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Lydia Slobodian, Lorélie Escot and Hamudi Majamba
with George Bakari, Neema Bhoke, Gift Kweka, Daniel Lema,
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IUCN ENVIRONMENTAL LAW PROGRAMME

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DEUTSCHE ZUSAMMENARBEIT

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This publication has been made possible with the kind support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry of Economic Cooperation and Development (BMZ) and the German Federal Ministry for Environment, Nature Conservation, Building and Nuclear Safety (BMUB).

Published by: IUCN, Gland, Switzerland in collaboration with the IUCN Environmental Law Centre, Bonn, Germany

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Citation: Lydia Slobodian, Lorélie Escot and Hamudi Majamba with George Bakari, Neema Bhoke, Gift Kweka, Daniel Lema, Tasco Luambuano and Edson Rwechungura (2016). *Wildlife Cases in Tanzanian Courts.* IUCN, Gland, Switzerland. x + 49

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Layout by: IUCN Environmental Law Centre, Bonn, Germany

Available from: IUCN (International Union for Conservation of Nature)
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Preface and Acknowledgments

Illegal killing and trade is a major threat to wildlife particularly in Africa. Despite many campaigns to try and curb poaching and trade in endangered species in East Africa the problem continues to take a huge toll on the biodiversity of the region, steadily driving many species towards extinction. The current levels of elephant and rhino poaching are the highest in decades driven by burgeoning demand for ivory. East African countries, especially Tanzania, are increasingly implicated as source or transit countries for illegal ivory and rhino horn. Major contributing factors are persistent weakness in the legislation governing wildlife crime along with poor implementation and low levels of compliance at all levels. In many countries in Africa weaknesses and loopholes in wildlife laws and law enforcement provide inadequate deterrents, and prosecuting wildlife crime is not a priority for many of the decision makers controlling implementation of environmental laws through the police, customs and judicial authorities. The result is a low conviction rate and weak penalties for wildlife crime. These problems are compounded by cross-border challenges such as the lack of harmonization of wildlife laws. There is therefore a need for strengthening laws and for building capacity and awareness within the criminal justice system.

It is against this backdrop that IUCN, in collaboration with the University of Dar es Salaam, has carried out this analysis of court cases related to illegal wildlife trade in mainland Tanzania with the aim of providing information to strengthen the judicial chain with regards to wildlife legislation. This is part of a larger project, implemented with TRAFFIC and GIZ, to strengthen legal mechanisms to address wildlife trade in East Africa. A companion study, conducted by TRAFFIC assesses the state of wildlife protection and trafficking in Tanzania.[1] These studies are best read together, to gain a full picture of the state of illegal wildlife trade in Tanzania, within and outside of the courts. These studies, as well as all cases and materials discussed, are available on www.wildlex.org.

The project is supported and implemented within the Polifund project "Combating poaching and illegal wildlife trade in Africa and Asia" implemented by GIZ on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ) and the German Federal Ministry for Environment, Nature Conservation, Building and Nuclear Safety (BMUB). The Polifund combines the expertise and resources of five German ministries, international organisations and NGOs to combat poaching and the illegal trade in wildlife products (ivory and rhino-horn) in Africa and Asia.

Thanks are owed to the IUCN World Commission on Environmental Law, IUCN Species Programme, Embassy of the Federal Republic of Germany in Tanzania, UNODC, Space for Giants and Wildlife Direct, and specifically to Flora Mueller, Lena Thiede, Dan Challender, Ted Leggett, Ofir Drori, Shamini Jayanathan and Elizabeth Gitari for their advice and input on the process and substance of this study. Special thanks go to the University of Dar Es Salaam for working with us on coordinating and supporting this study; the African Wildlife Foundation and TRAFFIC for working with us to organize a series of judicial and prosecutorial training workshops at which the results of the report were presented and discussed; and the Tanzanian Judiciary, Attorney General's Office, Ministry of Natural Resources and Tourism, and Wildlife Division for their ongoing support. Thanks also to the IUCN Tanzania Office for their help and support for the organisation of workshops in Dar es Salaam. Particular thanks go to Anni Lukács (ELC Senior Documentation Officer) for formatting and graphics and Ariadni Chatziantoniou (ELC intern) for supporting statistical analysis and Jil Self (ELC Programme Assistant) for proofreading.

Bonn, Germany, September 2016

[1] Msuha *et al.*, Wildlife Protection and Trafficking Assessment in Tanzania, TRAFFIC 2016.

List of Abbreviations and Acronyms

AG	Attorney General
CITES	Convention on International Trade in Endangered Species
CPA	Criminal Procedure Act
DPP	Director of Public Prosecutions
EOCCA	Economic and Organized Crime Control Act
NPA	National Parks Act
UNCC	UN Convention Against Corruption
UNTOC	UN Convention on Transnational Organized Crime
WCA	Wildlife Conservation Act t

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1 Introduction

Wildlife crime is a growing and highly recognized issue. Environmental crimes, of which wildlife crime represents a major part, have become the fourth largest international illegal activity, and often involve highly organized and wealthy international networks.[2] A large portion of the products involved in wildlife crime come from African wildlife, including wildlife indigenous to Tanzania. Key links of international criminal supply chains are located in Tanzania, which makes Tanzanian courts an important checkpoint for addressing global wildlife crime.

2 Wildlife-Related Criminal Law in Tanzania

2.1 History of Wildlife Law in Tanzania[3]

The history of formal legislative enactments aimed at regulating wildlife conservation in Tanzania dates way back to the colonial era where some of the communities' customary norms, rites and rituals were recognized in the provisions of the laws which made it an offence to enter into protected areas or hunt wild animals. With time, the customary laws were removed from statute books, marking the commencement of local communities viewing wildlife conservation as the preserve of the government. They felt excluded from the process and the resentment was reflected in the constant clashes with authorities on wildlife.

The colonial governments approach in criminalizing entry and killing of wildlife without a permit and possession of trophies was generally the 'fences and fines' model. This entailed total prohibition of entry and settlement in wildlife protected areas. In a few cases, such entry was permitted to those with licenses. This is what the independent government of Tanganyika adopted.

The Wildlife Conservation Ordinance, the main colonial law that sought to address wildlife offences had provisions that were considered deterrent. This was the case with the Wildlife Conservation Act, 1974 and the numerous Regulations made under it. Prosecution of wildlife cases was conducted by police officers until the enactment of the National Prosecutions Service Act, No. 2 of 2008 when State Attorneys from the Office of the Attorney General's Chambers (DPP's Office) took charge. The Act, however, still allows the DPP to delegate this function. (See Article 58B (3) of the Constitution of the United Republic of Tanzania and section 23 of the National Prosecutions Service Act). One of the reasons for changing prosecution of cases relating to poaching and unlawful possession of trophies was that it was considered inappropriate for police officers to arrest offenders, conduct investigations and thereafter prosecute cases. The problem of lack of the necessary expertise (from the cases that were thrown out of court due to diligence on the part of the prosecution) was another factor. Corruption among some disloyal police offers was also a factor that led to the removal of prosecution of the cases from the police.

In the course of prosecuting wildlife offences, a number of legislative enactments have been used. The common ones have been the framework legislation (the Wildlife Conservation Act), the Criminal Procedure Act of 1985, which governs procedural matters in criminal cases, and the Economic and Organized Crimes Control Act, which has also been resorted to as wildlife crimes are considered economic offences. In order to assess the evidence to be adduced, a prosecutor also needs to be well versed with the provisions of the Evidence Act. It is these pieces of legislation that have traditionally been used to prosecute wildlife crimes. The Office of the Attorney General's Chambers (Discharge of Duties) Act, Cap. 268 is also relevant in so far as the AG's powers to delegate prosecution of cases and that of the DPP's to enter *nolle prosequi* in cases involving wildlife crimes is concerned.

Unfortunately, there has not been any innovation by the prosecutors to use Regulations made under the framework wildlife law or even international legal instruments such as the Convention on International Trade in Endangered Species of Flora and Fauna where wildlife crimes relate to illicit trade. Case law from other jurisdictions which have addressed wildlife crimes with implications for countries such as Tanzania has also hardly been used by prosecutors.

Some prosecutors, including seasoned ones, have also been oblivious to the frequent amendments to the law relating to wildlife crimes which have been made through miscellaneous amendments. (For example the Wildlife Law (Miscellaneous Amendments) Act No. 2 of 2010 which has made significant changes to the Criminal Procedure Act and the Economic and Organized Crimes Control Act.

Apparently, judges and magistrates seem to have adopted the adversarial system in adjudicating cases and have become 'inactive' in the course of determining criminal laws cases being prosecuted under the wildlife legislation. As a result, there seems to be little input from the bench in the form of expanding the jurisprudence of wildlife crimes legislation in the course of delivering judgments. Instead, there is a reliance on prosecutors and advocates to develop the jurisprudence of wildlife crimes along this line.

[2] Nellemann, C. (Editor in Chief); Henriksen, R., Kreilhuber, A., Stewart, D., Kotsovou, M., Raxter, P., Mrema, E., and Barrat, S. (Eds). 2016. *The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security*. A UNEP-INTERPOL Rapid Response Assessment.

[3] This section was authored by Prof. Hamudi Majamba, University of Dar es Salaam.

2.2 Legal Framework for Wildlife Crime

Criminal offences related to wildlife are created by primary legislation and elaborated through regulations and case law. This includes legislation related to wildlife and protected areas as well as legislation related to firearms and economic and organized crime. Procedure for investigation and adjudication of these offences is contained in these acts as well as the Criminal Procedure Act. International instruments are relevant insofar as they are implemented in national legislation.

Certain amendments to the legislation below are not easily accessible or fully applied. The legislative review in this section addresses the legislation as most often cited by the analyzed court decisions.

2.2.1 Environmental Legislation

The Wildlife Conservation Act is Tanzania's framework legislation regarding wildlife. It creates several wildlife offences and sets out the rules applying to the prosecution of wildlife crimes.

The Wildlife Conservation Act was adopted in 1974, and amended several times until it was succeeded by the Wildlife Conservation Act of 2009 (WCA 2009). The Act was further amended in 2016, but these amendments were not in force during the time of any of the cases analyzed, and so are largely not considered in this analysis.[4]

The act creates offences related to, *inter alia*:

- unlawful behavior (hunting, possession of weapons, destruction of vegetation, etc.) in a game reserve, game controlled area or wetlands reserve (§14-21);
- unlawful hunting, capturing, wounding, killing or disturbance of a wild animal;
- unlawful transfer of hunting license (§ 60);
- unlawful dealing, transfer, transportation, import or export of trophies (§ 80-84);
- unlawful possession of government trophies (§ 85);
- import or export in violation of the Convention on International Trade in Endangered Species (CITES) (§ 84, 95).

It defines "trophy" as "any animal alive or dead, and any horn, ivory, tooth, tusk, bone, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal" (§ 3). A government trophy is any trophy taken without a permit or otherwise unlawfully acquired, or any trophy declared as a government trophy by the Minister by order in the Gazette (§ 85(1)). Government trophies are considered property of the government of Tanzania.

Penalties attached to these offences are provided for in the WCA 2009. These penalties depend on species of wildlife, value of trophy, type of protected area, or other circumstance. For example, the penalty attached to unlawful possession of government trophies is determined by the classification of the species under the First Schedule of WCA 2009 as well as on the value of the trophy, as attested by a certificate of valuation (Box 1).[5]

Box 1: Wildlife Conservation Act (2009) § 86(2)

(1) Subject to the provisions of this Act, a person shall not be in possession of, or buy, sell or otherwise deal in any government trophy.

(2) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction-

(a) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act, and the value of the trophy does not exceed one hundred thousand shillings, to imprisonment for a term of not less than five years but not exceeding fifteen years or to a fine of not less than twice the value of the trophy or to both; or

(b) where the trophy which is the subject matter of the charge or any part of such trophy is part of an animal specified in Part I of the First Schedule to this Act, and the value of the trophy exceeds one hundred thousand shillings, to a fine of a sum not less than ten times the value of the trophy or imprisonment for a term of not less than twenty years but not exceeding thirty years or to both.

(c) in any other case -

(i) where the value of the trophy which is the subject matter of the charge does not exceed one hundred thousand shillings, to a fine of not less than the amount equal to twice the value of the trophy or to imprisonment for a term of not less than three years but not exceeding ten years;

(ii) where the value of the trophy which is the subject matter of the charge exceeds one million shillings, to imprisonment for a term of not less than twenty years but not exceeding thirty years and the court may, in addition thereto, impose a fine not exceeding five million shillings or ten times the value of the trophy, whichever is larger amount.

Box 2: National Parks Act (1959, as last amended in 2003) § 21

(1) Any person who commits an offence under this Act shall, on conviction, if no other penalty is specified, be liable -

(a) in the case of an individual, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one years or to both that fine and imprisonment;

(b) in the case of a company, a body corporate or a body of person to a fine not exceeding one million shillings.

(2) Any person who contravenes the provisions of this section commits an offence against this Act.

[4] Written Laws (Miscellaneous Amendments) (No.2) Act, No. 04 of 2016

[5] Paragraph (c)(iii) was added by the Written Laws (Miscellaneous Amendments) (No.2) Act, No. 04 of 2016

The National Parks Act (NPA) provides for the establishment, control and management of national parks. It creates offences related to, *inter alia*:

- unlawful entry into a national park;
- unlawful hunting and capturing within a national park; and
- unlawful mining within a national park.

The act provides for penalties associated with these offences, with reference to the schedules of species of WCA 2009 in relation to offences related to species. Penalties may vary depending on whether the offender is an individual or a company. The Ngorongoro Conservation Act governs the management, use and conservation of natural resources in the Ngorongoro Conservation Area.[6] It creates offences for certain behaviors which might have an impact on the wildlife of this area.

2.2.2 Firearms and Economic and Organized Crime

Corruption, organized crime, and unlawful use of firearms are often associated with wildlife trafficking.

The Arms and Ammunition Act regulates unlawful activities involving civil arms and ammunitions, including possession, dealing and national or international trade.[7]

A breach of the provisions of this act constitutes an offence. The act expressly provides for certain penalties, but more severe penalties may apply under the Economic and Organized Crime Control Act (EOCCA).[8]

The EOCCA provides framework rules for prosecution of specific crimes, qualified as economic offences and listed in a schedule to the act. Listed offences include:

- bribery and corruption;
- leading organized crime;
- occasioning loss to a specified authority;
- unlawful use of firearms;
- offences against conservation of wildlife;
- unlawful possession of arms or ammunition.

Box 3: Arms and Ammunition Act (2001, as last amended in 2007) §§ 4, 34

Section 4
(1) No person shall use, carry, or have in his possession or under his control any firearms or ammunition, except in a public or private warehouse, unless he is in possession of an arms licence issued under this Act.
Section 34

(1) Any person who contravenes any provision of this Act, or any regulation, notice, or order made under it, or the conditions of any licence or permit, commits an offence under this Act.

Most of the offences created under the WCA 2009 are considered economic offences under the EOCCA.

The EOCCA gives exclusive jurisdiction over economic offences to the High Court of Tanzania, which can delegate such jurisdiction to trial courts where the Director of Public Prosecutions (DPP) gives authorization through a formal certificate. It also creates a generic penalty which applies to all economic offences where a different penalty is not stated.[9]

2.2.3 Criminal Procedure Act

Procedural rules applying to criminal cases principally derive from the Criminal Procedure Act (CPA).[10] It contains provisions relevant to the investigation, prosecution and trial of alleged criminal offences. These include rules on arrest, interrogation, bail, charges, witnesses, adjournment, pleading, withdrawal, discharge, decision, judgment, sentencing, appeal, etc. The WCA and other environmental laws also include provisions relating to procedure, such as powers of authorized officers and compounding of certain offences.

2.2.4 International Law

Tanzania is Party to multiple international agreements relevant to wildlife crime, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the UN Convention against Transnational Organized Crime (UNTOC), and the UN Convention against Corruption (UNCAC). At the regional level, it has ratified the Southern African Development Community's 1999 Protocol on Wildlife Conservation and Law Enforcement, and participates in regional initiatives to combat wildlife crime, notably through the 1994 Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.

The Wildlife Conservation Act contains provisions expressly criminalizing breaches of CITES requirements.[11] They must be read with the implementing CITES Regulations which provide for stiff penalties against CITES offenders.[12]

2.2.5 Judicial system

In Tanzania, trials for wildlife offenders may be brought in magistrate's courts or district courts, with written

[6] Cap. 284 R.E. 2002. Note that this Act was amended in 2016 by Written Laws (Miscellaneous Amendments) Act No. 03 of 2016. As these amendments were not in force at the time of any of the cases studied, they are not included in this analysis.

[7] Cap. 223 R.E. 2002.

[8] Cap. 200 R.E. 2002.

[9] This generic penalty in force until the recent amendment of the EOCCA, dated 24th of June 2016, was a maximum of fifteen year imprisonment (section 60(2)). It is now twenty to thirty years, according to section 13 of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2016.

[10] Cap. 20 R.E. 2002.

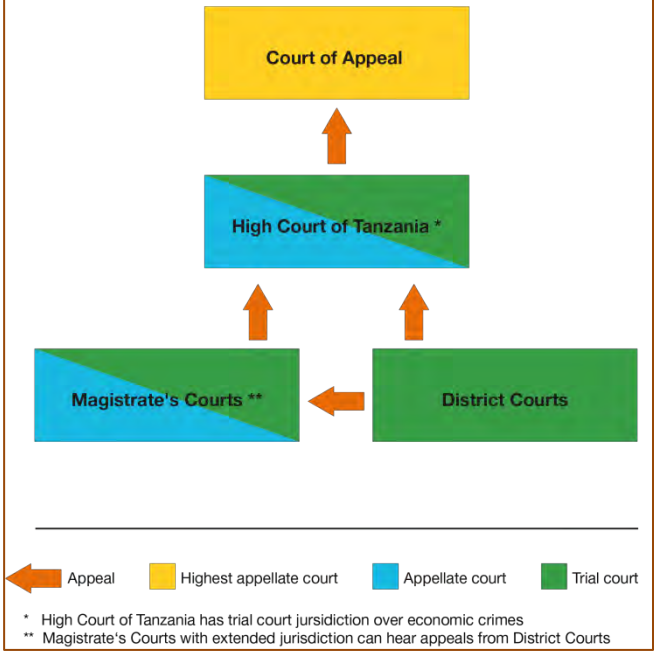
[11] See for instance section 82, 83, 84 and 95 of the 2009 WCA.

[12] 2005 GN 225/2005.

consent of the DPP where necessary. The High Court of Tanzania also has original trial jurisdiction over economic crimes, including many wildlife-related offences.

The decision in the trial court may be appealed by either the prosecution or the accused to the High Court of Tanzania. Under certain circumstances, decisions in District Courts may also be appealed in Magistrate Courts with extended jurisdiction. Appeal from the High Court may be made to the Court of Appeal of Tanzania. Decisions from the Court of Appeal and the High Court of Tanzania are binding on subordinate courts. Additional courts, such as Primary Courts, have no jurisdiction to determine wildlife cases in Tanzania, although they form part of the Tanzania Judicial System.

Figure 1: Hierarchy of Courts



3 Methodology

The project of collecting and analyzing wildlife-related court decisions started in October 2015. IUCN worked with legal experts in different regions of mainland Tanzania to gather a representative sample of court decisions from lower and higher courts. Information obtained from the court opinions was used to conduct a statistical analysis in order to identify trends in the judicial response to wildlife crime and to assess the strengths and weaknesses of the Tanzanian legal system.

