LAWYERS FOR ANIMAL PROTECTION IN AFRICA

INVESTIGATION · ILLEGAL WILDLIFE TRADE

Twelve Tonnes, *No Trial*

What twenty-two ivory seizures at the Port of Mombasa reveal about wildlife enforcement in Kenya

TWENTY-TWO MAJOR SEIZURES · OUTCOME OF EACH

LAPA

WILDLIFE CRIME & ENFORCEMENT PROGRAMME

CONTENTS

What is in this report

> **Note on sources.** Case outcomes and seizure figures are drawn from court records and confirmed open-source reporting. Figures marked for verification should be confirmed against primary sources before external citation.

KEY FINDINGS

Twenty-two major seizures. No conviction that has survived appeal.

22

Major ivory seizures — each exceeding 500kg — in which the Port of Mombasa featured as point of seizure, port of origin, or transit port since 2010.

12

Of those seizures were never prosecuted at all. A further one was withdrawn, one ended in acquittal, and seven remained pending.

15+ tonnes

Of ivory accounted for by the seizures that were never prosecuted.

0

Convictions surviving appeal. The single conviction recorded — Feisal Mohamed Ali, 2016 — was overturned, the appellate court finding the prosecution had not discharged its burden of proof.

1

The rank of the lead investigator — a corporal — assigned to the December 2016 case involving 1,097.75kg of ivory.

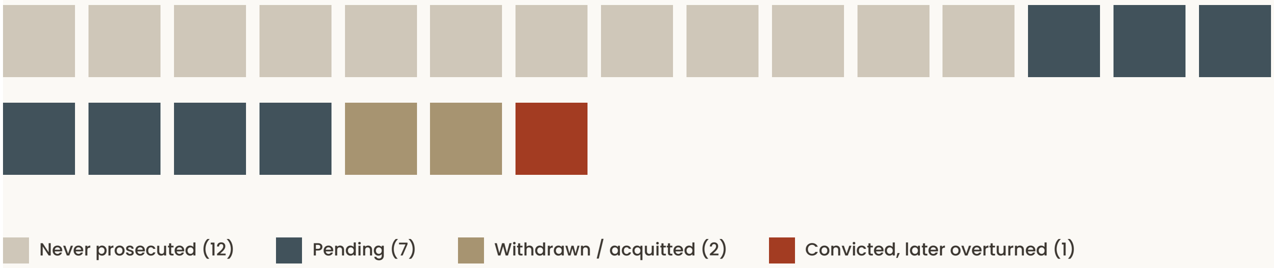
EXECUTIVE SUMMARY

A failure of conversion, not of capacity

Between 2010 and the period covered by this study, the Port of Mombasa featured in twenty-two major ivory seizures — as point of seizure, port of origin, or transit port. "Major" here means consignments exceeding 500 kilograms: not a tourist with a carving in his luggage, but containerised freight, moved by people with access to customs systems, shipping documentation and port infrastructure.

Of those twenty-two, twelve were never prosecuted at all. One prosecution was withdrawn. One ended in acquittal. Seven remained pending at the time of writing. One produced a conviction — in a trial the record shows to have been marked by police misconduct and procedural irregularity, and which did not survive appeal.

The ivory in the twelve unprosecuted seizures exceeds fifteen tonnes.



This report argues that these numbers describe something other than a resource problem. Kenya does not lack wildlife legislation; the Wildlife Conservation and Management Act, 2013 carries penalties among the most severe in the region. It does not lack enforcement agencies; this report identifies more than a dozen with relevant statutory mandates. It does not lack international support; the port has received scanning equipment, sniffer dogs, and a UNODC-supported container control programme.

What it lacks is the conversion of seizures into convictions of the people who organise them. On the evidence assembled here, the failure is systemic and has three components: **investigative capacity allocated inversely to case importance**, **the near-total absence of financial investigation**, and **corruption sufficiently embedded in port operations to render physical inspection controls decorative**.

CENTRAL RECOMMENDATION

Wildlife trafficking at this scale should be prosecuted as organised economic crime under the Proceeds of Crime and Anti-Money Laundering Act and the Prevention of Organised Crimes Act, with asset tracing and forfeiture as the primary instruments — not as a wildlife offence turning on possession of a trophy by whoever happened to be holding it.

Kenya has these statutes. In the cases examined here, they were almost entirely unused.

SECTION 01

Introduction: the profit, and the risk

Per kilogram, ivory and rhino horn have at times commanded retail prices comparable to cocaine or heroin. The penalties for trafficking them, in most jurisdictions, are substantially lower, and the probability of any individual consignment resulting in a conviction of its organiser is lower still.

