES.

F. Bird Species

(1) Any bird species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any bird species listed in Appendix I of the CITES.

(3) Any of the bird species listed below—

SCIENTIFIC NAME

COMMON NAME

<i>Gyps Africans</i>	African White-backed Vulture
<i>Necrosyrtes monachus</i>	Hooded Vulture
<i>Trigonoceps occipitalis</i>	White-headed Vulture
<i>Psittacus erithacus</i>	African Grey Parrot

G. Invertebrate Species

(1) Any invertebrate species categorized as critically endangered in the IUCN Red list of Threatened Species.

(2) Any invertebrate species listed in Appendix I of the CITES.

Made this 14th day of December 2017

A.C. Masi
Minister of Natural Resource,
Energy and Mining

(FILE No. DNPW/8/8/2)



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