3.1 Collecting Cases

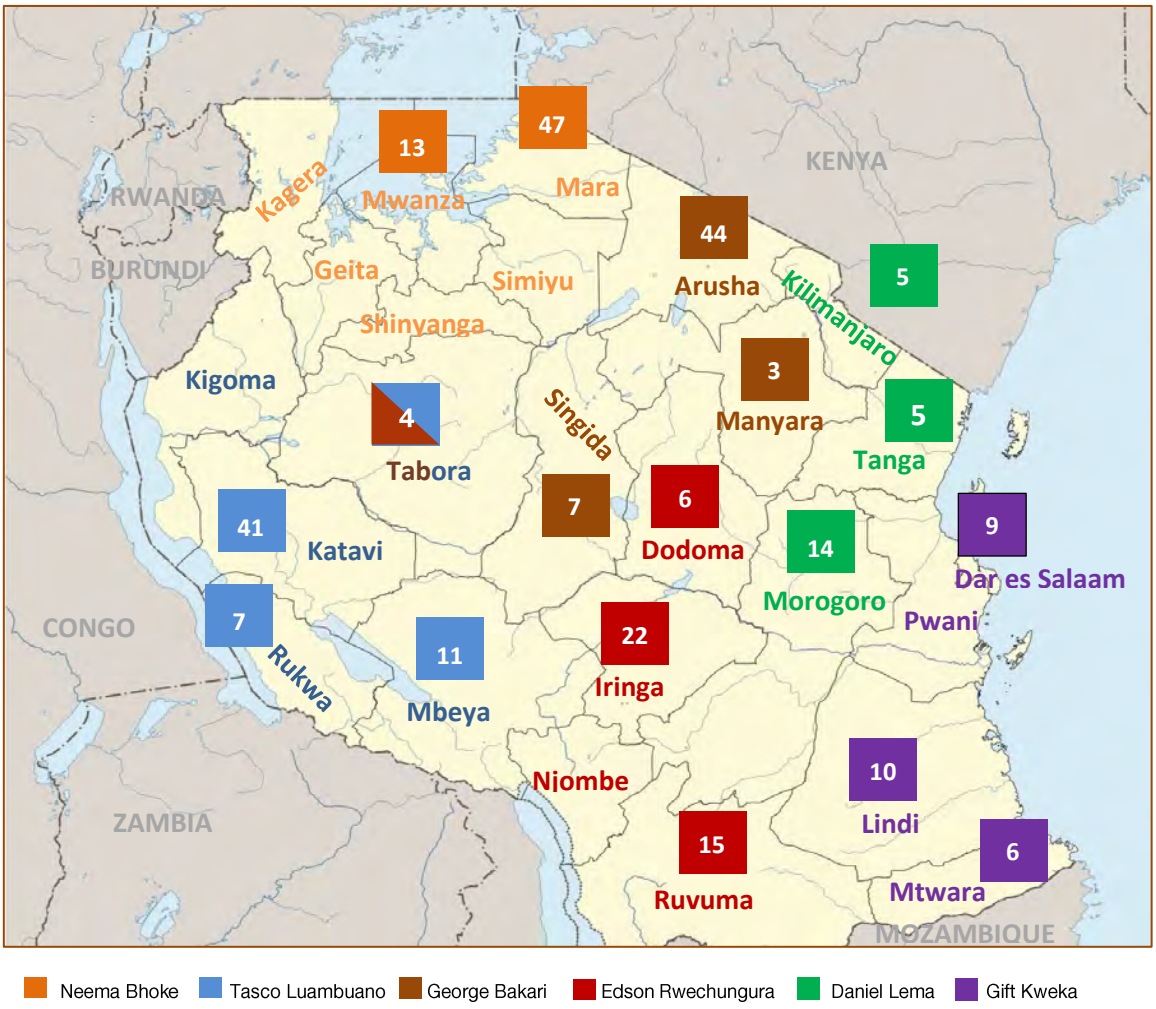
For six months, six Tanzanian legal experts were each entrusted with the mandate of collecting and analyzing judgments from Magistrate courts, District Courts, tHigh Court and the Court of Appeal of Tanzania. They were supervised by Professor Hamudi Majamba, Dean of the School of Law of the University of Dar es Salaam and expert in environmental law. Each legal expert was assigned three to six regions, as follows:

- Neema Bhoke: Kagera, Mara, Mwanza, Geita, Shinyanga and Simiyu
- George Bakari: Arusha, Manyara, Singida and Tabora (shared with Mr. Tasco Luambano)
- Gift Kweka: Dar es Salaam, Pwani, Lindi and Mtwara
- Daniel Lema: Kilimanjaro, Tanga and Morogoro
- Tasco Luambuano: Kigoma, Katavi, Rukwa, Mbeya and Tabora (shared with Mr. George Bakari)
- Edson Rwechungura: Dodoma, Iringa, Njombe and Ruvuma

Zanzibar was excluded from the scope of the study, because the islands have their own court system and apply different legal provisions with regards to wildlife.

In total, 269 decisions were collected across Tanzania, of which 225 were from lower courts and 44 from higher courts.

Map 1: Consultants and number of collected cases by region*



Following an agreed standardized methodology for collecting cases, the experts first tried to liaise with relevant courts in the region assigned to them in order to obtain soft or hard copies of court decisions. This was often unsuccessful, due to low cooperation of court staff and lack of available technical resources (computers, printers, etc.). The experts carried a letter of introduction from the University of Dar Es Salaam, explaining the purpose of the research.

In addition, the experts attempted to work through the Wildlife Division of the Ministry of Natural Resources and Tourism in Dar es Salaam, but it was unable to provide cases within the time period of the project. Its zonal office in Mwanza was not able to share court decisions because it did not receive the necessary permission from the Wildlife Division in Dar es Salaam in due time. The experts also approached the Attorney General's Office and its Office of the Director of Public Prosecutions, but no cases were able to be shared.

Therefore, in order to access cases it was necessary to travel to the districts. At the courts, the personnel were sometimes hesitant to cooperate because they suspected that the collection of cases could serve the purpose of assessing the work of magistrates or judges from the court. Registrars or clerks needed authorization from the judge in charge of the registry before they could communicate cases. The authorizing officer might work in another court, and rarely visit other registries. Personnel in the courts or registries sometimes requested payments in exchange for access to court decisions; no such payments were made in the course of this project.

It should be noted that typed judgments which have been certified to be true copies of the original are public documents, and should be made available on request.

Limited record-keeping posed an additional challenge. Little information about the judgment is recorded, which makes it difficult to trace relevant judgments in the registries, which are organized by case number, not content. In some cases the experts were denied access to the archives, and were therefore only able to access recent judgments.

* Geographical map of Tanzania adapted from:
© Sémhur/Wikimedia Commons/CC-BY-SA-3.0 (or Free Art License).

Collection of cases was also hindered by the very limited access of the courts to computers, printers, paper and ink. There is also a low number of trained staff capable of typing court decisions. Where decisions are typed, they often contain multiple typographical errors, and follow non-standard formatting. It was sometimes impossible to obtain a copy of a typed court decision.

The obstacles to typing decisions are serious. A judgment does not have official value until it is typed and signed by the deciding magistrate or judge. Higher court decisions are not binding until they have been typed and signed, while lower court decisions cannot be appealed until the decision is typed.[13] Trial courts therefore give priority to typing judgments which have been requested by one of the parties for the purpose of appeal.

For the purpose of this report, 63 untyped decisions were included in the analysis. However, these decisions are not referenced by name or identifying details, and have not been published online.

All typed cases collected have been published on WildLex, www.wildlex.org, a database of wildlife-related law created and maintained by IUCN. This database is free to all, and intended to serve as a resource for prosecutors, magistrates and judges, as well as researchers and students. Tanzania is the first pilot country for WildLex, which is intended to serve as an international database that will cover more countries in the future.

3.2 Analysis

The 269 collected decisions were analyzed by the legal experts in order to retrieve basic factual and legal information from each case. This information was used to conduct an analysis of various aspects of the judgments, for the purpose of identifying trends in the judicial treatment of wildlife-related cases in Tanzania.

The initial analysis of each case was conducted using a matrix elaborated by the IUCN Environmental Law Centre together with the legal experts in Tanzania (Annex 1: Matrix). The matrix included space for information from the judgment such as the species involved, value of trophies, charges brought, characteristics of the accused, basis of decision, and cited legislation. Experts were also asked to provide additional contextual information if available, such as whether the case was appealed and whether the accused was granted bail, and to provide their own legal opinion about the case.

The information from the matrices was entered into Excel sheets in order to identify common features or discrepancies between cases and trends in the criminal courts responses to wildlife crime. The statistics produced from the analysis are only indicative – no statistical tests were run to determine significance.

Separate tables were created for initial trial and appeal cases but all cases were included, irrespective of whether the accused person(s) pleaded guilty, was released on bail or appeared in court or not. Court decisions from trial courts that have outstanding appeals were included. The analysis included cases which have been decided under older laws than those currently in force. Even though penalties associated with different wildlife offences have evolved over time, pecuniary penalties have always been indexed to the value of the trophy for offences involving species.[14] Similarly, imprisonment penalties imposed by the court in the collected cases differ from the minimum and maximum provided by the law under which they were decided in the same proportion in cases decided under previous laws as in cases decided under the law currently in force. Therefore, all decisions are included in the study.

The study focuses on a broad number of offences, regardless of whether a species is actually harmed by the unlawful behavior. Offences such as unlawful possession of a weapon in a national park or unlawful entry in a national park, for example, are considered wildlife-related offences in the study. The decisions may relate to either fauna or flora

The preliminary results of the study were presented and discussed at a workshop for prosecutors, magistrates and judges in Bagamoyo, Dar es Salaam in May 2016. The ensuing report was discussed at a second workshop in Arusha in September 2016.

[13] According to conversations with prosecutors, judges and law professors during Wildlife Judicial and Prosecutorial Assistance Trainings Series (Tanzania), “Strengthening Mechanisms to Combat Wildlife Crime”, Bagamoyo, 24-26 May 2016.

[14] Except under section 67(2)(a) of the Wildlife Conservation Act No. 12 of 1974, which never forms the legal basis of prosecution of an accused person in the cases collected.

4 Results from the Trial Courts

The cases collected include 225 trial court decisions from fifteen different regions of Tanzania (Map 2). In addition to conviction rates and average penalties imposed, the cases were analyzed in terms of types of offences prosecuted, species and wildlife products involved, legal basis for the decision, and characteristics of the accused persons.

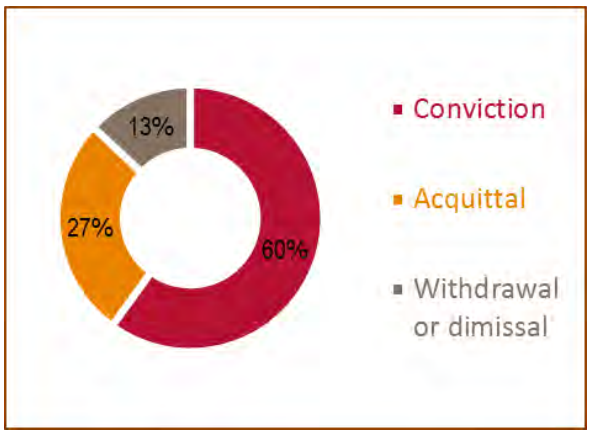
4.1 Conviction rates and penalties

In 135 of the 225 trial cases analyzed, at least one of the accused persons was found guilty of at least one of the offences as charged – an average conviction rate of approximately 60%. In 27% of cases, all accused persons were acquitted, and in 13% of cases, charges were dismissed or withdrawn (Figure 2).

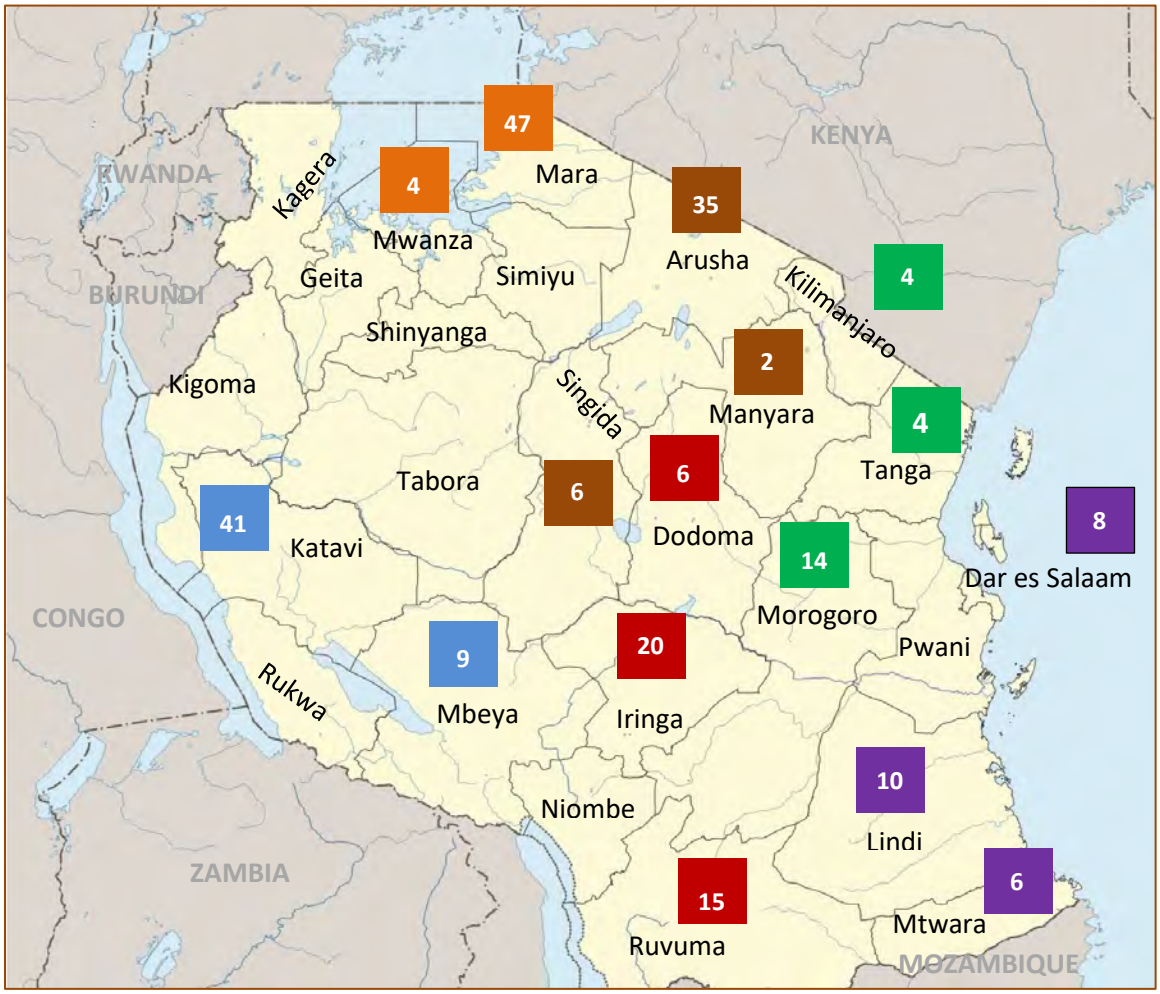
The conviction rates vary greatly from one region to another (Figure 3). For example, in Iringa only 6 out of 20 cases resulted in a conviction (30%), whereas in Katavi, 33 of the 41 cases resulted in a conviction (80.5%).

Penalties also vary. Overall, the average imprisonment penalty imposed by the court across all cases analyzed is 11 years and 8 months; while the average fine is 194,356,326 Tanzanian shillings, or about 89,000 USD[15] (Table 1). Penalty imposed varies by offence (see Section 4.2) and by value of the wildlife product (Section 4.3.3), but there remain significant discrepancies between cases, even those involving similar facts.

Figure 2: Outcomes of trial court cases analyzed



Map 2: Number of trial court decisions per region



[15] The exchange rate used is that of August 2016: 2190 TSH per USD.

Figure 3: Conviction rates per region

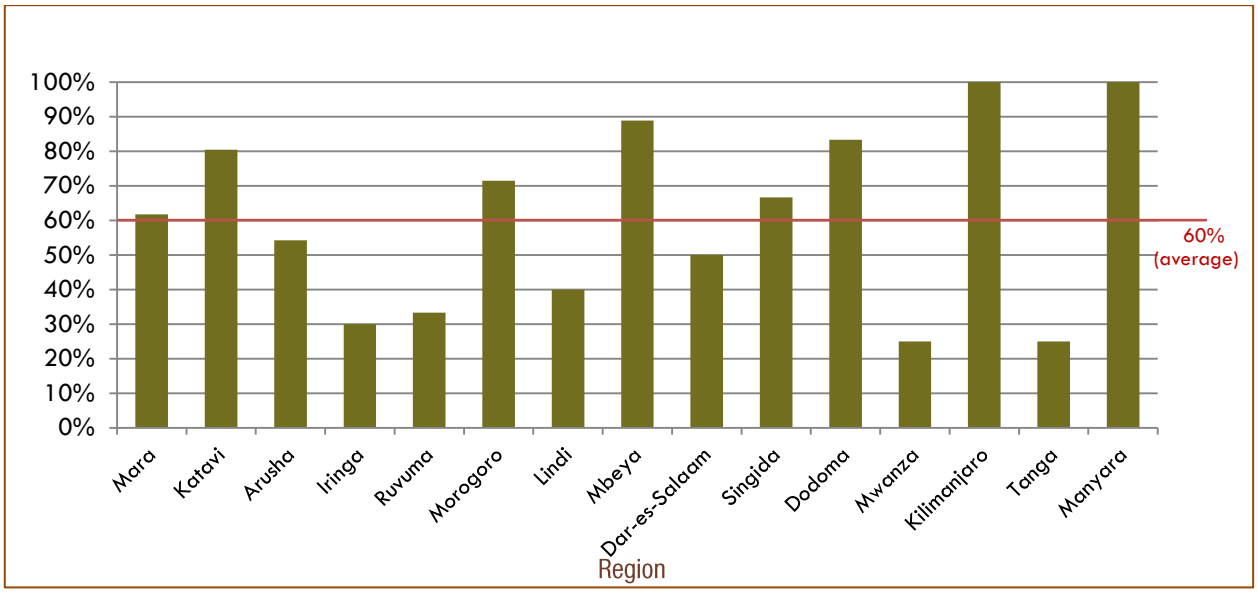


Table 1: Average penalties

Average imprisonment	Average fine (TZS)	Average trophy value (TZS)
11 years, 8 months	194,356,326	34,082,279

Often the imprisonment penalty is offered only as default in case of nonpayment of fine. The option of a fine is granted by the court in 44.5% of offences where one or more accused is found guilty.

4.2 Types of offences

A range of offences are used to prosecute wildlife offenders in Tanzania. In the 225 wildlife-related trial court decisions analyzed, 27 different charges can be identified. For the purpose of this study, these are classified into nine categories of offences: 1) taking/hunting/capturing of a government trophy; 2) possession/transportation of a government trophy; 3) trade/dealing in a government trophy; 4) firearms related offences (outside of a protected area); 5) protected areas related offences; 6) licensing offences; 7) offences related to organized crime; and 8) other crimes (Table 2).

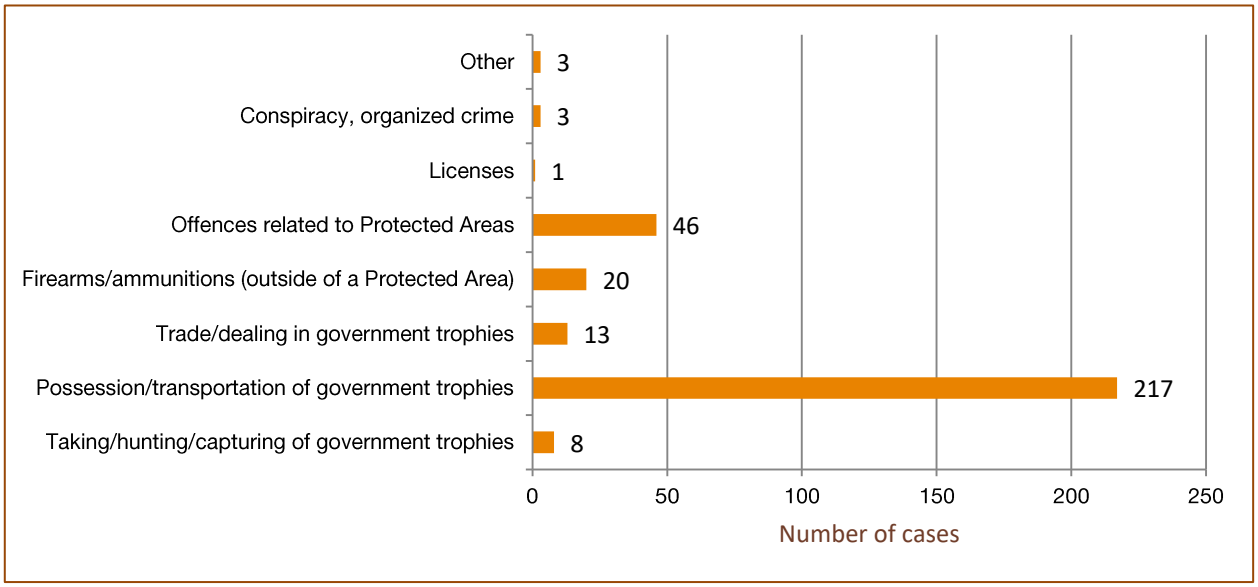
4.2.1 Charges brought

The majority of cases – 217 out of 225 – involve offences related to unlawful possession and/or transportation of a government trophy (Figure 4). Unlawful possession of a government trophy is the single most common charge brought by the prosecution in the cases analyzed. It can be found in 216 of the 225 trial court cases, and in 142 cases it is the only charge brought against the accused. Six cases involve the related offences of unlawful transportation of government trophies and failure to report possession.

Table 2: Categories of offences

Taking/hunting/capturing of government trophy
Unlawful capture of animals
Unlawful killing of natural game animal
Unlawful hunting
Unlawful hunting during a closed season
Unlawful hunting of scheduled animal
Possession/transportation of government trophy
Unlawful possession of government trophy
Unlawful transportation of government trophy
Failure to report possession
Trade/dealing in government trophy
Unlawful dealing in government trophy
Firearms/ammunitions (outside of a Protected Area)
Unlawful possession of firearm
Unlawful possession of ammunitions
Unlawful transfer of firearm
Unlawful activities in a Protected Area
Unlawful entry into a protected area
Unlawful possession of weapon in a protected area
Unlawful hunting in a protected area
Unlawful mining in a game reserve
Unlawful hunting/capturing fish in a national park
Unlawful destruction of vegetation in a game reserve
Licenses
Unlawful transfer of hunting license
Unlawful acceptance of license
Conspiracy, organized crime
Conspiracy to commit offence
Leading of organized crime
Organizing the crime on unlawful exportation of wild animal
Other
Practicing as an unregistered traditional health practitioner
Omitting to discharge duty
Neglecting to prevent commission of an offence
Occasioning loss to the government

Figure 4: Charges brought in trial court cases



About 20% of cases (46 cases) involve offences related to protected areas, including illegal entry, hunting and possession of firearms or weapons in national parks, game reserves, game controlled areas and conservation areas.

20 cases (almost 10%) involve offences related to firearms (outside of protected areas). Only 3.5% of cases (8 cases) involve illegal taking, hunting or capturing of wildlife, and only 6% (13 cases) involve trade or dealing in government trophies. Just 1% of cases (3 cases) involve offences relating to conspiracy or organized crime, such as leading organized crime. The remaining charges are found in less than 2% of cases.

Unlawful possession of a government trophy is the single most common charge brought by the prosecution in the cases analyzed. It can be found in 216 of the 225 trial court cases, and in 142 cases it is the only charge brought against the accused.