That asymmetry is the whole business model. A trafficking network that can lose sixty per cent of its product and retain ninety-nine per cent of its revenues is not deterred by seizures. It is inconvenienced by them.

This is worth stating plainly because a great deal of anti-trafficking effort — and a great deal of the funding attached to it — is directed at interdiction: scanners, detection dogs, patrols, seizure statistics. Interdiction matters. But a seizure that removes product without touching the people, the companies or the money behind it is a cost of business absorbed and passed on.

The trade has also incorporated the very institutions meant to constrain it. The individuals implicated across the case material examined here are not only poachers and couriers. They include clearing agents, shipping agents, customs officials, port managers, and — in cases documented across the region — police, prosecutors and judicial officers.

> *Organised wildlife crime at this level does not evade the system. It operates through it.*

SECTION 02

Reality on the ground: the Port of Mombasa

A port that stopped finding things

For several years, Mombasa was described in international reporting as a nexus of the global ivory trade. Investigations by the Elephant Action League and by the *Wall Street Journal* set out a port where documentary falsification by shipping and clearing agents was routine, where inspection was negotiable, and where organised groups operated with confidence.

Then the seizures stopped. This can be read two ways, and the distinction matters enormously.

The first reading is success: enforcement improved, traffickers were displaced to other routes, and the absence of seizures reflects an absence of ivory.

The second reading is that the controls were bought. Under this reading, the absence of seizures reflects not an absence of contraband but an absence of detection — which is what one would expect if the relevant officials had been comprehensively compromised.

The evidence assembled here favours the second reading, for a reason that is difficult to argue around. **The port's own search and verification protocols have not independently generated an ivory seizure since 2013.**

The seizures that did occur came from elsewhere. The 2014 case involving Feisal Mohamed Ali arose before any involvement of port inspection staff. The December 2016 consignment of 1,095 kilograms cleared the port entirely — it was loaded, sailed, and was recalled from the high seas after intelligence originating outside Kenya. Scanners, detection dogs and the container control programme have, on this record, produced nothing.

> *A control system that never triggers is not evidence that nothing is passing through it. It is evidence about the control system.*

The concurrent prosecution of a large group of Kenya Revenue Authority and Kenya Ports Authority managers — including senior IT personnel — on fraud charges relating to port systems is consistent with this reading. If the data systems can be manipulated, the physical controls that depend on them are irrelevant.

What happened to the cases

OUTCOME OF TWENTY-TWO MAJOR SEIZURES SINCE 2010	NO.
Never prosecuted	12
Prosecution pending	7
Prosecution withdrawn	1
Acquittal	1
Conviction	1
Convictions surviving appeal	**0**

The single conviction — Feisal Mohamed Ali, 2016 — requires particular attention, because it was for a period presented internationally as evidence that Kenya's post-2013 enforcement regime worked.

The trial was, on the record, seriously compromised: exhibits mishandled, police conduct impugned, procedural irregularities throughout. **The conviction was subsequently overturned on appeal.**

ON APPEAL — THE COURT'S FINDING

No evidence pointed to Feisal. No witness testified that he was in possession of the trophies, or was seen or found ferrying them, or was found at the premises at any time before, during or after the recovery of the alleged ivory. There was no evidence that the vehicles mentioned by the witnesses belonged to him, nor of what his position was at Fuji Motors Ltd or the relationship he had with that company or its owners.

The court held that the principles of circumstantial evidence relied upon had been misconstrued; that the prosecution had not discharged its burden of proof, the doubts and gaps in the case falling to be resolved in the appellant's favour; and that he had been wrongly convicted and sentenced.

Who investigates, and how much

The Directorate of Criminal Investigations, not the Kenya Wildlife Service, is the lead agency for these cases. That allocation is defensible — DCI has the criminal investigation mandate and KWS's prosecutorial powers under the Wildlife Conservation and Management Act are, as discussed below, unclear.

What is not defensible is the resourcing pattern. For the January 2013 seizures and the 2015 "tea" consignments, multi-agency task forces were assembled, including the Lusaka Agreement Task Force and INTERPOL. For the Feisal investigation, and for the December 2016 case involving over a tonne of ivory, **the lead investigator was a single corporal.**

One officer, of junior rank, against a network with the resources to place ivory inside a sealed container, obtain a forest movement permit, clear it through two national customs systems, and load it onto a vessel.

The outcome of those investigations is not mysterious.