Which charge is brought may depend on the region or the specific prosecutor, or the importance allocated to a specific case. In cases with similar facts, different charges may be used. For example, in the case *Republic v. Arquemides Joao Mahanjane*, the accused persons – both Mozambican citizens – were arrested while crossing the border from Malawi to Tanzania with two rhino horns together worth 82,221,692 TZS and charged with unlawful possession of government trophies.[16] They were not charged with trade or dealing, or illegal import. In a similar case of *Republic v. Song Lei*, the accused were caught crossing the border from Malawi to Tanzania on a motorcycle with eleven pieces of rhino horn worth 902,880,000 TZS.[17] In that case, they were charged with – and convicted of – three counts: unlawful possession of government trophies, unlawful dealing in government trophies, and leading organized crime. While the value of evidence was higher in the *Song Lei* case – which may have given it more weight in the eyes of prosecutors – the additional charges would almost certainly have been appropriate in the *Mahanjane* case as well. In other cases, prosecutors only brought charges of unlawful possession even where the accused was arrested while engaged in selling or trading.

One offence is notable by its absence. The Wildlife Conservation Act prohibits import or export of a CITES listed species without a CITES permit. This charge was not used in any of the cases analyzed (see Section 4.5).

Box 4: Wildlife Conservation Act 2009 § 95

95(1) Any trade in violation of CITES provisions is prohibited under this Act and all specimens illegally traded shall be confiscated.

(2) A person shall not, except under and in accordance with the terms and conditions of a permit issued by the Director in accordance with CITES provisions, export from or import into or transport through or re-export from Tanzania, any wildlife species, specimens or products.

…

(7) Any person who contravenes the provision of this section commits an offence and shall be liable on conviction to a fine of not less than three times the value of the specimen involved in the commission of the offence or to a minimum of five years imprisonment or to both.

[16] *Republic versus Arquemides Joao Mahanjane* [2015] District Court Kyela, no. 01 of 2015. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-arquemides-joao-mahanjane-another.

[17] *Republic versus Song Lei and three others* [2015] Resident Magistrate Court Mbeya, no. 06 of 2015. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-song-lei-3-others.

Table 3: Conviction rates for different offences

Category of offences	No. of cases	Convictions	Conviction rate
Taking/hunting/capturing of government trophies	8	2	25%
Possession/transportation of government trophies	217	131	60%
Trade/dealing in government trophies	14	8	62%
Firearms/ammunitions (outside of a Protected Area)	20	10	50%
Offences related to Protected Areas	46	30	65%
Licenses	1	0	0%
Conspiracy, organized crime	3	2	67%
Other	3	1	33%

4.2.2 Conviction rates for different offences

It is difficult to compare conviction rates across penalties because of the vastly different number of cases involving different offences. However, examining conviction rates for different offences can still be indicative.

The conviction rate in cases involving offences related to possession or transportation of a government trophy is 60%, which is equivalent to the overall average conviction rate. However, other offences vary (Table 3). Only eight cases involve charges of taking, hunting or capturing of a government trophy, and only two of these cases (25%) resulted in a conviction. Conversely, 76% of 37 cases involving possession of a weapon within a protected area resulted in conviction of at least one accused – but conviction rates for other offences related to protected areas bring the overall conviction rate for that category down to 65%. Only 50% of 20 cases involving firearms and/or ammunitions outside of protected areas resulted in conviction. Of the 13 cases involving trade or dealing in a government trophy, 62% resulted in a conviction, also very close to the overall average.

Of the 122 analyzed cases resulting in conviction for unlawful possession of government trophies, the average imprisonment penalty is 12 years and five months.

4.2.3 Penalties for different offences

Penalties imposed by the court can vary significantly from one case to another, even for cases dealing with the same offence. This can be attributed to multiple factors, such as the flexibility offered by the law, the type of impacted species, the value of trophies, and the specific circumstances of the case, including the personal situation of the offender. However, the law often provides for minimum penalties for specific offences, and magistrates and judges do not always apply these minima.

Minimum penalties dictated by statute can be high (Table 4 and Annex 2). Under Section 86(2)(b) of the Wildlife Conservation Act 2009, the minimum penalty for unlawful possession of trophies from specified species worth more than 100,000 Tanzanian shillings is 20 years imprisonment and/or a fine of at least ten times the value of the trophy.

Of the 122 analyzed cases resulting in conviction for unlawful possession of government trophies, the average imprisonment penalty is 12 years and five months. Calculation of the average takes into account all imprisonment penalties, regardless of whether they are obligatory or apply in the alternative to payment of a fine. It excludes the two cases where only pecuniary penalties were imposed. Most of the cases applied the WCA 2009, although 8 of the cases included in the calculation were decided under a previous law with lower penalties. Removing those 8 cases does not affect the average imprisonment penalty (Table 4).

The average fine in unlawful possession cases is 192,955,008 TZS, or the equivalent of approximately 88,000 USD. Removing the 16 cases decided under previous law, the average is: 196,462,827 TZS. This amount needs to be analyzed in the context of trophy values, and is distorted by a small number of exceptional cases, as discussed further in Section 4.3.3.

In some cases, a lower penalty than the statutory minimum is applied based on circumstances. For example, in *Republic v. Cherehani Mayombi*,[18] the accused was found in possession of one lion skin and one leopard skin, together worth a total of 12,600,000 Tanzanian shillings. The court took into account the fact that the accused was a 19 year old at the time of the offence, and may have inherited these trophies from her

[18] *Republic versus Cherehani Mayombi and Kamama Lukubaja* [2013] District Court of Mpanda, No. 17 of 2013. This case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/r-v-cherehani-mayombi-another.

Table 4: Statutory penalties and penalties imposed for selected offences

	Statutory penalties++		Average penalties imposed	
	Fine (TZS)*	Prison**	Fine (TZS)	Prison
Taking/hunting/capturing of government trophy				
Unlawful hunting	2x trophy value	1-5 years	605,000	1.5 years
Possession/transportation of government trophy				
Unlawful possession of government trophy	Min. 2x-10x trophy value	Min. 3-20 years; max. 10 - 30 years	192,955,008	12.4 years
Failure to report possession	100,000 - 500,000	12 -18 months	100,000	0.83 years
Trade/dealing in government trophy				
Unlawful dealing in government trophy	Min 2x-10x trophy value	Min. 2- 20 years; max. 5 - 30 years	744,287,178	7.5 years
Firearms/ammunitions (outside of a Protected Area)				
Unlawful possession of firearm	None	Max. 15 years	391,667	3.1 years
Unlawful possession of ammunitions	None	Max. 15 years	1,733,333	7.1 years
Unlawful activities in a Protected Area+				
Unlawful entry into a protected area	Min. 0-100,000; max. 500,000-1,000,000	Min. 0-1 years; Max: 1-3 years	72,313	0.9
Unlawful possession of weapon in a protected area	Min. 0-100,000	Max. 3 years	70,200	1.4 years
Unlawful hunting in a protected area	Min. 100,000-200,000; Max. 500,000 – 2,000,000	Min. 1 month – 3 years; Max. 6 months -10 years	14,000	2.1 years
Conspiracy, organized crime				
Leading of organized crime		Max. 15 years	No fine imposed	15 years

* min/max varies according to the value of the trophy and type of species
** may be cumulative or alternative to a fine; min/max varies according to the value of the trophy and type of species.
+ penalties depend on the nature of the protected area (game reserve, national park, etc.) and whether offence is committed by individual or company
++ statutory penalties are those under the most recent statutes applied in the analyzed cases, and do not include the 2016 amendments. See Annex 2b

grandfather, and that she was nine months pregnant at the time of trial. Given these circumstances, the court re-qualified the offence as "failure to report possession of government trophies" and sentenced the accused to 2 months in prison and 100,000 Tanzanian shillings.[19]

In other cases, the reason for lower penalties is not clear. For example, in *Republic v.Charles Mzungu*,[20] the accused was caught in possession of five elephant tusks worth a total of 48,000,000 TZS, and sentenced to a fine of 48,000,000 TZS, or five years in prison. In this case, the fine is one tenth of what is required by statute, and the prison sentence is a quarter of the statutory minimum.

Conversely, sentences sometimes seem high in relation to the offence. For example, in *Republic v. Emiry Feruzi*, the accused was found in possession of 20 kilograms of hartebeest meat, worth approximately 600,000 TZS, or 600 USD.[21] He was sentenced to 20 years imprisonment, with no option to pay a fine.[22]

Other offences show similar trends. For the seven convictions involving unlawful dealing in government trophies, the average fine imposed by the courts is 744,287,178 TZS[23] and the average imprisonment penalty is seven years and six months. WCA 2009 provides that the minimum penalty for unlawful dealing in trophies is 2 years, and the maximum is 30 years, depending on the species and the value of the trophy.

For the seven convictions involving unlawful possession of a firearm outside a protected area, the average fine is 391,667 TZS[24] and the average imprisonment penalty is three years and one month. Convictions for unlawful possession of a weapon inside a protected area result in lower penalties, averaging 70,200 TZS[25] or one year and five months (Table 4).

[19] Approx. 45 USD.

[20] *Republic versus Charles Mzungu* [2013] District Court of Kilosa, No. 05 of 2013. This case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/r-v-charles-mzungu.

[21] Conversion rate as specified in the opinion.

[22] *Republic versus Emiry Feruzi* [2014] District Court of Katavi, No. 110 of 2014. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-emiry-feruzi.

[23] Approx. 340,000 USD.

[24] Approx. 180 USD.

[25] Approx. 32 USD.

4.2.4 Analysis: Types of offences

Overall, the imprisonment penalties dictated by law are high, and this is reflected in the penalties as imposed. UNTOC defines serious crime as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty."[26] Using this definition, there is little doubt that Tanzania treats wildlife crime as serious crime, both in law and in fact.

However, the high imprisonment penalties are mitigated by the frequent use of a fine in the alternative to imprisonment, as well as the relatively low fines. Where the fine is less than or equal to the value of the trophy, it creates a relatively low deterrent for the offender with resources to pay.

There is some suggestion from the results that high penalties may be disproportionately affecting small time offenders. These may be individuals acting on their own for reasons of subsistence or to support their livelihoods, or lower links of a well-organized criminal chain. In either case, they may lack the means to pay fines and avoid imprisonment – an option available to those higher up the criminal chain.

The disproportionate use of the charge of possession of government trophies may reveal a weakness in the prosecution of wildlife-related cases. Possession of government trophies is part of a larger chain of conduct that typically involves multiple individuals. Possession does not occur on its own – the trophy must first be taken, hunted, killed or captured. In most cases, the possessor is not the end consumer – the trophy is intended for transport and sale, and often for illegal export. Organized criminal groups may be involved. The reliance on the charge of possession of government trophies therefore raises at least two questions:

1. Where the accused is involved in other types of wildlife crime, why don't prosecutors charge them with the crimes of hunting or dealing in addition to the crime of possession?
2. Where the accused is not involved in other types of wildlife crime, why don't prosecutors and investigators use plea-bargaining or other tactics to support investigation of those further along the chain?

There are a number of possible answers, brought out in a series of workshops held with prosecutors, investigators and judges.[27] Investigators reported that they may lack time, means and resources to follow up on all cases. Prosecutors confirmed that they use the charge of possession because it is one with which they are familiar, in a legal framework where it can be challenging to fully understand how to use the different wildlife-related offences scattered across multiple statutes. Prosecutors also argued that they lack time to prepare a case, and the offence of unlawful possession is easier to prove than other offences, such as unlawful dealing or buying. In this analysis, conviction rates for dealing (62%) were slightly higher than conviction rates for possession (56%), but this may be explained by the low number of cases involving dealing making it hard to accurately assess, or the fact that prosecutors may choose to prosecute only those dealing cases which are strong enough to result in conviction.

There may be some confusion based on how the offences are presented in law. WCA 2009 § 86(1) states, "a person shall not be in possession of, or buy, sell or otherwise deal in any government trophy", in a provision often referred to as "possession of government trophies". Prosecutors may be conflating the different offences provided in this section. In the workshops held in May and September, prosecutors questioned whether they were allowed to bring charges for both possession and dealing in the same case, based on this section.

A simpler explanation may be the relevant penalties. The offence of unlawful possession of a government trophy can carry a minimum penalty (20 years imprisonment) that is as high as or higher than any other offence specified in WCA 2009 – matched only by the penalty for dealing in a government trophy provided in the same provision of the Act. In comparison, the offence of leading organized crime under the EOCCA in force at the time of the analyzed cases carried a maximum penalty of 15 years. In 2016, this penalty under the EOCCA was raised to 20 years – equivalent to penalties available for unlawful possession.[28]

The high penalty and relative ease of prosecution may partly explain why possession was chosen rather than dealing or hunting in cases where either would be an option. From the point of view of a prosecutor who seeks to impose the highest penalties possible in a way that is easiest to prove in court, the charge of possession makes sense.

However, from a strategic point of view, the focus on possession may not be the most appropriate way to address wildlife crime. Wildlife crime is driven by organizers and dealers, who often make the most profit on international trade. Strengthening the legal focus – on the part of lawmakers, prosecutors, and judges – on the aspects of wildlife crime related to international dealing and organized crime could prove more effective at protecting Tanzanian wildlife while avoiding disproportionate penalization of small scale offenders.

[26] United Nations Convention on Transnational Organized Crime (UNTOC), article 2(b).

[27] Wildlife Judicial and Prosecutorial Assistance Trainings Series (Tanzania), "Strengthening Mechanisms to Combat Wildlife Crime", Bagamoyo, 24-26 May 2016, Arusha 27-29 September 2016.

[28] Section 13 of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2016, adopted on the 24th of June, 2016.

4.3 Species, evidence and value of trophies

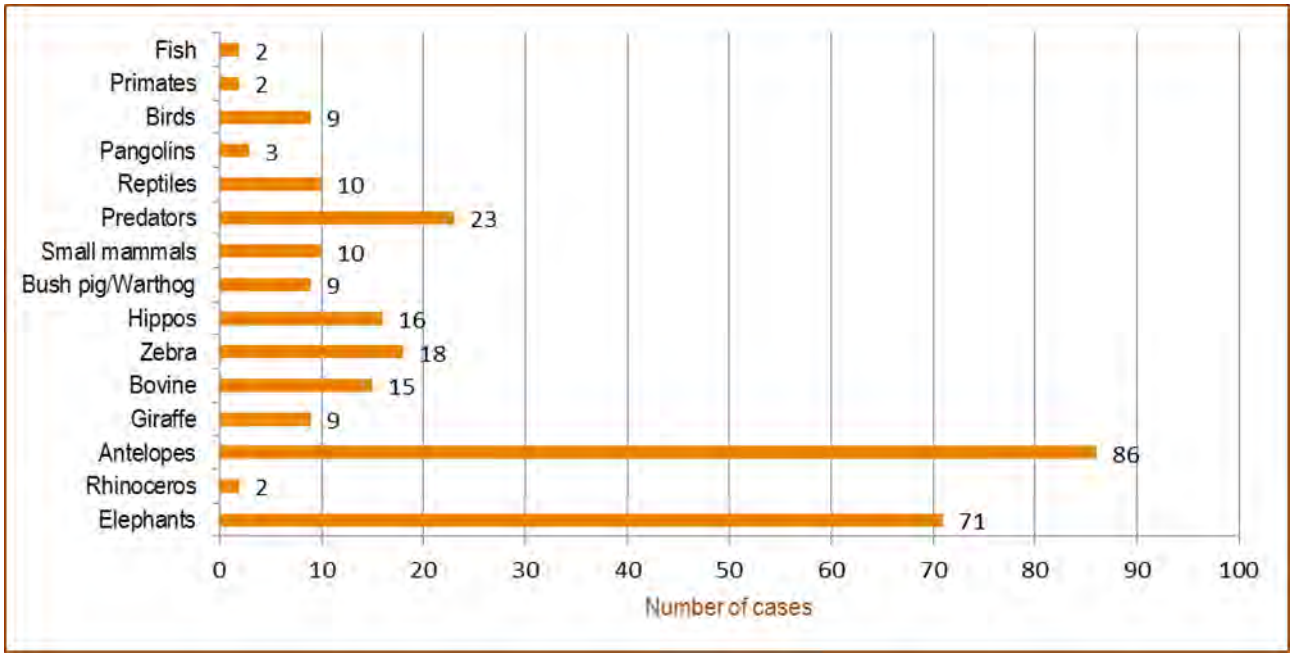
The cases surveyed cover a wide number of species, and a wide range of values and uses. The 225 wildlife-related court decisions involve 66 identified species. These species were classified in 15 different categories for the purpose of this study (Table 5).

Four cases did not involve wildlife products as evidence (e.g. related to possession of a firearm) and two involved species that were not identified.

Table 5: Species involved in wildlife cases

Elephants	Rhinoceros	Giraffes	Zebras	Hippopotamus
Elephant	Rhinoceros	Giraffe	Zebra	Hippopotamus
Fish	**Bovine**	**Primates**	**Bush pigs and warthogs**	**Pangolins**
Fish	Bush bull Buffalo	Monkeys	Bush pig Warthog	Pangolins
Antelopes	**Birds**	**Small mammals**	**Reptiles**	**Predators**
Antelope Bushbuck Dik-dik Duiker Eland Gazelle Gerenuk Greater kudu Hartebeest Impala Lesser kudu Oryx Puku Reedbuck Roan Steinbuck Topi Waterbuck Wildebeest	Black Verreaux's eagle Crowned crane Eagle Finch Grebe Green pigeon Grey-headed kingfisher Ground hornbill Guinea fowl Kori bustard Lapet faced vulture Olive pigeon Ostrich Plover Secret bird Turaco Yellow-fronted canary	Aardvark African hare African rabbit Badger Hedgehog Hyrax Porcupine	Cobra Crocodile Lizard Python Tortoise Turtle	Cheetah Civet cat Fox Hyena Leopard Lion Mongoose Serval cat Wild cat

Figure 5: Occurrence of different species in wildlife related cases



The remaining 219 cases cover a range of species, from leopard to rabbit to pangolin to hippopotamus. Almost a third of the cases analyzed deal with elephants (Figure 5). Almost 40% involve different species of antelope. Fifty-one cases involve more than one species.

Different species – and in many cases, the same species – are used for different purposes, which may be relevant in criminalization or penalization. There is a difference between an individual involved in the commercial trade in ivory and a subsistence hunter of bushmeat, both in terms of culpability and in terms of ecological impact. This is addressed in Section 4.3.4.

It is difficult to directly analyze environmental impact and intended use of species from the judicial opinions alone. It is possible to gain some idea by looking at the species involved, types of evidence and value of trophies in relation to conviction rates and penalties imposed.

4.3.1 Penalties for different species

WCA 2009 classifies species in different categories for the purpose of protection and penalization, as laid out in the three Parts of the First Schedule to the Act. This classification is based on ecological rather than economic values, and takes into account the commitments of the country towards international conventions, such as CITES.[29] For example, species listed on the First Schedule of WCA 2009 are subject to stronger protections and higher penalties, depending on the offence and the value of the trophy (See Section 4.2.3).

For the main offences impacting wild species, penalties are no higher, and the conviction rate is slightly lower in cases involving threatened and listed species.

Based on this legal distinction, in judicial opinions, the average penalties should be higher in cases involving listed or threatened species. However, in the cases analyzed there is no evidence of a correlation between species involved and the severity of the penalty. The analysis isolated cases involving species which are listed in Part I of the First Schedule to the WCA 2009 and which are considered vulnerable, endangered or critically endangered according to the IUCN Red List of Threatened Species[30] – cheetah, elephant, leopard, lion and rhinoceros.[31] These cases were compared with cases brought for the same offences that did not involve these species. For the main offences impacting wild species – unlawful possession, transportation, hunting, dealing, and failure to report possession – penalties are no higher, and the conviction rate is slightly lower in cases involving threatened and listed species (Table 6).

In addition, penalties vary greatly from one case to another.

Table 6: Conviction rates and penalties for listed and threatened species

	Threatened/listed species	Overall Average*
Conviction rate	43.8%	55.2%
Average trophy value (TZS)	76,715,293	34,082,279
Average fine (TZS)	216,460,778	229,279,418
Average imprisonment	6.74 years	12.5 years

* For offences involving trophies

4.3.2 Nature of wildlife evidence

Tanzanian law defines "trophy" as "any animal alive or dead, and any horn, ivory, tooth, tusk, bone, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal…"[32] As expected, the cases analyzed included a broad range of types of wildlife evidence: live or dead animals, parts of animals (e.g. legs, arms), ivory and horn, meat, skin, eggs, etc. (Figure 6).

Almost half (97) of the 219 cases in which wildlife evidence is brought and identified involve meat. While there is a commercial trade in wildlife meat, both within Tanzania and internationally, in the majority of cases involving meat, it will most likely be used for subsistence purposes or sold on the global market.

A significant number of cases involve ivory. Elephant tusks are brought as evidence in 23.7% of the cases. These cases deal with offences related to possession, dealing, hunting and transportation of ivory. The bushmeat and elephant ivory cases are examined in more detail in Section 4.3.4.

Almost 10% of cases involve entire dead animals or carcasses. It is likely that in many of these cases, the animal is intended to be used as meat, but other possible uses might include skinning, scaling or use of claws, tusks, bones or other parts to trade, make products or develop traditional medicine.

4.3.3 Value of trophies

As discussed above, penalties in wildlife-related offences are often indexed to the value of the trophy – or wildlife part or product involved – which forms the basis for determining the minimum and maximum fines that can be imposed by the court. For almost all offences, the minimum fine is at least 2 times the value of the trophy, and for some – such as unlawful possession of a government trophy for certain species worth more than 100,000 TZS – the minimum fine is as much as 10 times the trophy value (Table 4).