SECTION 03

Case study: the December 2016 consignment

This is the most instructive single case in the material, because the documentary trail is unusually complete. It is reproduced here in detail because the detail is the argument.

Torit, South Sudan ORIGIN

Consignment believed to originate in South Sudan, crossing into Uganda by road at Elegu. The Bill of Lading declared country of origin as the Democratic Republic of Congo and place of delivery as Sihanoukville, Cambodia. Declared exporter: a company at Torit. Declared importer: a company in Gujarat, India.

Declared origin false — each authority saw a document consistent with the last; none saw the whole.

Elegu & Kampala, Uganda 22 SEP 2016

Two containers sealed by Uganda Revenue Authority officers, with recorded seal numbers and a recorded officer identifier.

Rubber-stamped 28 August 2016 — a date earlier than the sealing date. Not queried.

Malaba, Kenya border RAIL TRANSIT

The Kenyan clearing agent generated an entry; KRA posted a sighting account on the SIMBA 2005 system. Officers performed a sight-check — container number, seal number, wagon number — against the entry. All three matched, because nothing about the container's exterior was false. As the declared contents were timber, the agent obtained a Forest Movement Permit from the Kenya Forest Service; teak beams carry no restriction on issuance, and the permit was properly issued for the goods as declared.

No physical verification — there is no scanner at Malaba. Whether to verify is a supervisor's discretionary decision.

Port of Mombasa 13–14 OCT 2016

A KPA export department employee completed a release form for customs. The customs official's function at this point is to compare KWATOS (KPA) data against SIMBA (KRA) data. **The information did not correspond.** The official identified the discrepancy, recorded that there appeared to have been an omission and that the consignment had been released for unknown reasons, and escalated to his supervisor. The supervisor's response was that the export section's function was to check container numbers and confirm the containers were intact.

Not scanned. Released 14 October.

Departure 19 OCT 2016

Loaded and sailed for Sihanoukville, Cambodia. Subsequent email correspondence shows a request to the shipping line to divert the containers.

Recall from the high seas 27 OCT – 4 DEC 2016

KRA received notification concerning a related consignment intercepted in Vietnam, naming the same exporter. The containers were returned to Mombasa, arriving 4 December.

Intelligence originated outside Kenya.

Scanned on return VERIFICATION

The image analyst recommended verification. Verification recovered **335 pieces of ivory, 1,097.75 kilograms.**

What this case establishes

Read it again in reverse. The same containers, in the same port, passed outward without scanning and were found on return by the first scan performed. The detection technology worked immediately when it was applied. It was not applied on the outward leg.

Note also what did *not* fail:

- The seals were intact.
- The container numbers were correct.
- The forest permit was validly issued.
- The customs officer who spotted the data mismatch **did his job** and escalated it.

> *The system generated a warning and a human being with authority declined to act on it. Every subsequent control was bypassed not by defeat but by omission.*

This is why capacity-building recommendations, standing alone, miss the point. More scanners at Malaba would help. More training would help. Neither addresses a supervisor deciding that a flagged discrepancy on a container bound for South East Asia is not his department's concern.

THE FINAL OUTCOME

One clearing agent arrested. The network that arranged a false DRC origin, a South Sudanese shell exporter, an Indian consignee, a Cambodian destination and a diversion request routed through a Gulf-based freight company remained untouched.

Methods of concealment

Across the case material, ivory and other trophies have been concealed within declared consignments of tea, plastics, groundnuts, coffee and timber. The commodity selection is not random — each is a bulk agricultural or industrial export for which Kenya and its neighbours are plausible sources, attracting no particular scrutiny and often, as with timber, carrying its own routine permit regime that provides documentary cover.

The adaptability is worth noting because it defeats commodity-specific profiling. Detection based on "what suspicious cargo looks like" will always trail the networks, which observe what is being examined and declare something else.

SECTION 04

Why the trade persists

Corruption

Corruption and wildlife trafficking are not adjacent problems; they are a single mechanism. Corruption enables every stage from poaching through export, and a portion of the proceeds is recycled into maintaining it. What the Mombasa material demonstrates is corruption at an institutional rather than individual level — not a ranger accepting money to look away, but the coordinated non-functioning of a control system.

This has an important implication for how these cases must be investigated. A network embedded in the enforcement apparatus cannot reliably be investigated by that apparatus. Where the lead investigator on a tonne-scale case is a lone junior officer within an institution that the network may already have penetrated, the investigation's failure is over-determined.

The legal framework, and what it does not do

Kenya's statutory position is better than it is often described. The Wildlife Conservation and Management Act, 2013 substantially raised penalties for offences involving endangered species. The Constitution incorporates ratified treaties, including CITES, through Article 2(5) and 2(6). Enforcement mandates exist across DCI, KWS, KFS, KRA, KPA, KAA, KMA, the Financial Reporting Centre, the Assets Recovery Agency, the ODPP and the National Intelligence Service.

FOUR STRUCTURAL WEAKNESSES RECUR IN THE CASE MATERIAL

1. **Prosecutorial ambiguity.** Neither the Wildlife Conservation and Management Act nor the Forest Conservation and Management Act clearly confers prosecutorial powers on KWS or KFS authorised officers. Both agencies conduct investigation and intelligence work and then depend on the ODPP to prosecute. Handover points are where cases are lost.

2. **Fragmentation without coordination duties.** More than a dozen agencies hold relevant mandates. Very little in the governing statutes obliges them to share intelligence, and where multi-agency task forces have been assembled they were assembled ad hoc, for particular cases, at the discretion of individuals.

3. **Severe penalties, weak process.** A statute providing for heavy sentences produces nothing if cases collapse before sentencing. Severity may in some circumstances make matters worse — where a penalty is perceived as disproportionate, courts become more exacting on evidence and more receptive to technical defences, and prosecutions with poor evidentiary foundations fail. Kenyan appellate treatment of **mandatory minimum sentences** under the WCMA has moved from a period of judicial softening to a rigorous reassertion of statutory boundaries, shaped throughout by shifting interpretations of Supreme Court human rights jurisprudence. In *Karim Ezekiel Kilumile v Republic* (2021) and *Samuel Achieng Alego v Republic* (2018), courts asserted that the *Muruatetu* rationale applied equally to non-optional minimum sentences, and freely reduced rigid WCMA penalties on mitigation such as first-time offending or a guilty plea.[1]

4. **Charging practice.** This is the central failure and it is set out separately below.

Capacity

Real, but frequently overstated as the primary cause. The December 2016 case did not fail for want of a scanner in Mombasa — the port has scanners. It failed because one was not used.

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1. In *Republic v Tuiya & 2 others* (2024/2025), courts reinforced that when dealing with mandatory WCMA minimums (such as section 92(4)), judges cannot bypass custodial or heavy financial floors to grant lighter alternatives such as Community Service Orders. This trajectory culminated in broader validation by the Supreme Court in *Republic v Manyeso* and related appeals, where the apex court upheld the constitutionality of legislative mandatory minimums, validating that Parliament has the sovereign right to prescribe rigid penalties to deter high-gravity crimes such as economic or wildlife exploitation.

SECTION 05 · THE CENTRAL FINDING

The unused statutes

Kenya's **Proceeds of Crime and Anti-Money Laundering Act** and the **Prevention of Organised Crimes Act** appear in this report's table of legislation.

They appear almost nowhere in the case material.

A tonne of ivory in a container is the *product* of an offence that is fundamentally financial. Somebody financed the purchase. Somebody paid the transporters, the agents, and the officials. Somebody expected payment on delivery in Cambodia. Somebody registered the companies in South Sudan, Uganda, India and the Gulf. Somebody moved the money.

Charged as a wildlife offence, the case turns on possession of a trophy and typically reaches only whoever is proximate to the container — a clearing agent, a driver. Charged as organised crime and money laundering, the case turns on the network.

INSTRUMENTS THE WILDLIFE STATUTE DOES NOT HAVE

Asset tracing & forfeiture	Under POCAMLA, through the Assets Recovery Agency, which has express powers over proceeds of crime and predicate offences.
Suspicious transaction analysis	By the Financial Reporting Centre.
Beneficial ownership inquiry	Into the corporate vehicles used at each stage of the route.
Mutual legal assistance	With transit and destination states, on terms a domestic wildlife charge does not readily engage.

Traffickers can absorb the loss of product. They cannot absorb the loss of assets, and they cannot easily replace a laundering channel that has been identified and closed.

WHAT THIS REQUIRES

Wildlife trafficking above a defined threshold should, as a matter of prosecutorial policy, be charged as organised economic crime, with a financial investigation opened in parallel from the point of seizure.

This requires no new legislation. It requires an ODPP policy direction, a standing FRC referral protocol, and the assignment of financial investigators to wildlife cases as a matter of course.

SECTION 06

The international picture — and its limits

The international trade in ivory has been prohibited under CITES since 1990. African elephant populations are split across Appendix I and Appendix II, and Appendix II listings permitted the one-off stockpile sales to Japan in 1999 and to China and Japan in 2008 — sales whose effect on subsequent demand remains contested and which are directly relevant to any future stockpile-sale proposal.