The trophy value is determined by an expert evaluation

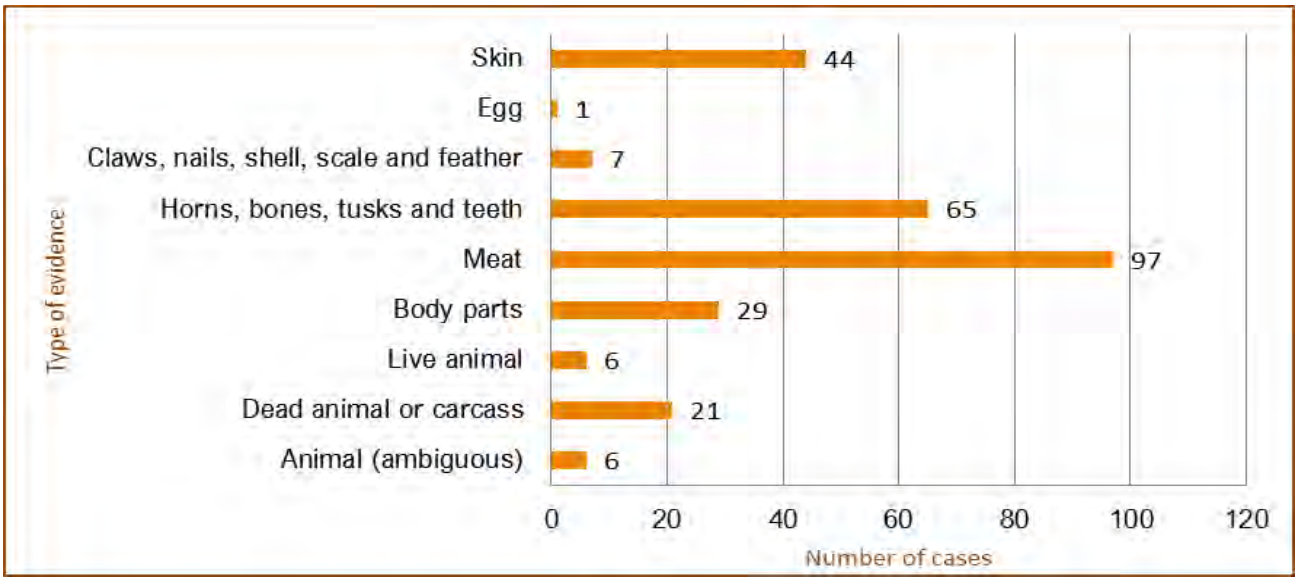
[29] See §§19, 47, 53, 86 and 95 of the WCA 2009 read together with First Schedule to the Act.

[30] www.iucnredlist.org

[31] Abbott's Duiker is also listed in Schedule 1 and considered critically endangered on the IUCN Red List, but was excluded from this analysis because it was not always possible to tell from judgments which species of duiker was involved in the case.

[32] WCA 2009, § 3.

Figure 6: Nature of trophy involved in wildlife cases



that takes place during the investigation. A certificate of valuation is part of the evidence that must be submitted by the prosecution to prove charges involving trophies.[33]

A fine was imposed in 61 of the 221 cases involving trophies.[34] The average trophy value in these 61 cases is 41,267,772 TZS, and the average fine is 229,279,418 TZS.

However, there are three cases which distort the calculation. They can be qualified as exceptional cases because the fine imposed by the court in each of the three cases approaches or exceeds 1 billion TZS.[35] The average fine for all three cases is approximately 4 billion TZS, or 20 times the overall average fine.

When these cases are excluded from the general calculation, the average fine imposed is 27,227,391 TZS and the average trophy value is 7,746,394 TZS (Table 7).

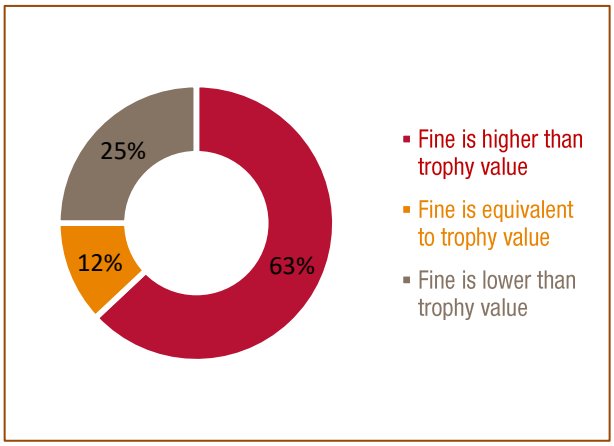
In many cases the fine is still low compared to the trophy value (Figure 7). Despite statutory minimum fines of between 2 and 10 times the trophy value, in over one third of cases, the court imposed a fine which is lower than or equal to the value of the wildlife trophies involved. Though fines do increase for higher trophy values, they do not reflect the ratios provided by law.

Table 7: Average trophy value and average fine

	Trophy value (TZS)*	Fine (TZS)
Overall	41,267,772	229,279,418
Excluding exceptional cases	7,746,394	27,227,391

* In the 61 cases where a fine was imposed by the court

Figure 7: Pecuniary penalties in reference to trophy values*



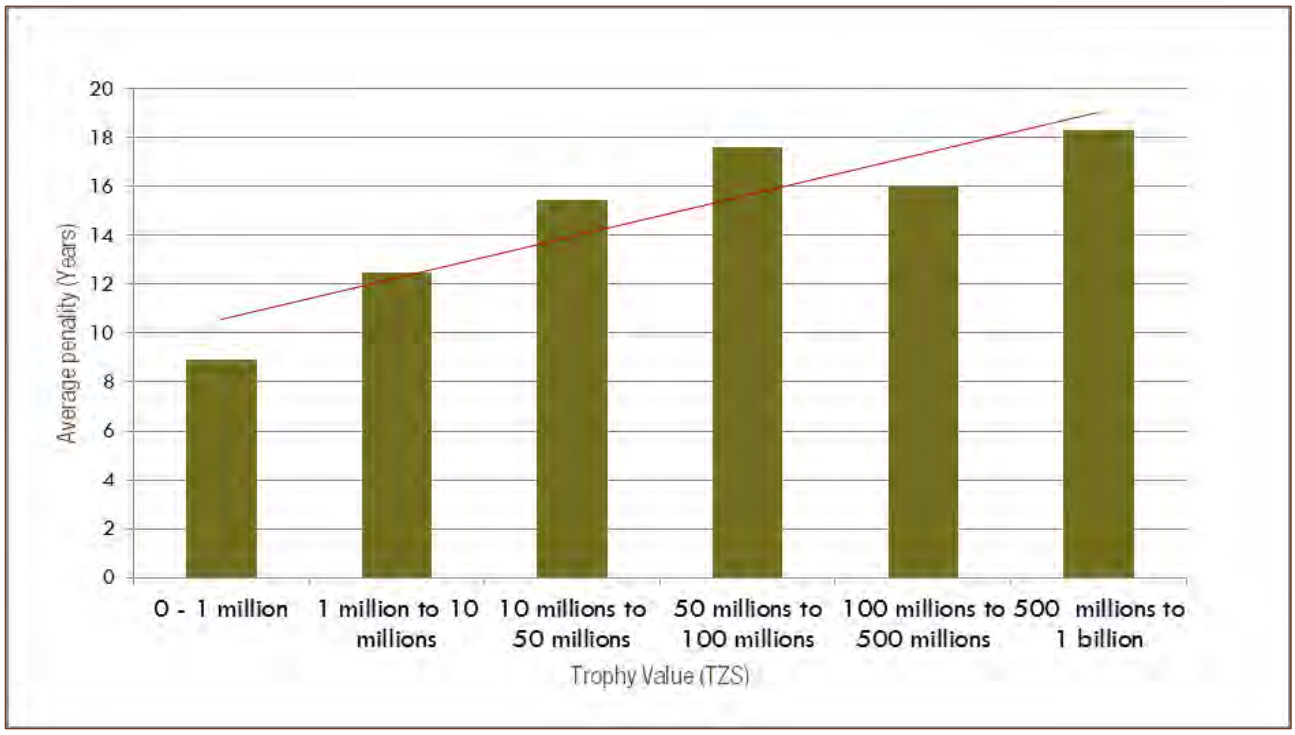
* 7 cases were excluded from the calculation because either the trophy value or the amount of the fine was not indicated in the judgment

[33] WCA 2009 § 86(3).

[34] This means that the penalties imposed for the offences of unlawful possession of firearm, unlawful possession of ammunitions, unlawful transfer of firearm, unlawful entry into a protected area, unlawful possession of weapon in a protected area, conspiracy to commit an offence, leading of organised crime, practicing as a traditional health practitioner, omitting to discharge duty, and neglecting to prevent commission of an offence have been taken aside for calculation of the average penalties in comparison to the average value of the trophies.

[35] *Republic versus Amani Rashid* [2016] Magistrate's court of Mpanda, No. 03 of 2016: a 1,200,000,000 TZS fine was imposed. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-amani-rashid; *Republic versus Song Lei and three others* [2015] Magistrate's court of Mbeya, No. 06 of 2015: a 10,228,735,280 TZS fine was imposed. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-song-lei-3-others; the third case is not yet typed: a 978,120,490 TZS fine was imposed.

Figure 8: Imprisonment penalties in reference to trophy values



Imprisonment penalties are to some extent correlated to the value of the trophy (Figure 8). However, average prison sentences penalties are high even for low value trophies, and typically do not exceed 20 years imprisonment – the statutory minimum for most offences involving scheduled government trophies worth more than 100,000 TZS – even for trophies of the highest value.[36]

Despite the overall correlation, in many cases similar penalties are awarded in cases involving very different values. In one case, the accused person was caught in possession of one elephant tail worth 24,000 TZS, or about USD 11 and was sentenced 20 years imprisonment, with no option to pay a fine.[37] In another, handwritten case, the accused was also sentenced to 20 years imprisonment but with the option to pay a fine in the alternative, on conviction for possession of 81 pieces of elephant tusks and 2 scales of ground pangolin.

In one case, the accused person was caught in possession of one elephant tail worth 24,000 TZS, or about USD 11 and was sentenced to 20 years imprisonment, with no option to pay a fine.

4.3.4 Comparison: Elephant Ivory and Rhino Horn vs. Bushmeat

Wildlife offences can be committed to serve various purposes. There is a difference between offences committed to supply international markets with high value wildlife products, and offences committed to provide wildlife products in internal or local markets, or for the purpose of subsistence. In these different scenarios, targeted species as well as product value often differ – these factors are described above. Emblematic wildlife products can illustrate the contrasting situations. In this section, a comparison of offences involving elephant tusks and rhino horn and offences involving bushmeat indicates how the courts handle these different types of wildlife cases.

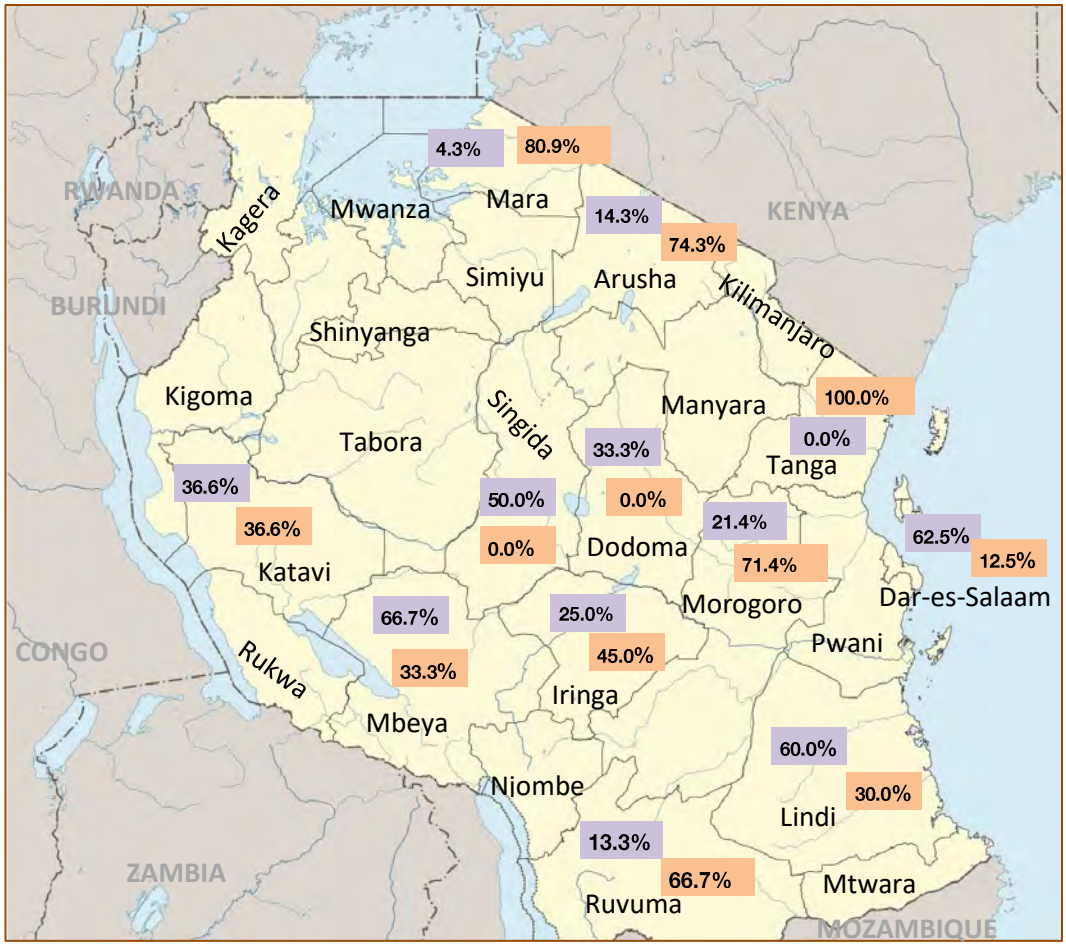
Elephant ivory and rhino horn are among the most expensive wildlife products on the market, and are usually destined for export internationally, particularly to Asia. Bushmeat is typically hunted to supply a local market, or for subsistence consumption. Fifty-four of the analyzed cases involve elephant ivory or rhino horn[38] and

[36] However, there is one case for the offence of unlawful possession of government trophy where the court imposed 30 years of imprisonment (statutory maximum) and one case where 30 years applies for all counts (without distinction of the penalty imposed for each count).

[37] *Republic versus Jailos Kajuti* [2011] District Court of Mpanda, No. 11 of 2011. The case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-jailos-kajuti*R v. Jailos Kajuti*.

[38] This includes only cases where ivory or horn were listed as trophies – it excludes cases involving full elephant carcasses, though many of these were also slaughtered for their ivory.

Map 3: Elephant ivory and rhino horn cases and bushmeat cases from different regions



120 cases involve bushmeat from various species.[39] The circumstances and outcomes of cases in the two categories vary significantly.

Cases in the two categories come from different regions of Tanzania (Map 3). A large number of bushmeat cases – 54% of these cases – come from the regions of Mara and Arusha, where Serengeti national park and Ngorongoro conservation area are located.[40] Bushmeat cases represent the majority of cases collected in those regions: 80.1% of wildlife-related cases brought before Mara courts and 74.3% of cases brought before Arusha courts involve bushmeat.

Regions on the Indian Ocean coast involve a higher number of ivory and rhino horn cases: 62.5% of wildlife related cases collected in Dar es Salaam and 60% of wildlife related cases collected in Lindi involve these trophies. A significant number of ivory and rhino cases are also found in Mbeya, a region on the border of Zambia and Malawi: 66.7% of the wildlife related cases from Mbeya involve rhino horn or ivory.

The largest number of ivory and rhino horn cases (15) comes from Katavi, which also has a significant number of bushmeat cases (15). This region borders Zambia and the Democratic Republic of Congo, by way of Lake Tanganyika, and contains a national park and a number of game reserves. examples provide some support for the conjecture that ivory and rhino cases are more prevalent in regions with borders or ports – which provide both access to international trade and checkpoints where offenders may be apprehended – while bushmeat cases are more common in regions containing protected areas, where animals thrive and where hunting is criminalized. Bushmeat cases often involve offences related to protected areas (illegal entry into a protected area; possession of a firearm in a protected area) as well as offences related to trophies.

The features of cases in two categories, as well as the penalties imposed by the courts, also vary (Table 8). In bushmeat cases, trophies are worth on average 3,710,989 TZS, while in cases involving ivory or rhino horn they are worth on average 118,622,938 TZS – 32 times more. This calculation includes one exceptional case, worth 902,880,000 TZS; when this case is

[39] This includes cases involving body parts and full carcasses of animals hunted for their meat. Note that some bushmeat cases involve elephant meat, or meat of other protected species such as hippopotamus.

[40] The relationship between bushmeat offences and protected areas was suggested by Tanzanian lawyers and law professors in a meeting in Dar es Salaam on 27 May 2016.

excluded, the average trophy value is 100,798,914 TZS.[41]

The average fine imposed in cases related to bushmeat is correspondingly much lower than penalties imposed in ivory and rhino horn cases, as is the average imprisonment sentence. An offender would on average be sentenced to serve 4 more years in cases involving ivory or rhino horns than in cases involving bushmeat. However, the average penalty imposed in bushmeat cases is still high. On average, a person convicted of an offence involving bushmeat was sentenced to serve 12 years in prison.

The number of cases involving foreign nationals for each category is indicative of the different purposes of wildlife crime. Only one bushmeat case involves a foreign national (0.83% of those cases) whereas five cases related to ivory and rhino horn involve foreign nationals (9.26% of cases). While it is hard to draw conclusions from such small numbers, this supports the assumption that ivory and rhino horn cases are more likely to enter international markets to be exported to other continents. Despite the international links, most of the cases involving foreign nationals deal with the offence of unlawful possession of government trophies, and only one includes the charge of unlawful dealing in government trophies and leading of organized crime. The involvement of foreign nationals in wildlife crime is discussed further in Section 4.6.2.

In cases involving ivory and rhino horn, the accused person was more likely to have legal representation. In 10 of the 54 ivory and rhino horn trials, at least one accused was represented by a lawyer, compared to only 5 of 120 trials involving bushmeat (see Section 4.6.3).

Table 8: Comparison of penalties in elephant ivory and rhino horn cases and bushmeat cases

	Ivory and rhino horns	Bushmeat
Average trophy value (TZS)	100,798,914*	3,710,989
Average fine (TZS)	265,482,028*	7,416,347
Average imprisonment penalty	16 years and 4 months	12 years

* Excludes one "exceptional" case, with a trophy value of 902,880,000 TZS and pecuniary penalty of 10,228,735,280 TZS. Including this case, the average trophy value is 92,562,280 TZS and the average fine is 1,031,886,125 TZS. It does not affect the average imprisonment penalty.

[41] This calculation only takes into account cases for which the value of the trophy corresponding to ivory, rhino horns or bushmeat is indicated. 10 cases involving ivory and 15 cases involving bushmeat among other trophies were excluded from calculation because the judgment did not detail the value of each trophy.

4.3.5 Species Highlight: African Elephant

African elephants (*loxodonta Africana*) are one of the symbols of African biodiversity, and serve as an important case study in their own right to understand how the judicial system functions to protect wildlife. They are classified as vulnerable by the IUCN Red List of Threatened Species[42] but the population in Central and East Africa is declining. They are also linked to a significant source of funding from tourism, that comprises a large percentage of Tanzania's GDP.

Many of the findings from section 4.3.4 are relevant here, as cases involving elephant ivory make up the majority of cases on ivory and rhino horn (52 of 54 cases). However, although ivory trafficking is the main motivation behind most elephant-related offences, other parts of the animal are used in illegal activities and are found in cases involving wildlife. In total, 32.4% of the wildlife-related court decisions analyzed involve elephants.

Most of these cases relate to ivory possession or trafficking. However, wildlife offenders were also caught with elephant meat as well as body parts including arms, ears, tails and teeth (Table 9). Elephant products are often high value trophies: on average, the evidence in cases involving elephants was 81,080,582 TZS. In comparison, the overall average value of trophies in wildlife-related cases is 34,082,279 TZS.

Elephant-related cases make up the majority of cases related to unlawful dealing: 10 of the 13 cases in which the accused was charged with unlawful dealing in government trophies involve elephants.

Though ivory trafficking can involve a large chain of offenders involved in exporting trophies to different countries, 1.7 accused persons are on average prosecuted in these cases. Only three elephant cases involve foreign nationals, but the average trophy value in these three cases is extremely high: 367,537,758 TZS.

Table 9: Evidence in cases involving elephants

Part of elephant's body (arms, ears and tails)	13
Elephant skin	1
Dead/killed elephant(s)	1
Elephant meat	12
Ivory	52
Elephant teeth	1

[42] www.iucnredlist.org.

4.3.6 Analysis: Species, evidence and value of trophies

It is worth noting that the profile of species in the cases analyzed does not necessarily reflect the profile of species impacted by wildlife crime.[43]

There could be many reasons for a discrepancy between the level of trade of a particular species and the incidence of arrest, prosecution or conviction for crimes involving that species. A particular species many not be a priority for prosecutors due to perceived low value or lack of importance. It may be undercriminalized in the legislation. For example, as of 2009, the pangolin was not listed on the First or Second Schedule of the Wildlife Conservation Act, despite high levels of international trade.

Most cases involving guilty pleas deal with low value species and local offenders who lack legal representation.

The range of species and type of evidence highlights the range of motivations involved in wildlife crime. In addition to seeking profit from sale of wildlife trophies, an individual involved in wildlife crime may be seeking food, practicing medicine, or protecting their family, community or crops. Wildlife crimes may also be committed unintentionally, by those who inherit wildlife specimens, hunt a species they do not know is protected, or inadvertently enter a protected area. For example, in *Republic v. Jacob Michael*, the accused, found in possession of a live dik-dik valued at 136,500 TZS, claimed that he captured the animal while guarding his crops, and was taking it to the Village office. The court, declining to "wast[e] much of its time", found that as the accused was in possession of the animal without a permit, he was guilty of the offence.[44]

Tanzanian law provides for these different uses of wildlife, *inter alia*, through special provisions on subsistence hunting, access to wildlife by traditional communities, and provisions on human-wildlife conflict.[45] However, the analyzed cases suggest that prosecution of certain offences – such as unlawful possession of a government trophy – can result in inappropriate impacts on small scale offenders and insufficient penalization of large scale dealers and organizers of wildlife crime.

This may be compounded by the reliance on relatively low pecuniary penalties in the alternative to imprisonment. The fact that penalties are often lower than the value of the trophy contributes to the fact that wildlife crime can be a high benefit/low risk activity for those organized enough to pay the fine. The reliance on charges of possession – even in cases involving high value ivory and rhino horn and clear international links – as well as the low number of accused persons and limited number of cases involving foreign nationals – implies a need to strengthen the ability of investigators and prosecutors to use different legal tools and strategically target higher links in the criminal chain.

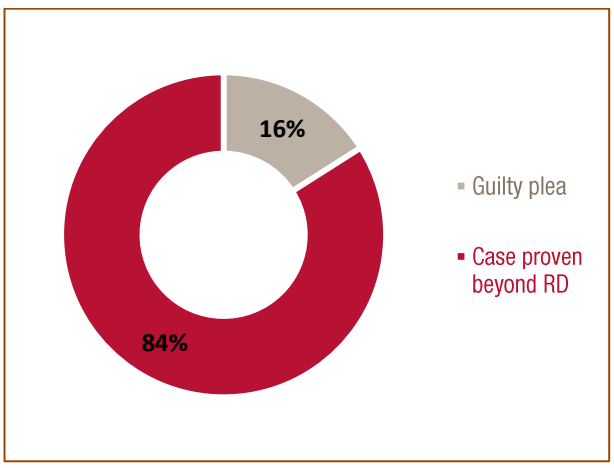
4.4 Legal basis of judgment

As described in Section 4.1, most of the analyzed cases resulted in conviction of at least one accused person for at least one of the offences charged (60%), but a significant number resulted in acquittal of all accused for all charges or withdrawal or dismissal of the case. Convictions typically result from either a guilty plea or a successful prosecution that proves guilt beyond a reasonable doubt. Conversely, almost all acquittals result from failure to prove all elements of the case beyond a reasonable doubt, although in some cases the reasoning is questionable. The remaining cases were withdrawn or dismissed by the prosecution or the trial judge or magistrate for a variety of reasons. Analyzing the legal basis for conviction, acquittal or withdrawal or dismissal can contribute to assessing how the criminal justice system can be made more efficient.

4.4.1 Conviction

Out of the 225 cases collected across Tanzania, 135 resulted in at least one conviction. In 22 of these cases, at least one accused person pled guilty (Figure 9). Guilty pleas are often the result of plea bargaining – a specific legal practice where the accused person agrees to plead guilty to certain charges in exchange for more lenient penalties or consent of the prosecution to drop more serious charges. Therefore, in cases with convictions based on guilty pleas might be expected to involve lower penalties than in other cases. The analyzed cases do not show this trend – the average fine in cases based on

Figure 9: Basis for conviction



[43] For an analysis of species impacted by illegal wildlife trade in Tanzania, see Msuha *et al.*, *Wildlife Protection and Trafficking Assessment in Tanzania*, TRAFFIC 2016.

[44] *Republic versus Jacob Michael* [2005] District Court of Babati, No. 01 of 2005. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-jacob-michael.

[45] See, *e.g.* sections 44, 45, 73 and 76 of WCA 2009.

guilty pleas is slightly higher than the value of the trophy.

In the analyzed cases involving guilty pleas, the average fine imposed is almost equivalent to the average trophy value – corresponding to the overall trend described in Section 4.3.3. When one exceptional case is removed[46] the average fine is approximately 10% higher than the average trophy value, and both values are significantly lower than the overall average (Table 10).

Table 10: Penalties in cases involving guilty pleas (excluding exceptional cases)

	Average trophy value (TZS)	Average fine	Average prison sentence
All cases involving trophies*	24,820,066*	27,227,391	12.2 years
Guilty pleas*	8,889,564**	9,791,858	8 years

* For cases where a fine was imposed, the average trophy value is TZS 7,746,394.

**For cases where a fine was imposed, the average trophy value is TZS. 4,933,684

Imprisonment penalties are also much lighter, but this may also be related to lower trophy values. The average imprisonment penalty in all cases involving trophies is 12.2 years, but in cases involving a guilty plea it is 8 years. The court often offers a fine in the alternative to a jail penalty in these cases; this option is provided in about 65% of cases involving a guilty plea, compared to 42.5% of cases where no accused persons pleaded guilty to an offence. This offers some support to the assumption that accused persons plead guilty to avoid imprisonment, but it could also be related to the relatively low trophy values involved.

Most cases involving guilty pleas deal with low value species and local offenders who lack legal representation. However, cases also reveal that most foreign accused persons choose to plead guilty (see Section 4.6.2).

In 112 cases, the magistrates or judges found that the case had been proven on the facts.[47] This typically requires the prosecutor to prove all elements of the case beyond a reasonable doubt.

The elements that need to be proven vary depending upon the offence, and are determined by a combination of statute and case law precedent. For example, in both *Republic v. Matheo Kayanda* and *Republic v. Song Lei*, the courts cite *Moses Charles Deo v. Republic* to lay out the elements of possession: physical possession or *corpus* and intention to possess or *animus*.[48] In both cases, the courts concluded that the fact that the accused persons were found in possession of the trophies together with the evidence that they were aware of the presence of the trophies over which they exercised control, was sufficient to prove possession.

In other cases, the elements are not addressed so clearly. For example, in *Republic v. Sylvester Evarist*, the court does not clearly identify the constituent elements of possession, and is laconic in acknowledging that the prosecution gathered enough evidence to prove the case against the accused person beyond a reasonable doubt. Instead, the court focuses on the claim of the accused that the trophies – bush buck horns, fish eagle, and other birds – were owned by his friend, stating, "the accused person was supposed to prove to this court that the stuffs belonged to his fellow who took on his heel."[49] This shift of the burden of proof from the prosecution to the accused implies that the court found that the prosecution had provided sufficient evidence for a *prima facie* case against the accused. However, this was not explicitly stated in the judgment, which can reduce clarity and leave the opinion more vulnerable to reversal on appeal (see Section 5.3).

There is also some discrepancy among magistrates and judges regarding what evidence is necessary to prove a case beyond a reasonable doubt. For example, in the case *Republic v. Juma Mwita*,[50] the accused persons were charged with unlawful entry into a national park, unlawful possession of weapons in a national park, and unlawful possession of government trophies. The prosecution called three witnesses to testify and tendered as evidence the weapons in question and the certificate of valuation of the trophies. The magistrate found the accused persons guilty of the three offences, on the basis that the prosecution had proven its case beyond reasonable doubt. In the similar case of *Republic v. Leonard Kimisha*, the accused was charged with unlawful possession of government trophies, and, as in *Juma Mwita*, the prosecutor called three witnesses and tendered the certificate of valuation of the trophies.[51] However, in this case, the magistrate held that the prosecutor had not proven the case beyond reasonable doubt, because no reason could justify the failure to tender as evidence the trophies themselves – "a physical exhibit" – rather than just the valuation certificate.

[46] In a case which has not yet been typed, a 978,120,490 TZS fine was imposed.

[47] In one unpublished case from Mara region, the magistrate convicted the accused after he jumped bail, on the basis that by doing so he denied himself the right to be heard.

[48] *Moses Charles Deo versus the Republic* [1987] Tanzania Law Reports p. 134, cited in *the Republic versus Matheo Kayanda and Damiani Kayanda* [2014] District Court of Katavi, No. 01 of 2014. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-matheo-kayanda-another; *Republic versus Song Lei* and three others [2015] Resident Magistrate's Court of Mbeya, No. 06 of 2015.

[49] *Republic versus Evarist* [2015] District Court of Mpanda, No. 02 of 2015. This case and its analysis can be accessed at; http://wildlex.org/court-decisions/r-v-sylvester-evarist.

[50] *Republic versus Juma Mwita* [2008] District Court of Serengeti District, No. 229 of 2008. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-juma-mwita-jomba-2-others.

[51] *Republic versus Leonard Kimisha* [2007] District Court of Mpanda, No. 16 of 2007. This case and its analysis can be accessed at; http://wildlex.org/court-decisions/r-v-leonard-kimisha.

4.4.2 Acquittal

In 27% of the analyzed cases – 60 cases – all of the accused persons are acquitted of all charges. In almost all of these cases the court explicitly states that the prosecution failed to prove the case beyond a reasonable doubt, but in a small number of cases the reasons for acquittal are less straightforward.

In many cases of acquittal, the decision is based on the failure of the prosecution to prove one of the elements of possession. For example, in *Republic v. Emmanuel Mathayo Burure*, the court found that the prosecution had failed to prove that elephant tusks found in a pit near the home of the accused belonged to him.[52]

In *Republic v. Matokeo Hansikari Manga*, the court clarified – citing a case from the United States – that proving possession requires proving control and knowledge, as well as physical possession, which is another way of saying that the prosecution must prove *animus* as well as *corpus*. In this case, the accused was found on a motorcycle with a sulphate bag containing 23 pieces of elephant tusk worth 157,800,000 TZS. The accused claimed that the tusks belonged to a passenger who he had taken on his motorcycle, and who ran away upon seeing the police. Based in part on investigator's unsuccessful attempts to track down the missing passenger, which according to the court implied that investigators believed the story that another person was involved, the court found that the possible existence of a passenger who owned the tusks created sufficient doubt to acquit the accused of the charge of possession.[53]

Other offences are more complicated to prove. For example, to prove the offence of unlawful dealing in government trophies, prosecutors must show that the accused intended to trade them, or had traded to obtain them. In *Republic v. Bahati S/O Michael Ngiriama*, for example, the court acquitted the accused of unlawful dealing in government trophies because "the prosecution side failed to show the exact act that was committed at what time, where and when the accused person deals with the trophies."[54] The accused, who had been charged with hunting 12 elephants worth 280,800,000 TZS and trading elephant ivory worth 60,300,000 TZS, were convicted of possession of firearms without a license and sentenced to 3 years imprisonment, and forfeiture of the firearms.

Acquittal often results from weak evidence or failure to produce witnesses on the part of the prosecution. For example, in *Republic v. Mwikwabe Mwita*, the court notes inconsistencies in the testimony of witnesses called, and between the information on the trophy certificate and that presented in the case. The court also suggests that an additional witness – a game warden or game officer should have been called to bolster the case.[55]

Some acquittals result from failure to prove that the wildlife products were from the alleged species. In *Republic v. Joseph Jumnne*, two men were arrested in a land rover carrying alleged giraffe meat worth 873,637.38 TZS. The accused claimed that the meat was not giraffe, but cow. The court found that prosecution had not proved its case, stating:

> I strongly wonder and ponder as to how did [law enforcement officers] draw conclusion that the said meat was giraffe meat and not cow or elephant or lion? Just a mere looking at the fresh [meat] concluded the experiment that the said meat was that of giraffe and not any other animal; this artistic experiment is to me, not a proper way to conclude the analysis, I suppose an expert person could be employed to test [the meat] and come up with the said remarks rather than using the anti-poaching police or the game wardens as it was done.[56]

The accused persons in this case were acquitted.

In other cases, failure to produce a certificate of valuation to the court in cases involving trophies resulted in acquittal. As described in section 4.3.3, this certificate identifies the species and its value, which determine which section of the law and which penalty should apply. Where the certificate of valuation of the trophy is improperly filed or missing, the court must acquit the accused person.

In a number of cases, persons were acquitted despite an admission during a police interview in the investigation. These admissions were discarded where the court found that the appropriate interview procedures were not followed. In the *Matokeo Hansikari Manga* case discussed above, evidence from an interrogation with the accused was expunged because the interrogation lasted longer than the proscribed four hours from the time of arrest, and this resulted in acquittal of the charges of unlawful dealing in trophies and unlawful possession of ammunition. In this case the accused alleged that his cautioned statement of admission was obtained involuntarily through severe torture and beating. The court took this into consideration in

[52] *Republic versus Emmanuel Mathayo Burure* [2010] District Court of Serengeti, No. 58 of 2010. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-emmanuel-mathayo-burure.

[53] *Republic versus Matokeo Hansikari Manga @ Nguvu*, [2015] Resident's Magistrate Court of Mbeya, No. 05 of 2015. The case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-matokeo-hansikari-manga-nguvu.

[54] *Republic versus Bahati S/O Michael Ngiriama and Juma S/O Ally Patric @ Kalumanzila* [2014] Resident Magistrate's Court of Mbeya, No. 03 of 2014 p. 8 (excerpt edited to remove typographical errors). This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-bahati-so-michael-ngiriama-another.

[55] *Republic versus Mwikwabe Mwita and another* [2010] District Court of Serengeti, No. 06 of 2010. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-mwikwabe-mwita-another.

[56] *Republic versus Joseph Jumnne and Nelson Nanyaro*, Resident Magistrate's Court of Arusha, No. 03 of 2007. Excerpt edited to correct typographical errors. The full case and its analysis can be found at: http://wildlex.org/court-decisions/r-v-joseph-jumnne-and-nelson-nanyaro.

expunging the evidence, stating, "why doubt that during all that period that the investigation team restrained the accused they tortured him to give the said cautioned statement?"[57]

4.4.3 Withdrawal or dismissal

Cases which are withdrawn or dismissed represent 13% of the analyzed cases. There are several ways in which a case can be withdrawn.

Under section 91(1) of the Criminal Procedure Act (CPA), the Director of Public Prosecutions (DPP) may enter a *nolle prosequi*, which results in immediate discharge of the accused but does not bar subsequent prosecution of the case. This happens in about 5% of the analyzed cases. The DPP does not have to provide a reason to justify the withdrawals, which makes it difficult to understand which circumstances can lead to use of section 91(1) of the CPA. Some cases were withdrawn after the accused person jumped bail. Use of *nolle prosequi* does not require consent of the court.

Individual prosecutors may use CPA Section 98 to withdraw charges against an accused in a subordinate court, with consent of the court or instructions from the DPP. If the prosecution withdraws charges before the accused is called upon to make his defence, it does not bar future prosecution. This section was used in withdrawal of charges in 2.7% of the analyzed cases, always before the defence.

The third main mechanism for discharge of a case is CPA section 225(5), which provides for discharge where the prosecution is unable to proceed with the hearing within the legally required period.

Under CPA Section 225(4), a court may adjourn a case falling under the act within a period of 60 days, which can be extended by additional 60 day increments on filing of a certificate by a Regional Crimes Officer, State Attorney, and DPP, sequentially. Total length of adjournment may not exceed 24 months from the date of the first adjournment. Where no certificate is filed and the prosecution is unable to proceed with the case, it is discharged under section 225(5).

Discharge on this basis occurs in 3.5% of all analyzed cases, and 27.6% of the cases which are withdrawn or dismissed. In many of these cases, the reason for discharge was linked to failure to produce witnesses.

4.4.4 Analysis: Legal basis of judgment

The legal bases for judgment found in the cases analyzed suggest opportunities for strengthening cases brought by the prosecution, particularly to ensure that procedures are followed – *e.g.* using an expert to identify species, presenting a valid certificate of valuation of trophies, bringing appropriate witnesses, and following correct procedures in interrogation. Prosecutors stated that they have a heavy workload and lack of adequate

Box 5: Criminal Procedure Act § 91(1)

91.- (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a nolle prosequi, either by stating in court or by informing the court concerned in writing on behalf of the Republic that the proceedings shall not continue; and thereupon the accused shall at once be discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognisances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

Box 6: Criminal Procedure Act § 98

98.- In any trial before a subordinate court any public prosecutor may with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of one or more of the offences with which such person is charged; and upon such withdrawal–

(a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but such discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) if it is made after the accused person is called upon to make his defence, he shall be acquitted.

Box 7: Criminal Procedure Act § 225(4) and (5)

225 (4) […] it shall not be lawful for a court to adjourn a case in respect of offences specified in the First Schedule to this Act under the provisions of subsection (1) of this section for an aggregate exceeding sixty days except under the following circumstances–

(a) wherever a certificate by a Regional Crimes Officer is filed in court stating the need and grounds for adjourning the case, the court may adjourn the case for a further period not exceeding an aggregate of sixty days in respect of offences stated in the First Schedule to this Act;

(b) wherever a certificate is filed in court by the State Attorney stating the need and grounds for seeking a further adjournment beyond the adjournment made under paragraph (a), the court shall adjourn the case for a further period not exceeding, in the aggregate, sixty days;

(c) wherever a certificate is filed in court by the Director of Public Prosecutions or a person authorised by him in that behalf stating the need for and grounds for a further adjournment beyond the adjournment made under paragraph (b), the court shall not adjourn such case for a period exceeding an aggregate of twenty four months since the date of the first adjournment given under paragraph (a).

(5) Where no certificate is filed under the provisions of subsection (4), the court shall proceed to hear the case or, where the prosecution is unable to proceed with the hearing discharge the accused in the court save that any discharge under this section shall not operate as a bar to a subsequent charge being brought against the accused for the same offence.

[57] *Republic versus Matokeo Hansikari Manga*, [2015] Magistrate's Court of Mbeya, No. 05 of 2015, p. 6. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/r-v-matokeo-hansikari-manga-nguvu

personnel, which keeps them from thoroughly preparing a case, particularly within the tight timelines set by law. This is further highlighted by the number of cases withdrawn or discharged where the prosecution is unable or unwilling to proceed with the hearing.

There are different problems involved in ensuring that witnesses will testify. Several reasons may explain that: the original poor investigation of the case, the lack of time and resources to properly inform the case and the lack of legal mechanisms and cooperation of the judiciary in securing witnesses for a case.

Wildlife-related cases may also be given a relatively low priority, where there is a limited number of cases prosecutors are able to effectively pursue.

There may be opportunities to strengthen the prosecution process by building awareness of the importance and impact of wildlife offences, reinforcing inter-agency cooperation to ensure that evidence and witnesses are found and brought before the court, and providing training to members of the prosecution on criminal law related to wildlife and legal procedure. It may also be necessary to assess prosecutors' workloads and more strategically focus on key cases while seeking plea bargains or other options in others, or provide additional financial, technical and legal resources to ensure efficient preparation of cases involving wildlife.

The analysis also reveals potential weaknesses in the opinions themselves. In many cases magistrates and judges do not explicitly state the constituent elements of each offence and evaluate them against the evidence brought by the prosecutors. This is an important legal step which promotes transparency and consistency and helps avoid decisions being reversed by the appellate court on the basis of error of fact or law.

Although almost all of the collected cases deal with the offence of unlawful possession and need to address elements defined only in case law, fewer than one fourth cite previous cases.

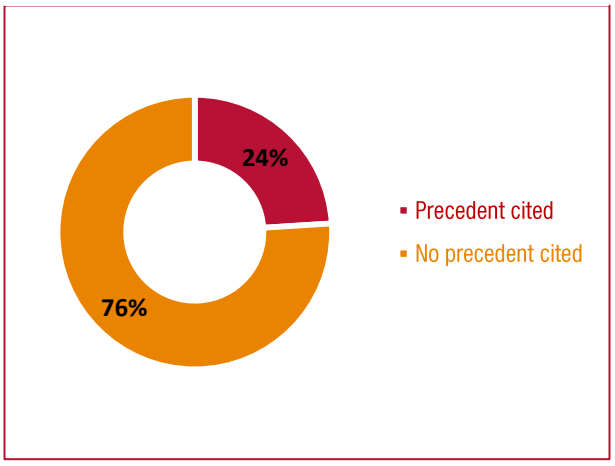
4.5 Legal citations in judgments

Legislation forms the basis of wildlife cases and is always cited in charge sheets and in judgments. This includes legislation that creates and defines offences, such as the Wildlife Conservation Act, the Economic and Organized Crimes Control Act and the National Parks Act in force at the time of the wrongful act, as well as legislation the defines procedure for investigation, prosecution and judgment, such as the Criminal Procedure Act. Judicial opinions should also cite relevant case law and international law to clarify and support the judgment.

4.5.1 Case law

Tanzania is a common law country, in which decided cases – precedent – play an important role. Cases from the High Court and the Court of Appeal of Tanzania bind lower courts, and provide guidelines on how legislation must be interpreted or applied. Cases from lower courts can also provide persuasive evidence of how law is interpreted and what penalties are applied. Courts can even look to other jurisdictions, including outside Tanzania, to settle general legal issues where there is insufficient precedent in Tanzania.

Figure 10: Citation of precedent in trial court opinions



Only 24% of the analyzed cases refer to at least one precedent (Figure 10). This can create inconsistency, where case law provides important standards and details of offences. For example, section 86(1) of the WCA 2009 states "a person shall not be in possession of, or buy, sell or otherwise deal in any government trophy", but does not define possession or provide examples of the elements which must be proven to show possession. The details are elaborated by subsequent binding case law, such as the case *Moses Charles Deo v. Republic* which states that possession includes both a material component (*corpus*) and a mental component (*animus*), and that both must be proved for a valid conviction.[58] Although almost all of the collected cases deal with the offence of unlawful possession and need to address elements defined only in case law, fewer than one fourth cite previous cases.

4.5.2 International law

Cases should reference international law, where appropriate. WCA 2009 creates offences for violation of CITES – proving these offences requires reference to the Convention. None of these offences were used in the cases analyzed (see Section 4.2.1). International law can also be used to highlight the importance of particular species or emphasize relevant legal principles.

Only one judgment of the 225 that were analyzed includes a reference to international law. The case

[58] *Moses Charles Deo versus the Republic* [1987] Tanzania Law Reports 134.