Since 2016, when the CITES Conference of the Parties resolved to recommend closure of domestic markets, the major consumer and transit jurisdictions have moved:

JURISDICTION	MEASURE	IN FORCE
China	Closed legal domestic ivory trade; licensed carving factories and retailers shuttered	2017
United States	Near-total federal commercial ban; several states legislating independently and more broadly	—
Taiwan	Commercial trading and display of all ivory banned via Wildlife Conservation Act amendments	2020
Hong Kong	Phased ban, phase-out running to the early 2020s	2021
Singapore	Full ban on domestic sale and public display for sale, under the Endangered Species Act	2021
United Kingdom	Ivory Act 2018; delayed by an unsuccessful judicial review brought by the antiques trade	2022

Two points matter for Kenya

First, demand-side closure shifts the enforcement burden, it does not remove it. As legal markets close, laundering routes become more valuable, not less — which is precisely the function that mammoth ivory now performs. Large volumes of mammoth tusk, principally from Russian permafrost, entering the same markets provide a legal cover commodity under which elephant ivory can be traded, and sustain the carving industry and consumer demand that would otherwise decay. Any Kenyan position at CITES should treat mammoth ivory regulation as an elephant conservation issue.

Second, online trade has substantially displaced physical retail. Enforcement designed around shops and market stalls does not reach it. This requires platform liability frameworks and crossborder digital investigation capacity, and it is an area where Kenyan enforcement has no meaningful presence.

SECTION 07

Recommendations

Fifteen measures, in five parts. None of the first four requires primary legislation.

A · ON CHARGING AND PROSECUTION

01 ODPP policy directing that large-scale wildlife trafficking be charged under POCAMLA and the Prevention of Organised Crimes Act, with wildlife offences charged in the alternative rather than alone.

02 A standing protocol requiring Financial Reporting Centre referral and a parallel financial investigation on every seizure above a defined threshold.

03 Statutory clarification of the prosecutorial and investigative powers of KWS and KFS authorised officers.

04 A dedicated wildlife crime prosecution unit within the ODPP, with continuity of counsel across the life of a case.

B · ON INVESTIGATION

05 Mandatory multi-agency task force composition for any seizure above a defined threshold — removing the discretion that produced a lone corporal on a tonne-scale case.

06 Vetted investigative units for cases where port or customs personnel are implicated, on the principle that a compromised institution cannot investigate itself.

07 Chain-of-custody and exhibit-handling protocols, with mandatory forensic sampling of seized ivory. The evidentiary failures in the Feisal proceedings are instructive and should be studied directly as a training case.

C · ON THE PORTS

08 Mandatory scanning of all export containers on selected high-risk routes, removing supervisory discretion for those routes.

09 Automated flagging where KWATOS and SIMBA data fail to correspond, with escalation that cannot be closed at supervisor level without recorded reasons. **The December 2016 discrepancy was detected by a human being and stopped there.**

10 Scanning capacity at Malaba and other inland entry points, where verification is currently a visual seal check.

D · ON THE REGION

11 Harmonisation of customs and wildlife penalties across EAC partner states, and a standing mutual legal assistance channel for wildlife cases through the Lusaka Agreement Task Force and HAWEN.

12 Reciprocal recognition of evidence, addressing the difficulty that arises where seized trophies are held in a third state — an issue that has already delayed proceedings in at least one Kenyan case.

E · ON THE MONEY

13 A beneficial ownership register requirement enforced against companies used in freight and clearing.

14 Customs flagging of trade transactions involving secrecy jurisdictions, and scrutiny of invoices for misinvoicing indicators.

15 Cost-of-crime quantification, to support forfeiture and compensation claims against convicted traffickers on behalf of the State.

SECTION 08

Conclusion

The question — where is Kenya going wrong in terms of illegal wildlife trade? — presupposes that the answer is a deficiency. Insufficient law, insufficient equipment, insufficient training.

The evidence in this report points somewhere less comfortable. On the December 2016 consignment, the law was adequate, the equipment was present, and an officer correctly identified the anomaly. The consignment sailed anyway.

Twelve seizures, fifteen tonnes, never prosecuted. Twenty-two major seizures and no conviction that has survived appeal. These are not the statistics of a system that is trying and failing for want of resources.

They are the statistics of a system that has been arranged, at specific points, not to work.

That is a harder problem than a funding gap, and it will not be solved by another scanner. It will be solved by following the money, prosecuting the networks rather than the couriers, and treating the compromise of enforcement institutions as itself the offence to be investigated.