Republic v. Bahati S/O Michael Ngiriama refers to CITES to emphasize that the species (elephant) impacted by the wrongful conduct of the accused persons is highly protected at the international level due to the threat of extinction.[59]

4.5.3 Analysis: Legal citations in judgments

Limited citation of judicial precedent can be partly explained by the poor access of magistrates, judges and prosecutors to decisions from other courts. It is the job of prosecutors, and as relevant defense attorneys, to bring relevant precedent to the attention of the court. As encountered in the collection of cases for this project, there are many challenges in accessing hard copies of wildlife-related cases, and very little access to electronic judgments. This can hinder harmonization of judicial decision-making, reduce legal certainty, and leave cases more vulnerable to being overturned on appeal. Improving access to judicial precedent and understanding of how to use international law could help strengthen cases at the trial court level.

4.6 Characteristics of the accused persons

As described in Section 4.4, different reasons can lead to conviction or acquittal of an accused person, or influence the decision of the prosecution or the court to withdraw or dismiss a case. Additional elements can also impact the outcome of a case, particularly the characteristics of the accused. Analyzing these characteristics can provide illumination about the impact of the criminal justice system on different wildlife activities and types of offenders.

4.6.1 Number of accused persons

Wildlife-related court decisions mainly involve a single individual or a few offenders. The average number of accused persons in the collected cases is 1.8.

This average includes cases involving elephant tusk, rhino horn, crocodile skin and pangolin scales, all of which relate to international illegal economic markets, and typically involve several offenders. As mentioned above, in the cases involving elephant, the average number of accused is 1.7.

4.6.2 Foreign nationals

Eleven of the collected trial court cases involve foreign nationals. These include five cases involving Chinese accused, one case each involving Kenyan, Mozambican, and Vietnamese accused persons, and three cases involving foreigners whose nationality was not identified. In these cases, conviction rates are high – nine of the eleven cases resulted in conviction. As mentioned in Section 4.4.1, in six of those cases, the accused pled guilty.

The guilty pleas did not lead to lower imprisonment sentences. The average imprisonment penalty for these cases is 17 years and 8 months. However, in almost all cases, the convicted offender was given the option to pay a fine rather than serve time in prison, and the fine is relatively close to the value of the trophy.

Cases involving foreign nationals typically involve higher value trophies as well as listed or threatened species, such as lions, leopards, rhinos, elephants and pangolins.[60] The average trophy value is six times higher than the overall average, and the fine is correspondingly higher (Table 11).[61]

In cases involving one or more foreign nationals, there are on average 2.2 accused, slightly higher than the overall average. Only two of the cases include the charge of leading organized crime.

Table 11: Cases involving foreign nationals

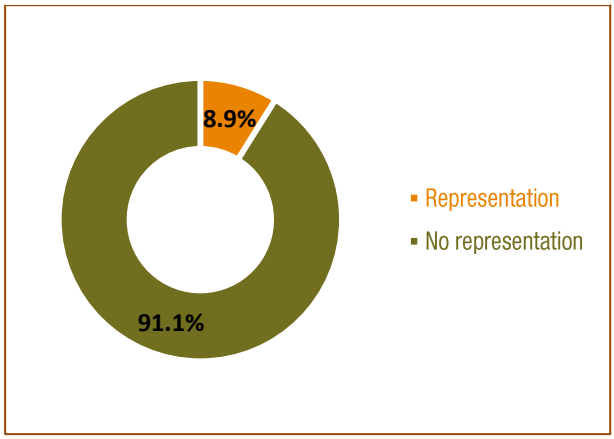
	Prison	Fine (TZS)	Trophy value (TZS)
Cases involving foreign nationals	17.25 years	1,618,861,774	210,141,637
Overall average	12.5 years	229,279,418	34,082,279

4.6.3 Legal representation

In most of the analyzed cases, the accused do not have legal representation; they are represented in only 8.9% of cases (Figure 11). This is similar to the overall situation in Tanzanian courts.

Although legal aid is available in Tanzania, it reaches a limited number of people and suffers from a lack of

Figure 11: Legal representation in trial cases



[59] *Republic versus Bahati S/O Michael Ngiriama and another* [2014] Resident Magistrate's Court of Mbeya, No. 03 of 2014. This case and its analysis can be accessed at; http://wildlex.org/court-decisions/r-v-bahati-so-michael-ngiriama-another.

[60] Lions, leopards, rhinos and elephants are all listed in the First Schedule of WCA 2009. Pangolins are not listed in the schedule, but are vulnerable according to the IUCN Red List of Threatened Species.

[61] Note that these numbers include the exceptional cases described in Section 4.4.3.

trained lawyers. This is now changing, as the number of lawyers in the country, and the quality of legal education, is increasing. However, there are limited funds dedicated to legal aid in the country, and many accused are not aware of their right to representation.[62]

Unrepresented accused persons are relatively ill-equipped to respond to the prosecution's legal arguments. In most of the cases analyzed, the accused does not present a prepared defense.

Even foreign nationals engaged in high value activities are often not represented by lawyers – the accused was represented in only 3 of the 11 cases involving foreigners.[63]

4.6.4 Analysis: Characteristics of the accused persons

The relatively low number of accused persons and low number of foreign nationals in analyzed cases does not reflect the paradigm of large organized criminal groups with strong international connections. This could be evidence that investigators and prosecutors are not successfully bringing into the case all involved in the supply chain.

This is underlined by the fact that only 1.3% of the collected cases involve offences such as conspiracy and leading of organized crime. The typical accused person in the cases analyzed is a low level offender who is killing, taking, hunting or transporting animals for local trade or consumption, or for another individual to export.

The typical accused person in the cases analyzed is a low level offender who is killing, taking, hunting or transporting animals for local trade or consumption, or for another individual to export.

Cases that do involve foreign nationals, demonstrate possible weakness in sentencing. Because most foreign nationals plead guilty, and are given a relatively low fine in the alternative to prison, the threat of criminal prosecution may not be an adequate deterrent, considering the high values of the trophies involved. While the fines in cases involving foreign nationals are high by Tanzanian standards, they still represent relatively low risk in relation to the potential profit to be gained. Cases involving foreign nationals likely involve organized international supply chains involving multiple criminal actors, so the low number of accused persons and the limited use of the offence of leading organized crime may point to weaknesses in the prosecution that could be addressed by improving capacity on investigation and use of legal tools.

The lack of legal representation of the accused raises questions, particularly where the accused is a low level offender. Insufficient legal representation can also limit legal debate in court, which serves to encourage magistrates or judges to write detailed opinions evaluating the elements of the offence and the evidence offered to prove it. As discussed in Section 5.1 , this can create problems at the appellate level.

4.7 Analysis: Trial Court Cases

The high average imprisonment penalties applied show that wildlife crime is treated as serious crime in Tanzania, both in law and in practice. However, the penalties are not well targeted. On one side, penalties for large scale operators are often lower than the statutory minimums, and can involve fines that are worth the same as or less than the value of the trophy. On the other side, small scale offenders caught in possession of low value trophies are receiving sentences for 20 years imprisonment.

It is significant that imprisonment penalties are often offered as an alternative in case of default of payment of a fine. This allows those with financial resources to avoid imprisonment, while potentially severely punishing those without resources to pay fines. In practice, small scale offenders are often given no option of paying a fine at all. At the same time, fines that are lower than trophy values change the cost-benefit analysis for prospective offenders that treat wildlife crime as a business.

The overall conviction rate – 60% -- could be strengthened. This may be explained by different factors, such as weak investigation or preparation of the case by the prosecution, or lack of resources leading to dismissal or withdrawal. Strategic decisions on the part of the prosecution to focus on cases involving high level organizers of wildlife crime could help alleviate workload and improve conviction rate by giving prosecution more space and resources to prepare.

The high prevalence of cases involving bushmeat suggests that measures designed to address the environmental impact of wildlife offences should focus not just on punishing large-scale chains of offenders, but also on preventing commission of offences at the local level. These are not unimportant cases – often the bushmeat comes from elephant or hippo or other protected or valuable species – but they may need to be addressed by using non-legal methods that are complementary to the criminal justice process. As Tanzanian law does allow subsistence hunting and traditional access to wildlife resources under certain circumstances, awareness-raising and education on which activities are prohibited or authorized and how to follow procedures for access will be an important tool in preventing individuals from committing wildlife offences. Improving understanding of the value of wild species as well as the penalties applicable to wildlife offences should also play a role.

[62] The Danish Institute for Human Rights, in cooperation with the East Africa Law Society, Access to Justice and Legal Aid in East Africa – A comparison of legal aid schemes used in the region and the level of cooperation and coordination between the various actors (2011), p. 34, 35 and 36; and Tanzania Network of Legal Aid Providers (TANLAP), Report on the state of legal aid provision in Tanzania from 2013 to 2015 (2015), p. 28 and 29

[63] Prosecutors and magistrates stated that many Tanzanian lawyers will refuse to represent a Chinese accused person in a wildlife case.

5 Results from the Appellate Court

Legal experts collected 44 decisions from appellate courts in eleven regions of Tanzania. Two of these were not included in the analysis because they were not appeals from a final decision but initial cases on granting bail.[64] Of the remaining 42, 15 were from the Court of Appeal of Tanzania, 26 from the High Court of Tanzania, and one from a Resident Magistrate's Court with extended jurisdiction.

Three of the appeals were brought by the prosecution. The first was about the jurisdiction of the trial court to grant bail to an accused person,[65] the second was against the decision of the trial court to acquit the accused person after invoking section 226(1) of the CPA 2002 which allows the court to proceed with the case in the absence of the accused persons[66] and the third was against the decision of the High court that unlawful possession of government trophies is not an economic offence.[67] These three decisions are excluded from the main analysis, in order to focus on the 39 cases brought to the appellate court by the accused.

5.1 Decision of the Appellate Court

In the appeals cases analyzed, three quarters of the convictions – 30 of 39 cases – are overturned (Figure 12). Only 15% (6 cases) of appealed cases are upheld, and 8% (3 cases) are declared inadmissible by the appellate court, based on irregularities in filing the notice of appeal of appeal.

> *In the appeals cases analyzed, over three quarters of the convictions – 30 of 39 cases -- are overturned.*

Figure 12: Decision of the appellate court in wildlife cases

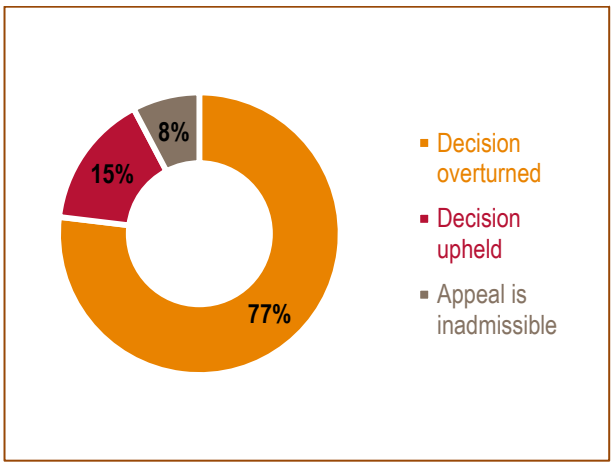
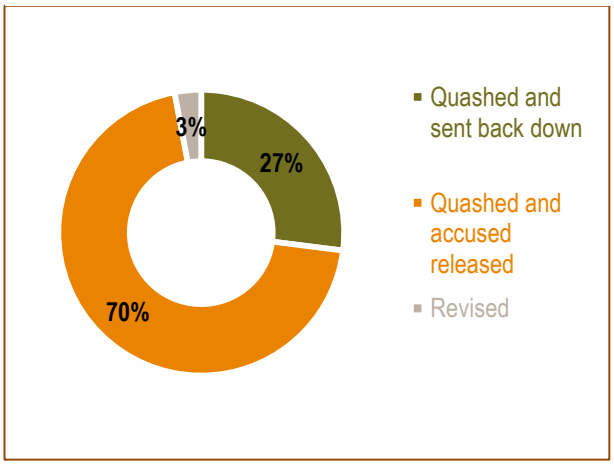


Figure 13: Result when appeal is allowed



The result of a successful appeal varies. In 8 cases, the case was sent back for retrial; in one case the decision was revised by the appellate court to lower the penalty, and in the remaining 21 cases the appellant was immediately released (Figure 13).

5.2 Trial court decisions on appeal

An appeal is made to a higher court after a final decision – in these cases, a conviction – by a lower court. Because of the small sample size, and time period between trial and appeal, the trial court cases discussed in the appeals are not in the analysis in Section 4. The appealed trial court cases are typically slightly older and in some instances were decided under previous versions of the law.

However, in terms of offences and species involved, the trial court decisions discussed in the appeals cases have a similar profile to the decisions analyzed above (Figures 14 and 15). The most common charge addressed on appeal was possession or transportation of government trophy, which appeared in almost all of the appeals cases for which the offence was known (36 out of 38 cases). Eleven of the 39 appellate cases analyzed involved elephants.

[64] *Mashaka S/O Maduhu versus the Republic* [2015] High Court of Tanzania at Sumbawanga, No. 83 of 2015 and *Sarbasia S/O Chanda versus the Republic* [2015] High Court of Tanzania at Sumbawanga. Those cases and their analysis can be accessed at: http://wildlex.org/court-decisions/mashaka-so-maduhu-mages-v-r and http://wildlex.org/court-decisions/sarbasia-so-chanda-v-r. These cases were decided within the High Court's jurisdiction to grant bail for economic offences.

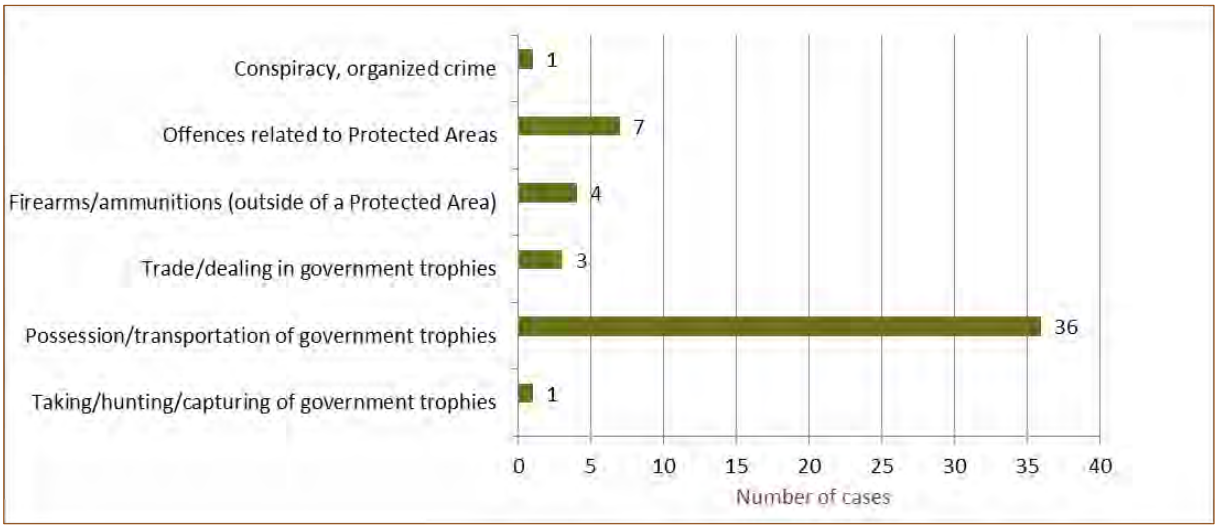
[65] *Republic versus Alex s/o Honole* [2007] High court of Tanzania at Sumbawanga, Criminal Revision No. 02 of 2005. This case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/r-v-alex-s-o-honole.

[66] *Republic versus Hamusi S/O Koni* [2007] High court of Tanzania at Sumbawanga, Criminal Revision No. 16 of 2007. This case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/r-v-hamisi-koni.

[67] *Director of Public Prosecutions versus Yohana Peter Ngoira and another* [2015] Court of Appeal of Tanzania at Arusha, Criminal Appeal No. 331 of 2015. This case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/dpp-v-yohana-peter-ngoira-and-another.

Figure 14: Charges discussed in appeals cases

Figure 15: Species involved in appeals cases



While there are fewer appellate cases decided than trial cases, it was not possible to estimate how many cases are appealed in Tanzania. Of the 225 trial cases analyzed in Section 4, 13 were appealed, 88 were not appealed, and for 124 cases it was not possible to determine whether an appeal had been made within the bounds of the project.

5.3 Basis of decision

Appeals can be made for different reasons. They can be based on errors of fact – where the court reached the wrong factual conclusion from the evidence; errors of substantive law – where the court misinterpreted the governing legislation or case law; or procedural errors (sometimes called errors of procedural law) – where the court failed to apply correct procedure regarding evidence and the conduct of the case.

In practice, it is difficult to quantitatively analyze bases of appellate decisions, because the decisions may be based on multiple grounds, or grounds could be overlapping or hard to categorize. Qualitative analysis of the appellate decisions does reveal illustrative errors that result in a case being overturned.

5.3.1 Lack of jurisdiction

One of the most common errors that resulted in a case being overturned was lack of jurisdiction. This occurs where the prosecution did not bring the wildlife-related case to the competent court, failed to produce the

certificate granting jurisdiction to the lower court,[68] or submitted a certificate that was wrongly filled in.[69] In over one fourth of the appellate cases analyzed, convictions are nullified because the trial court did not have jurisdiction.

For example, in the case *James S/O Sendama v. Republic*, the appellant had been convicted of possession of 71 pieces of elephant tusk worth 235,200,000 TZS.[70] He appealed on the basis that the crime was committed outside the district in which he was tried, and therefore the trial court lacked jurisdiction. After his appeal to the High Court was dismissed, he appealed to the Court of Appeal of Tanzania in Tabora. That court accepted his argument, quashed the sentence, and ordered the case to be retried.

In over one fourth of the appellate cases analyzed, convictions are nullified because the trial court did not have jurisdiction.

Most cases nullified for lack of jurisdiction involve failure on the part of the prosecutor to obtain a certificate from the Director of Public Prosecutions. Under the Economic and Organized Crime Control Act, an economic crime may only be brought to trial courts with the written consent of the Director of Public Prosecutions in the form of a formal certificate.[71] Without the certificate, the court has no jurisdiction, and the case is subject to nullification on appeal.

5.3.2 Breach of procedure in investigation

In many cases, the problems leading to reversal of a case originate not in the trial but in the investigation. One of the most common issues relates to interrogation of suspects.

As described in Section 4.4.2, failure to follow procedures in interrogation of suspects can render statements of admission (cautioned statements) and other evidence from interrogation inadmissible. For example, in *Wesiko Malyoki v. Republic*, the High Court of Tanzania in Mwanza set aside a 20 year imprisonment sentence based on irregularities in the interrogation of suspects. In that case, the appellant had been charged with and convicted of unlawful entry into a game reserve and unlawful hunting in a game reserve. He admitted to game officers that he had been involved in hunting and killing six elephants in the reserve, and this admission was used against him in the case. The Appellate judge noted that game officers did not have the mandate to record statements of confession, and that there was a delay between the date of arrest and the date of interrogation which raised questions about where and why they were detained, and why the statement was not taken by police, rather than the game officer. At trial, there was further error – the trial magistrate allowed the statement to be read in court before asking the accused if they had objections. Based on all of these irregularities, the High Court quashed the conviction and sentence and ordered the appellant to be released.

5.3.3 Failure to bring witnesses

The Appellate Court frequently determines that the trial court erred in finding the case proven beyond a reasonable doubt based on the evidence brought. One problem frequently noted is the lack of sufficient witnesses.

For example, in *Fahida Minja Kabarabara v. Republic*, the prosecution alleged that 140 kilograms of buffalo meat had been found in the house where the accused persons were resting for the night. They were arrested and charged with unlawful possession of government trophies and unlawful hunting of scheduled animals, and were convicted by the District Court of Mtwara.

The accused claimed that the meat belonged to the landlord, and that the landlord told the police he had gotten it in Mozambique, but then had paid a bribe to avoid arrest. At trial, the landlord did not testify, nor did any other witness from the village where the incident occurred. The trial court's decision relied instead on cautioned statements, which the Appellate Court ruled had been wrongly introduced at trial because the police officers did not narrate in court what rights they had read the accused before taking their evidence. The Appellate Court ruled that the irregularity in introducing the cautioned statement, together with the doubt introduced by the lack of witnesses, was sufficient to quash the convictions and set aside the sentences.[72]

[68] See for example *Mathew Gwandu and another versus the Republic* [2013] Court of Appeal of Tanzania at Arusha, Criminal Appeal No. 204 of 2013. This case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/mathew-gwandu-another-v-r.

[69] See for instance *Nkwabi Mayala and two others versus the Republic* [2014] High Court of Tanzania at Sumbawanga, Criminal Appeal No. 04 and 27 of 2014. This case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/nkwabi-mayala-2-others-v-r.

[70] Approx. 10,700 USD

[71] Section 12(3) read together with section 14(d) of the Economic and Organised Crime Control Act, Cap. 200, Revised Edition 2002. Jurisdiction to try economic offences is conferred by law on the High Court of Tanzania, and this competence can only be delegated to Magistrate's and District courts with the consent of the DPP through a formal certificate. Application of this section to the wildlife offences stated under the Wildlife Conservation Act 2009 was confirmed by the decision of the Court of Appeal of Tanzania at Arusha No. 331 of 2015, *Director of Public Prosecutions versus Yohana Peter Ngoira and another*. This is one of the cases brought by the prosecution excluded from the body of the analysis – it nonetheless has precedential weight for future cases. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/dpp-v-yohana-peter-ngoira-and-another.

[72] *Fahida Minja Kabarabara and another versus the Republic* [2007] High Court of Tanzania at Mtwara, Criminal Appeals No. 02 and 03 of 2007. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/fahida-minja-kabarabara-another-v-r.

5.3.4 Failure to prove identification of meat

A few cases were quashed by the Appellate Court because of doubt left by the failure of the prosecution to identify the species of origin of the trophy. The certificate of valuation of the trophy should inform the court about the species and its value, both to support the prosecution's case and to assist the magistrate or judge in determining the penalty which could be imposed after conviction. However, in some cases no certificate is presented, and identification is based on visual identification of the species by game wardens or rangers, which has been found insufficient to support a conviction.

For example, in *Abilah Hassani Mfaume v. Republic*, the appellant had been convicted of possession of meat identified by the game officers as zebra. The Appellant contended that the meat was hartebeest, hunted using a permit held by his friend who was not present at the time of arrest. The game officers testified that they did not see the zebra head or skin, but identified the meat as zebra based on their experience as game officers. The High Court, emphasizing that the species is crucial in determining sentence, found that this was not sufficient identification, and "failure by the prosecution to establish, with certainty, that the meat was of zebra fatally affected the prosecution evidence against the appellant." The Court quashed the conviction and ordered the appellant released.

This case is reminiscent of lower court cases such as *Republic v. Jumnne*, discussed in Section 0, which also dealt with the capacity of officers to identify species visually. In that case, the problem resulted in acquittal at the trial court level; in *Mfaume* the case went through the appeals process before being reversed.

5.3.5 Errors in citing or applying law

In several cases, the Appellate court found that the trial court had erred in applying the correct law. In an extreme case, *Jacob Michael v. Republic*, the court found that the accused had been prosecuted and convicted under the wrong law. The charge sheet contained erroneous citations of the law, and referred to the wrong section of the Wildlife Conservation Act, which was apparently accepted by the court. The appellate court quashed the decision of the trial court, stating that "the appellant pleaded to a non-existing offence".[73]

In other cases, there are errors in citing legislation in both charge sheets and judgments. References to the law are often approximate. This could indicate insufficient knowledge of or access to up-to date legislation.

In two cases, minors were treated as adults by the court, which failed to apply the Law of the Child.[74]

5.3.6 Errors in drafting the opinion

In some cases, the error leading to reversal on appeal is not in the interpretation of the facts, trial procedure or interpretation of substantive law in the trial court, but in the technical aspects of the lower court opinion itself. For example, in *Alfonce Sogore v. Republic*, two convictions were overturned because the trial court judgment did not explicitly state that the offenders were convicted; instead it ended with the words "I am of the considered view that prosecution side proved beyond a reasonable doubt that the accused committed the offence jointly as they were charged. I hereby find them guilty to the offence charged." This statement was not sufficient for the Appellate court, which ruled that in the absence of the explicit conviction, the sentence was unlawful and the offenders must be immediately released.[75]

In *Alfonce Soagore*, the Appellate Court also noted that the case was not signed. This in itself could constitute a basis for nullification of the case. In *Michael Jackson v. Republic*, the High Court found that the trial court decision was a nullity because the opinion was not signed, stating:

> A judgment not signed and dated, is not judgment at all, hence the conviction and sentence becomes outright, a nullity in all fours.[76]

These types of errors in writing the judgment are notable because they are easily preventable and because they are considered incurable by the appellate courts, and therefore lead to the release of wildlife offenders or the need for a new trial.

[73] *Jacob Michael versus the Republic* [2008] High Court of Tanzania at Arusha, Criminal Appeal No. 15 of 2008. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/jacob-michael-v-r.

[74] *Joseph Lazaro and two others* [2014] Court of Appeal of Tanzania at Mwanza, Criminal Appeal No.118 of 2014 and *Machako Athumani* [2014] High Court of Tanzania at Mwanza, Criminal Appeal No. 01 of 2014. Those cases and their analysis can be accessed at: http://wildlex.org/court-decisions/joseph-lazaro-2-others-v-r and http://wildlex.org/court-decisions/r-v-machako-athumani.

[75] *Alfonce Sagore and John Lemayani versus the Republic* [2014] High Court of Tanzania, No. 23 of 2012. The case and its analysis can be accessed at: http://www.wildlex.org/court-decisions/alfonce-sogore-another-v-r.

[76] *Michael Jackson versus the Republic* [2008] High Court of Tanzania in Arusha, Criminal Appeal No. 93 of 2008. This was one of several errors in this case that led it to be overturned, including discrepancies between the legal provisions cited in the charge sheet and those cited in the judgment and insufficient evidence to convict on proof beyond a reasonable doubt. This case and its analysis can be accessed at: http://wildlex.org/court-decisions/michael-jackson-v-r.

Figure 16: Proportion of appellate court decisions citing case law

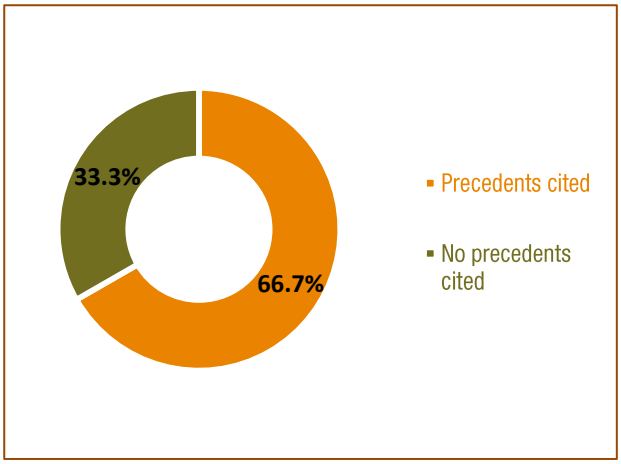
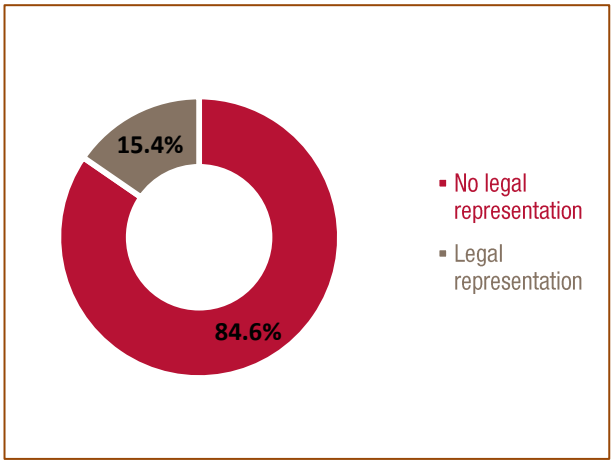


Figure 17: Legal representation of appellant in appellate courts



5.4 Legal citations in decisions

Decisions of the High Courts and Courts of Appeal of Tanzania bind trial courts. The decisions do not only resolve the outcome of a particular case, they also create legal interpretations and standards that lower courts must apply. It is therefore important that rulings are consistent and informed. A key aspect of this is referring to and citing precedent.

Two-third of the Appellate court decisions analyzed cite at least one precedent (Figure 16). This is much higher than the level of citation in trial court decisions, which could reflect greater access to cases, more familiarity with law, or more time.

Few of these references directly relate to the elements of wildlife offences. In most cases, precedent is used to resolve questions related to procedural or technical aspects of the trial.

5.5 Characteristics of the appellants

The relatively small number of Appellate cases analyzed makes it difficult to draw any conclusions about the relationship between outcome of appeal and appellant profile.

5.5.1 Foreign nationals

Among the appellate cases analyzed, no case was brought by an appellant who is not a Tanzanian national. This is very likely due to the low number of cases in the analysis – of the 255 trial cases, only 11 involved foreign nationals.

It is also to be expected given the high number of guilty pleas among foreign nationals at the trial level. It could be imagined that foreign offenders often choose to pay the fine imposed by the court, rather than appealing the decision. This idea is further supported by the fact that most of the appellants in the cases analyzed were serving time in prison.

5.5.2 Legal representation

Appellants have legal representation in 15.4% of the collected appeal cases, compared to 8.9% of the initial trial cases (Figure 17). All of the cases where the appellant was represented resulted in the decision of the lower court being revised or quashed.

It is difficult to assess whether legal representation is correlated with the value of trophies, or with the financial resources of the appellant. In the cases analyzed, appellants convicted for offences involving high value trophies did not always have legal counsel for their appeals.

5.6 Analysis: Appellate Cases

It is significant that over 75% of cases appealed are quashed, nullified, or revised by the Appellate court. Even where the case is sent for retrial, this adds to the workload of the prosecutors and magistrates in the lower courts. In most cases, however, the successful appellant is not retried, but released.

In most instances, overturn on appeal is preventable. Prosecutors stated that they know that they need a certificate from the DPP to bring a case to initial trial, but that they often lack time to get a certificate, because of the tight deadlines for trial imposed by law. It may be necessary to streamline or facilitate the process of applying for a certificate, as well as raise awareness among prosecutors that going forward without a certificate is not a good option as it will likely result in the case being overturned.

Other common grounds for appeal could be addressed by strengthening understanding of legal procedure and substance among prosecutors and magistrates, and to some extent investigators as well. Prosecutors and investigators must ensure that correct procedure is followed in arrest and interrogation of suspects, management and identification of evidence, and handling of witnesses. Prosecutors must bring the case in the right court, and bring appropriate legal arguments, including legislation and case law, while judges and

magistrates at the trial court level must ensure that the legal arguments put forward are sound, all relevant laws are considered, and trial procedures are followed. Prosecutors should not rely on one form of evidence, such as cautioned statements, but should bring sufficient witnesses and other evidence beyond the minimum.

Finally, magistrates and trial judges must be careful with their written judgments, ensuring not only that they contain obligatory components, but also that they provide strong enough justification that evaluates the evidence provided against the legal standard for each of the elements of the offence that the prosecution must prove.

Shortcomings in these areas may relate not just to lack of legal knowledge in relation to wildlife but to limited time devoted to wildlife cases on the part of prosecutors and courts, because of tight deadlines, heavy workload, or a low priority given to wildlife cases. Prosecutors' offices need sufficient trained staff, time and financial resources to prepare strong cases against wildlife offenders.

Appellate court judges themselves can contribute to the strengthening of cases by elaborating clear and consistent standards and promoting an interpretation of procedural and technical requirements that is straightforward for lower court magistrates and judges to understand and follow.

There may also be opportunities for improvement in ensuring streamlined procedures that are straightforward for magistrates and judges to understand and follow. Appellate court judges themselves can contribute by elaborating clear and consistent standards and promoting an interpretation of procedural and technical requirements that facilitates compliance.

Above all, actors involved at the trial court level should recognize that mishandling of cases at the trial level will lead them to be overturned, which will add to the workload and negate the time and resources already committed to the case.

6 Conclusions

The study reveals several gaps and challenges in the way that wildlife cases are dealt with in Tanzanian courts. The study itself also suggests possible solutions and ways forward, supported by discussions with prosecutors, magistrates, judges, legal experts, wildlife officers, and policy experts conducted over the course of the study and the two workshops held in Dar es Salaam and Arusha. There remain unanswered questions, which will need further study to resolve. However, the initial research presented here provides a first empirical insight into the workings of Tanzanian courts in cases involving wildlife.

One of the primary problems identified in the case analysis is that cases tend to have a high impact on low level offenders, but fail to deter high level offenders. Legislation stipulates high penalties, which are sometimes applicable to low level offences. The statutory penalty for unlawful possession of a government trophy can be 20-30 years, for certain species worth more than 100,000 TZS. This is not reserved for cases involving high value internationally traded products such as ivory or rhino horn – the average penalty applied in cases involving bushmeat is 12 years, and in several cases convicted offenders were sentenced to 20 years imprisonment for possession of small amounts of meat or animal parts worth a few hundred USD or less. There is little indication that magistrates and judges are sufficiently considering trophy value, vulnerability of the species, or circumstances of the offence in sentencing: in many cases, they seem to be simply applying the statutory minimum.

Some convictions result in cases where there is suggestion that the offences were unintentional, or purely for subsistence or to protect livestock or crops. Though Tanzanian law provides for subsistence hunting and management of human-wildlife conflict, courts show little sympathy where accused fail to follow stipulated procedures.

At the same time, judicial treatment does not always sufficiently deter high level offenders, who are most responsible for driving wildlife loss in the country. Prosecutors overly rely on the offence of unlawful possession, which can apply as readily to subsistence hunters as to high level criminals, and almost never make use of charges related to financial crimes (money laundering, corruption), organized crime, or CITES violations. Few cases involve transboundary elements or foreign nationals, though foreign trade represents one of the most damaging impacts on Tanzanian wildlife. Where foreign offenders are involved, they tend to plead guilty, and are almost always given an option to pay a fine instead of serving a prison sentence. These fines are typically very low compared to the value of the trophy, especially in high value cases, despite statutory requirements for many cases that the financial penalty be at a minimum 10 times higher than the trophy value. Overall, in over one third of all cases analyzed the fine is lower than or equal to the value of the wildlife trophy. This makes wildlife crime extremely low risk, relative to its high potential benefits.

There are examples of successful investigation leading to prosecution of high level offenders, as in the well-publicized case of the "ivory queen". Yang Fenglan was arrested in Dar es Salaam in October 2015, charged with trafficking elephant ivory worth more than 2.5 million USD. [FN] The case, which is underway, could provide an important model for investigation and prosecution of large scale ivory dealers in Tanzania.[77]

[77] BBC News, "Who is the 'Ivory Queen'", 9 May 2016, http://www.bbc.com/news/world-africa-36203798.

A second identified gap is a failure to fully investigate wildlife related crimes, to go beyond the initial offender apprehended to discover those operating further up the criminal chain. Most cases analyzed involve low level offenders, even cases involving high value trophies that are almost certainly intended for trade and export, likely passing through several middle-men and higher level operatives. There is little use of plea-bargaining as an aid to investigation, and only 1.3% of analyzed trial court cases involve charges of conspiracy or leading of organized crime. The average number of accused is only 1.8, even in cases relating to activities which, by their nature, involve larger criminal groups. As mentioned above, few cases involve foreign nationals. While there is some evidence of attempts to investigate on the part of enforcement officers and prosecutors, these are severely limited by lack of time and resources.

Additional issues impede successful prosecution. These include avoidable errors such as withdrawal because of inability to proceed with the hearing within the allotted time. In other cases, problems arise from discrepancies in standards for proving reasonable doubt, including lack of clarity on how many witnesses must be brought or what procedures must be followed to identify species. This is apparent in both trial and appellate cases, where lack of agreed standards leads to acquittals or cases being overturned.

Where cases do result in conviction, there is a high rate of reversal on appeal. Over 76% of appealed convictions were overturned, in the appellate cases analyzed. Many of these were overturned because of avoidable procedural errors on the part of investigators, prosecutors and judges. In over a quarter of all appellate cases studied, convictions were nullified because of lack of jurisdiction, typically resulting from failure to obtain a certificate from the DPP. This is not just a problem of not understanding the legal requirement, but also of lack of time and resources to fulfil it.

Investigators make errors in the handling of admissions, treatment of suspects and identification of species, which, when not caught by the trial court, results in reversal on appeal. Some of the most trivial errors include errors in the way judgments are written. It is a waste of limited time and resources to go through an investigation and trial, only to have the resulting conviction overturned because the judgment was not signed.

Apart from procedural errors, trial court opinions show weaknesses that leave them vulnerable to being overturned. These include some of the issues mentioned above which can impede conviction in the first instance, such as discrepancies in understanding what is needed to prove a case beyond a reasonable doubt, or concerns over identification of species. In addition, opinions may contain errors in applying or citing law. Sometimes out of date legislation can be used in the opinion, often originating from a bad reference on the charge sheet. Where correct legislation is referred to, opinions often don't clearly spell out elements of the offence or cite precedent, which would make them stronger and more defensible in the appellate court.

From an ecological standpoint, the cases are not tailored to relate to impact on wildlife. Despite stronger statutory protection for listed species, there is no evidence that cases involving particularly threatened or endangered species result in higher conviction rates or higher penalties, which would imply prioritization by prosecutors and magistrates or judges. Similar penalties are given for activities implying different impacts – the same penalty may be given for possession of small amounts of wildebeest meat or large quantities of elephant ivory.

Many of the issues described above are attributable at least in part to an overburdened system that lacks time, resources and trained personnel to adequately investigate, prosecute and adjudicate wildlife cases. This undermines preparation of cases and leads to procedural errors and substantive weaknesses that leave cases vulnerable to being overturned on appeal – which in turn contributes to the burden on the system by necessitating retrial or nullifying the effort that goes into securing a conviction. In this overburdened system, wildlife cases are not a priority, though this may be changing with rising awareness of the economic importance of wildlife to the country,

While there can be little doubt that Tanzania treats wildlife crime as serious crime, based on penalties provided for in law and applied by courts, the criminal justice system could be strengthened to improve the deterrent effect on high level criminals while reducing disproportionate impacts on small scale criminals, and at the same time improving efficiency and alleviating the workload of prosecutors, magistrates and judges.

One of the primary purposes of criminal justice is to deter the offender from acting again, or discourage others from committing a similar offence. Low pecuniary penalties – often lower than the value of the trophy – coupled with fairly low conviction rates and high rates of overturn on appeal undermine the high imprisonment penalties provided in wildlife related legislation. Full realization of the deterrent effect of the legislation will require efficient investigative and enforcement agencies that lower the chances of evading capture, strategic prosecutors that target high level organizers, and capable magistrates who impose stringent penalties where appropriate.

A key question not answered by this analysis is whether sentences are actually being carried out. Except in cases where there is record of an appeal – only 13 of the 225 trial court cases in this study – there is little information on what happens to offenders following conviction. Do they actually serve their full sentence or do they manage to walk free after serving a partial sentence, or none? This information is critical to understanding the impact of the justice system on criminal behavior relating to wildlife, but it is not available from an analysis of judicial opinions alone. It will require further research, in cooperation with prosecutors and the judiciary.

This report also does not address the question of corruption. There is widespread agreement that corruption is a serious issue related to wildlife related crime throughout Africa and the world. According to the

Global Corruption Barometer, 86% of respondents in Tanzania perceived the judiciary as corrupt or extremely corrupt.[78] Tanzania has repeatedly made commitments to address corruption, which will be key to combatting wildlife crime. Strengthening the legal framework and increasing transparency in the judicial process will be a means of addressing corruption relating to wildlife crime.

There should be more research into the relationship between what is happening in the courts and what is happening on the ground, in terms of value and use of wildlife products, species population and endangerment levels, and levels and nature of illegal wildlife trade.

Finally, this report is limited to a study of courts in Tanzania. However, the most harmful illegal wildlife trade is international in nature. Therefore, it is important to consider the relationship between the operation of the judicial system of Tanzania with that of its neighbors, as well as transit and destination countries for wildlife products. One of the questions raised by Tanzanian judges over the course of the study was how to contact and work with courts in other jurisdictions to obtain or share necessary evidence and other information. Beyond this, the effectiveness of judicial treatment of wildlife crime in Tanzania will always depend on the corresponding effectiveness of criminal justice systems in other countries.

Based on what was learned from this study, as well as discussions with legal actors and other stakeholders, it is possible to formulate recommendations for addressing identified issues and strengthening legal processes for addressing unsustainable wildlife trade:

1. **Legislative reform.** Legal frameworks should be updated to tailor offences and penalties to target and appropriately deter high level criminal actors. This has already started with the 2016 amendments to the EOCCA that impose a higher generic penalty for economic crimes such as corruption and leading an organized criminal group. Additional reform could include better targeting penalties for unlawful possession of government trophies to mitigate the impact on small scale offenders while ensuring deterrence of high level criminals. Reform of the criminal procedure legislation could be helpful to streamline and standardize procedures to make them easier to follow and reduce errors that lead to reversal on appeal.
2. **Capacity building.** Investigators, prosecutors and judges need sufficient capacity and knowledge to effectively handle wildlife related cases. Improved procedural training at all levels could help avoid preventable errors that lead to cases being overturned. Training of prosecutors could increase proficiency in bringing charges using different offences (including CITES offences, financial offences, and offences relating to organized criminal activities), use of plea-bargaining and other tactics as aids to investigation and as ways to alleviate the burden on the court system by more strategically choosing which cases to pursue. Capacity building among judges could promote at the trial level stronger judgments that are less likely to be overturned, and at the appellate level awareness of the need to create clear and consistent standards for substantive elements of offences and straightforward procedures for investigation, prosecution and adjudication at the lower levels.
3. **Awareness raising.** There is increasing awareness in Tanzania of the economic and social importance of wildlife. This needs to be enforced, particularly among legal actors, to raise the priority of wildlife cases and the seriousness with which they are treated by judges. In addition, improvements in understanding of threat levels affecting different species and the relative impacts of different activities can help prosecution and judges better prioritize cases and apply appropriate penalties.
4. **Resources.** In some cases, investigators, prosecutors, magistrates and judges lack basic resources for accomplishing their work. This includes computers, printers and internet technology for typing cases and accessing information; easy access to relevant legal materials such as up-to-date legislation and judicial cases; and guidelines on best practices in investigation and prosecution, such as procedures for identification of meat that will be accepted in court. In some cases basic operating costs and additional trained personnel may be the most beneficial resource for improving handling of wildlife cases.
5. **Judicial and prosecutorial exchange.** One mechanism for improving capacity and practices and improving transparency in the Tanzanian judicial system may be exchange of knowledge and experiences with other jurisdictions. Direct engagement with prosecutors and judges from other countries with successful records of prosecution of wildlife offences can promote understanding and improvement in practices. This could take the form of one-off workshops or trainings or of direct exchange programs, where foreign lawyers visit and spend time in Tanzanian courts, and vice versa.
6. **Public outreach.** If community members are failing to understand and follow correct procedures for subsistence hunting and addressing wildlife-human conflict, as

[78] Global Corruption Barometer 2013, http://www.transparency.org/gcb2013/country/?country=tanzania. Note that GCB has released a new evaluation for 2015, which does not include the same question, but finds that 36% of Tanzanian respondents thought that most or all judges and magistrates are corrupt. Global Corruption Barometer, People and Corruption: Africa Survey 2015 (Transparency International 2015).

suggested in some of the cases, this could be addressed by public awareness campaigns or direct training of communities. Public outreach can also seek to raise awareness of what is legal and what isn't, potential penalties for wildlife offences, identification of protected species, and the importance and value of wildlife management and protection to Tanzanian economy and society.

7. **Transparency**. The difficulty in collecting cases for this study highlights a problem of transparency in the judicial system. Where cases are public record, they should be made available. This will not only assist prosecutors and judges, it will also shine light on the actions of the courts, and support public accountability of the judicial system.

While this report is limited in many ways, it does provide a glimpse into the activities of the judicial system in Tanzania in cases related to wildlife crime. It is hoped that it will help inform a conversation about improvements in that system, throughout the region, and elsewhere in the world.

Annexes

Annex 1: Matrix used to analyze wildlife-related court decisions during the project

GENERAL INFORMATION ABOUT THE CASE	
Case number	
Court	
Date	
Name of the judge/Magistrate	
Name of the parties	
Prosecuting authority (DGOs, state attorney, police…)	
Representation of accused person (lawyer?)	
Transnational elements (Citizen/non-citizen, cross-border offence…)	
DESCRIPTION	
Defendants (age, gender…)	
Judicial history of the case	
Facts	
Charges	
SPECIES	
Name	
Evidence	
Value	
Processed/Not processed	

LEGAL REFERENCES	
Legislation (principal and ancillary legislation)	
Cases cited	
International instruments	
DECISION/OPINION	
Decision	
Basis of the decision (reasons)	
Legal issues raised in judgment	
Penalty	
OTHER CONTEXTUAL INFORMATION	
Context	
Appealed/Not appealed	
Bail	
Opinion on the case	

Annex 2a: Minimum and maximum penalties provided by the most recent law cited for each offence in the collected court decisions*

Offense		Imprisonment	And/or	Fine (TZS)	Provision
Taking/hunting/capturing of government trophy					
Unlawful capture of animals	If animal specified in Part I of the First Schedule to the WCA	Not less than 3 but not exceeding 5 years	Optionally in addition	Not less than twice the value of the trophy	§§ 50 and 53 WCA
	If animal specified in Part II of the First Schedule to the WCA	Not less than 2 but not exceeding 5 years			
	If animal specified in Part III of the First Schedule to the WCA	Not less than 1 but not exceeding 3 years			
Unlawful hunting	-	Not less than 1 but not exceeding 5 years	And/Or	Not less than twice the value of the trophy	§ 55 WCA
Unlawful methods of hunting	-	Not less than 1 but not exceeding 3 years	And/Or	Not less than 1,000,000 but not exceeding 2,000,000	§ 65 WCA
Unlawful hunting during a closed season	If national game	Not less than 3 but not exceeding 5 years	Or	Not less than twice the value of the trophy	§ 28 WCA
	If animal specified in Part II of the First Schedule to the WCA	Not less than 2 but not exceeding 5 years	And/Or	Not less than twice the value of the trophy	
	If animal specified in Part III of the First Schedule to the WCA	Not less than 1but not exceeding 3 years	And/Or		
	In any other case	Not less than 6 but not exceeding 12 months	And/Or	Not less than 300,000 but not exceeding 2,000,000	
Unlawful hunting of scheduled animal	If animal specified in Part I of the First Schedule to the WCA	Not less than 3 but not exceeding 10 years	And/Or	Not less than twice the value of the trophy	§ 47 WCA
	If animal specified in Part II of the First Schedule to the WCA	Not less than 2 but not exceeding 5 years			
	If animal specified in Part III of the First Schedule to the WCA	Not less than 1 but not exceeding 3 years			

* Legislation mentioned can be found here: http://www.wildlex.org/

Possession/transportation of government trophy					
Unlawful possession of government trophy	If animal specified in Part I and is worth less than 100,000 TZS	Not less than 5 but not exceeding 15 years	And/Or	Not less than twice the value of the trophy	§ 86 WCA
	If animal specified in Part I and is worth more than 100,000 TZS	Not less than 20 but not exceeding 30 years		Not less than 10 times the value of the trophy	
	In any other case, if the trophy is worth less than 100,000 TZS	Not less than 3 but not exceeding 10 years	Or	Not less than twice the value of the trophy	
	In any other case, if the trophy is worth more than 1,000,000 TZS	Not less than 20 but not exceeding 30 years	Optionally in addition	Not exceeding 5,000,000 or 10 times the value of the trophy whichever is the larger amount	
Unlawful transportation of government trophy	-	Not less than 2 but not exceeding 5 years	And/Or	Not less than twice the value of the trophy	§ 84 WCA
Failure to report possession	-	Not less than 12 but not exceeding 18 months	And/Or	Not less than 100,000 but not exceeding 500,000	§ 87 WCA
Trade/dealing in government trophy					
Unlawful dealing in trophies	-	Not less than 2 but not exceeding 5 years	And/Or	Not less than twice the value of the trophy	§ 80 WCA, read together with § 84 WCA
Unlawful dealing in government trophies	If animal specified in Part I and is worth less than 100,000 TZS	Not less than 5 but not exceeding 15 years	And/Or	Not less than twice the value of the trophy	§ 86 WCA
	If animal specified in Part I and is worth more than 100,000 TZS	Not less than 20 but not exceeding 30 years		Not less than 10 times the value of the trophy	

	In any other case, if the trophy is worth less than 100,000 TZS	Not less than 3 but not exceeding 10 years	Or	Not less than twice the value of the trophy	
	In any other case, if the trophy is worth more than 1,000,000 TZS	Not less than 20 but not exceeding 30 years	Optionally in addition	Not exceeding 5,000,000 or 10 times the value of the trophy whichever is the larger amount	
Firearms/ammunitions (outside of a Protected Area)					
Unlawful possession of firearm	-	A term not exceeding 15 years		None	§§ 4(1) and 34 AAA, read together with § 57 EOCCA and para. 12 (use) and 18 (possession) of the First schedule to the EOCCA and § 60 EOCCA
Unlawful possession of ammunitions	-	A term not exceeding 15 years		None	§§ 4(1) and 34 AAA, read together with § 57 EOCCA and para. 18 of the First schedule to the EOCCA and § 60 EOCCA
Unlawful transfer of firearm	-	Not exceeding 15 years		None	§§ 24 and 34 AAA, read together with § 57 EOCCA and para. 18 of the first schedule to the EOCCA and § 60 EOCCA
Unlawful activities in a Protected Area[**]					
Unlawful entry into a protected area	Game reserve	Not less than 1 but not exceeding 3 years	And/Or	Not less than 100,000 but not exceeding 500,000	§ 15 WCA
	National park	Not exceeding 1 year for an individual;	Or	Not exceeding 500,000 for an individual; Not exceeding 1,000,000 for legal persons	§ 21 NPA
Unlawful possession of weapon in a protected	Game reserve	Not exceeding 3 years	And/Or	Not exceeding 200,000	§ 17 WCA

[**] Ngorongoro Conservation Act could not be accessed but might provide for other penalties for some of these protected area-related offences

area	Game reserve, game controlled area or wetlands reserve	Not less than 6 months but not exceeding 2 years	And/Or	Not less than 200,000 but not exceeding 1,000,000	§§ 20(1)(b) and 20(4) WCA
	National park	Not exceeding 2 years	And/Or	Not exceeding 20,000	§§ 24(1)(b) and 24(2) NPA
	General offence	Not less than 1 but not exceeding 3 years	And/Or	Not less than 200,000 but not exceeding 5,000,000	§ 103 WCA
Unlawful hunting in a protected area	Game reserve, game controlled area or wetlands reserve: If animal specified in: Part I of the First Schedule to the WCA	Not less than 5 but not exceeding 10 years	Optionally in addition	Not less than 500,000 but not exceeding 2,000,000	§ 19 WCA
	Part II of the First Schedule to the WCA	Not less than 2 but not exceeding 5 years		Not less than 300,000 but not exceeding 500,000	
	Part III of the First Schedule to the WCA	Not less than 1 but not exceeding 3 years		Not less than 100,000 but not exceeding 1,000,000	
	In any other case	Not less than 1 but not exceeding 6 months	Or	Not less than 200,000 but not exceeding 500,000	
	National park: If animal specified in: Part I of the First Schedule to the WCA	Not less than 3 but not exceeding 7 years		Not exceeding 100,000	§ 23 NPA
	Part II of the First Schedule to the WCA	Not less than 2 but not exceeding 5 years	Optionally in addition	Not exceeding 50,000	

	Part III of the First Schedule to the WCA	Not less than 1 but not exceeding 3 years		Not exceeding 20,000	
	in any other case	Not less than 3 months but not exceeding 2 years	Or	Not less than 3,000 but not exceeding 20,000	
Unlawful mining in a protected area	Game reserve, game controlled area or wetlands reserve	Not less than 6 months but not exceeding 2 years	And/Or	Not less than 200,000 but not exceeding 1,000,000	§§ 20(1) and 20(4) WCA
	National park	Not exceeding 2 years	And/Or	Not exceeding 20,000	§§ 24(1)(a) and 24(2) NPA
Unlawful capturing of fish into a national park	If animal specified in: Part I of the First Schedule to the WCA	Not less than 3 but not exceeding 7 years	Optionally in addition	Not exceeding 100,000	§ 23 NPA
	Part II of the First Schedule to the WCA	Not less than 2 but not exceeding 5 years		Not exceeding 50,000	
	Part III of the First Schedule to the WCA	Not less than 1 but not exceeding 3 years		Not exceeding 20,000	
	In any other case	Not less than 3 months but not exceeding 2 years	Or	Not less than 3,000 but not exceeding 20,000	
Unlawful destruction of vegetation in game reserve and wetlands reserve	-	Not less than 3 but not exceeding 5 years	And/Or	Not less than 200,000 but not exceeding 500,000	§§ 18(1) and 18(3) WCA

Licenses					
Unlawful transfer of hunting license	-	Not less than 1 but not exceeding 5 years	And/Or	Not less than 5,000,000	§ 60 WCA
Unlawful acceptance of license***	-	A term not exceeding 3 years	And/Or	Not exceeding 20,000	Not expressly stated in the 2009 WCA, compared to what was stipulated in § 46 WCA 2002
Conspiracy, organized crime					
Conspiracy to commit offence	For offence punishable with imprisonment for three or more years of imprisonment	A term not exceeding 7 years or "*the greatest punishment to which a person convicted of the offence in question is liable is less than imprisonment for 7 years, then to such lesser imprisonment*"	And/Or	None	§§ 384 and 385 PC, read together with §§ 29 and 35 PC
	For offences punishable with imprisonment for less than 3 years:	A term not exceeding 2 years		For offences punishable with imprisonment for less than 3 years: "a fine" to the discretion of the court but not excessive	
Leading of organized crime	-	A term not exceeding 15 years		None	§ 57 EOCCA read together with § 4 First Schedule of the EOCCA and § 60 EOCCA
Organizing the crime on unlawful exportation of wild animal	-	A term not exceeding 15 years		None	Was associated to leading of organized crime in the collected case
Other					
Practicing as a traditional health practitioner without being registered	-	A term not exceeding 2 years	And/Or	Not exceeding 200,000	§ 45 TAMA
Omitting to discharge duty	-	2 years		None	§ 123 PC

*** Penalties under WCA Cap. 283 R.E. 2002, because the collected court decisions which deals with the offence of unlawful acceptance of license was decided under this act.

Neglecting to prevent commission of an offence	-	A term not exceeding 2 years	And/Or	"a fine" to the discretion of the court but not excessive	§ 383 PC, read together with §§ 29 and 35 PC
Occasioning loss to the government	-	None		When the loss or damage exceeds one million shillings: compensation of an amount not exceeding the amount of the actual loss	§ 9 EOCCA

WCA: Wildlife Conservation Act, 2009
EOCCA: Economic and Organised Crime Control Act, 1984 (as amended in 2008)
PC: Penal Code , 1945 (as amended in 2007)
AAA: Arms and Ammunitions Act, 2001 (as amended in 2007)
NPA: National Parks Act , 1959 (as amended in 2003)
TAMA: Traditional and Alternative Medicines Act, 2002

Annex 2b: Provisions currently in force (amendments 2016)

Provisions currently in force (amendments 2016)			
Amended act	**Amended by**	**Relevant amendment**	**Impacted wildlife-related offences**
Wildlife Conservation Act	Written Laws (Miscellaneous Amendments) (No. 2) Act, No. 04 of 2016 §§ 58 and 59	**§ 59:** A third paragraph is added to s. 86 WCA, as follows: "(iii) Where the value of the trophy which is the subject matter of the charge exceeds one hundred thousand shillings but does not exceed one million shillings, to a fine of not less than the amount equal to twice the value of the trophy or to imprisonment for a term of not less than ten years but not exceeding twenty years or both".	Unlawful possession, buying, selling and dealing in government trophies
Economic and Organised Crime Control Act	Written Laws (Miscellaneous Amendments) Act, No. 03 of 2016 § 5 *et seq.*	**§ 13:** subsections (2), (3) and (4) of section 60 EOCCA are substituted by the following: "(2) Notwithstanding provision of a different penalty under any other law and subject to subsection (3), a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both that imprisonment and any other penal measure provided for under this Act" **§ 16:** para. 14 of the First Schedule to the EOCCA is amended as follows: "14. A person is guilty of an offence under this paragraph who commits an offence under section 17, 19, 24, 26, 28, 47, 53, 103, 105, Part X or Part XI of the Wildlife Conservation Act or section 16 of the National Parks Act. (...) 31. A person is guilty of an offence under this paragraph who commits an offence under section 20, 21 or 45 of the Firearms and Ammunitions Control Act."	Economic offences

Annex 2c: Minimum, maximum and average pecuniary penalty per offence

Offences	Number (No.) of cases resulting in conviction	Average fine (TZS)	Min. fine (TZS)	Max. fine (TZS)	No. cases below average	No. cases equal average	No. cases above average
Taking/hunting/capturing							
unlawful capture of animals	0	All the cases resulted in acquittal					
unlawful killing of a natural game animal	0	All the cases resulted in acquittal					
unlawful hunting outside a PA	2	605,000	100,000	1,110,000	1	0	1
unlawful hunting during a closed season	0	All the cases resulted in acquittal					
unlawful hunting of scheduled animal	0	All the cases resulted in acquittal or withdrawal					
Possession/transportation of government trophy							
unlawful possession of government trophy	118	192,955,008	25,000	8,523,946,066	53	0	3
unlawful transportation of government trophy	1	The penalties imposed in that case apply to all counts, penalty for each count is not detailed					
failure to report possession	2	100,000	100,000	100,000	0	1	0
Trade/dealing in government trophy							
unlawful dealing in government trophy	7	744,287,178	33,337,000	1,704,789,213	2	0	2
Firearms/ammunition (outside PA)							
unlawful possession of firearm	9	391,667	50,000	1,200,000	4	0	2
unlawful possession of ammunition	4	1,733,333	1,000,000	3,000,000	2	0	1
unlawful transfer of firearm	0	All the cases resulted in acquittal					
Entry in a Protected Area							
unlawful entry into PA	28	72,313	5,000	300,000	10	0	6
Weapon (in PA)							
unlawful possession of weapon in PA	26	70,200	8,000	200,000	8	0	7
Unlawful activities in PA							
unlawful hunting in PA	8	14,000	8,000	20,000	1	0	1
unlawful mining in game reserve	0	All the cases resulted in acquittal					
unlawful capturing of fish into a national park	1	100,000			0	1	0
unlawful destruction of vegetation in game reserve	0	All the cases resulted in acquittal					

Licenses							
unlawful transfer of hunting license	0	All the cases resulted in acquittal					
unlawful acceptance of license	0	All the cases resulted in acquittal					
Conspiracy, organized crime							
conspiracy to commit offence	0	All the cases resulted in acquittal					
leading of organised crime	2	No pecuniary penalty imposed in this case					
organising the crime of unlawful exportation of wild animal	0	All the cases resulted in acquittal					
Other							
practicing as a traditional health practitioner without being registered	0	All the cases resulted in acquittal					
omitting to discharge duty	0	All the cases resulted in acquittal					
neglecting to prevent commission of an offence	0	All the cases resulted in acquittal					
occasioning loss to the government	1	No pecuniary penalty imposed in this case					
	Number (No.) of cases resulting in conviction	**Average fine (TZS)**	**Min fine (TZS)**	**Max fine (TZS)**	**No. cases below average**	**No. cases equal average**	**No. cases above average**
FOR ALL CASES	135 *	196,459,936	18,000	10,228,735,280	81	2	23

* 135 of the 225 trial court decisions resulted in conviction of at least one of the accused persons but some cases had to be removed from the calculations necessary to fill in the above rows because the opinion did not provide details on the applicable penalties for each count and imposed a general penalty for all the counts of that case.

Annex 2d: Minimum, maximum and average imprisonment penalty per offence

Offences	Number (No.) of cases resulting in conviction	Average imprisonment (years)	Min. imprisonment (years)	Max. imprisonment (years)	No. cases below average	No. cases equal average	No. cases above average
Taking/hunting/capturing							
unlawful capture of animals	0	All the cases resulted in acquittal					
unlawful killing of a natural game animal	0	All the cases resulted in acquittal					
unlawful hunting outside a PA	2	1.5	1	2	1	0	1
unlawful hunting during a closed season	0	All the cases resulted in acquittal					
unlawful hunting of scheduled animal	0	All the cases resulted in acquittal or withdrawal					
Possession/transportation of government trophy							
unlawful possession of government trophy	118	12.4	0.16	30	55	0	56
unlawful transportation of government trophy	1	The penalties imposed in that case apply to all counts, penalty for each count is not detailed					
failure to report possession	2	0.83	0.16	1.5	1	0	1
Trade/dealing in government trophy							
unlawful dealing in government trophy	7	7.5	2	20	4	0	2
Firearms/ammunition (outside PA)							
unlawful possession of firearm	9	3.1	0.5	5	5	0	2
unlawful possession of ammunition	4	7.1	0.42	20	3	0	1
unlawful transfer of firearm	0	All the cases resulted in acquittal					
Entry in a Protected Area							
unlawful entry into PA	28	0.9	0.08	2	9	0	19
Weapon (in PA)							
unlawful possession of weapon in PA	26	1.4	0.25	3	15	0	11
Unlawful activities in PA							
unlawful hunting in PA	8	2.1	0.75	3	5	0	3
unlawful mining in game reserve	0	All the cases resulted in acquittal					
unlawful capturing of fish into a national park	1	3.0	3	3	0	1	0

unlawful destruction of vegetation in game reserve	0	All the cases resulted in acquittal					
Licenses							
unlawful transfer of hunting license	0	All the cases resulted in acquittal					
unlawful acceptance of license	0	All the cases resulted in acquittal					
Conspiracy, organized crime							
conspiracy to commit offence	0	All the cases resulted in acquittal					
leading of organised crime	2	15.0	15	15	0	2	0
organising the crime of unlawful exportation of wild animal	0	All the cases resulted in acquittal					
Other							
practicing as a traditional health practitioner without being registered	0	All the cases resulted in acquittal					
omitting to discharge duty	0	All the cases resulted in acquittal					
neglecting to prevent commission of an offence	0	All the cases resulted in acquittal					
occasioning loss to the government	1						
	Number (No.) of cases resulting in conviction	**Average imprisonment (years)**	**Min. imprisonment (years)**	**Max. imprisonment (years)**	**No. cases below average**	**No. cases equal average**	**No. cases above average**
FOR ALL CASES	135 *	11.64	0.2	30	98	4	96

* 135 of the 225 trial court decisions resulted in conviction of at least one of the accused persons but some cases had to be removed from the calculations necessary to fill in the above rows because the opinion did not provide details on the applicable penalties for each count and imposed a general penalty for all the counts of that case.

Annex 3: Species involved in court decisions dealing with wildlife offences in Tanzania

Species	Occurrence [79]	Species	Occurrence
Aardvark	1	Hyena	2
Lapet faced vulture	1	Hyrax	2
Leopard	6	Impala	20
Lion	8	Kori bustard	1
Badger	2	Kudu	5
Buffalo	14	Lapet faced vulture	1
Bush bull	1	Leopard	6
Bush pig	2	Lion	8
Bushbuck	5	Lizard	4
Cheetah	4	Mongoose	1
Civet cat	3	Monkey	2
Cobra	1	Oryx	1
Crocodile	1	Pangolin	3
Crowned crane	1	Pigeon	1
Dik-dik	13	Plover	2
Duiker	8	Porcupine	2
Eagle	4	Puku	1
Eland	3	Python	2
Elephant	71	Reedbuck	2
Finch	1	Rhinoceros	2
Fish	1	Roan antelope	1
Fox	1	Secret bird	1
Gazelle	9	Serval	2
Gerenuk	1	Steinbuck	2
Giraffe	9	Topi	4
Grebe	1	Tortoise	2
Grey-headed kingfisher	1	Turaco	1
Ground hornbill	1	Turtle	2
Guinea fowl	2	Warthog	7
Hartebeest	2	Waterbuck	2
Hedgehog	1	Wild cat	2
Hippopotamus	16	Wildebeest	27
Hyena	2	Yellow-fronted canary	1
Hyrax	2	Zebra	18
Impala	20		
Kori bustard	1		
Kudu	5		
TOTAL 308			
TOTAL NUMBER OF CASES 225			

[79] Note: This table presents the type of species involved in the cases but does not represent the number of animal which have actually been killed, taken, captured, transported, possessed, traded, etc. during commission of those wildlife offences.

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