

"الإطار القانوني لمكافحة جرائم البيئة في جمهورية كينيا"

The Legal Framework of Fighting Environmental Crimes in the Republic of Kenya

PRESENTATION

BY

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Scope of the Presentation



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Introduction



- ❖ Environmental crimes are illegal activities harming the environment and aimed at benefitting individuals/groups or companies from the exploitation of damage to trade or theft of natural resources.
- ❖ Environmental crimes are recognised as transnational organized crimes allowing organized groups to exploit natural resources with minimal risk, contributing to conflicts and illicit financial flows.
- ❖ In order to ensure efficiency of investigation and prosecution of environmental crimes there is need for cooperation and collaboration between prosecutors and law enforcement agencies.

Types of Environmental Crimes

- Illegal trade in wildlife e.g poaching & wildlife trafficking
- Smuggling of ozone depleting substances
- Illicit trade in hazardous waste
- Illegal, unregulated and unreported fishing
- Illegal logging and charcoal trade
- Oil spillage
- Destruction of wetlands
- Improper solid waste disposal (including marine litter)



International Conventions

- **United Nations Convention against Transnational Organized Crime(UNTOC):**

- ❖ Member States commit to combatting transnational organized crime by creating domestic offences, enhancing extradition and law enforcement cooperation, and promoting training and technical assistance to strengthen national authorities' capacities.
- ❖ MoU/Agreements to establish joint investigation teams.

- **Convention on International Trade in Endangered Species (CITES):**

- ❖ Ensures that international trade in wild animals and plants does not threaten their survival.



International Conventions Cont'd



- **United Nations Convention on the Law of the Sea (UNCLOS):**

- ❖ Sets international rules for maritime boundaries, exploitation, conservation, management of natural resources, navigation rights and ensuring sustainable use of ocean resources globally.

- **United Nations Convention Against Corruption (UNCAC):**

- ❖ Strives to prevent and combat corruption through measures like criminalization, law enforcement, international cooperation, asset recovery, and technical assistance.

Regional Conventions / Agreements

African Convention on the Conservation of Nature and Natural Resources:

Aims to enhance environmental protection, sustainable development, and natural resource conservation across Africa, promoting cooperation and legal frameworks for ecological sustainability.

East African Community (EAC) Protocol on Environment and Natural Resources Management:

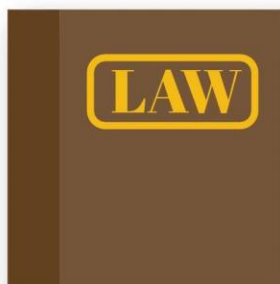
Aims to promote sustainable development, ensure environmental protection, and enhance cooperation among EAC Member States for natural resource management.

Jeddah Amendment to the Djibouti Code of Conduct 2017:

Aims to enhance cooperation between states in order to repress illicit maritime activities including illegal, unreported and unregulated fishing and also recognizes the important role of the 'Blue Economy'

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National Legal Framework



1. The Constitution of Kenya 2010
2. The Environmental Management and Co-ordination Act, 2015
3. The Climate Change Act, 2016
4. The Forest Conservation and Management Act, 2016
5. The Wildlife Conservation and Management Act, 2013
6. The Water Act, 2016
7. The Energy Act, 2019
8. The Nuclear Regulatory Act, 2022
9. Fisheries Management and Development Act, 2016

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National Environmental Regulatory Authorities



National Environment
Management Authority
(NEMA)



The Climate Change Council



Kenya Wildlife Service
(KWS)



The National Environment
Tribunal



Kenya Forest Service
(KFS)

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Role of ODPP in Prosecution of Environmental Crimes

► Policy Development:

Decision to Charge; Plea Bargaining and Diversion Policy, SOP's for Wildlife Offences in Kenya and ODPP Sustainability Green Plan Policy.

► Multi-Agency Cooperation:

The ODPP collaborates with law enforcement agencies such as National Environment Management Authority, Kenya Wildlife Services, Kenya Forest Service, Kenya Revenue Authority, Asset Recovery Agency and Directorate of Criminal Investigations to effectively prosecute environmental crimes.

► Case Management System:

Implementation of the *Uadilifu* Automated Case Management System which registers and tracks environmental crimes in Kenya.

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Role of ODPP in Prosecution of Environmental Crimes



- **Establishment of Land and Environmental Division.**
- **Participating in the Kenya Landscape and Ecosystem Restoration Program and the National Tree Planting Day:**
Through frequent tree planting activities across ODPP offices.
- **Community dialogue/engagement:**
Sensitizing the public on the importance of environmental protection and conservation.
- **Embracing renewable energy:**
Installation of Solar Panels in various offices such as Wajir.
- **Capacity building:**
Training of Prosecutors in the high prevalent environmental crime areas such as Narok, Nanyuki, Taita Taveta etc

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Challenges

1. Resource constraints to undertake thorough investigations and evidential forensic analysis
2. Inordinate delays in trial process
3. Reluctance by witnesses to appear and testify for fear of reprisal.
4. Reluctance of witnesses to provide information against the architects.
5. Economic dominance of the criminal groups through corruption or political interference
6. Lack of designated courts/magistrates to handle environmental crimes related cases.



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Lessons Learnt



- Establishment of a forensic analysis lab at Kenya Forest Services expediting analysis of evidence
- "Follow the Money Approach" in tracing, confiscating and forfeiting illicit funds.
- Sensitizing the public through programs conducted by Prosecutors, Kenya Wildlife Services with support from Conservation bodies.
- Punitive and deterrent sentences and fines.
- Destruction of ivory.
- Forfeiture of instruments of crime

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Lessons Learnt Cont'd

- Enhanced joint trainings for prosecutors and law enforcement agencies on environmental crimes particularly on investigation, collection, preservation and presentation on evidence.
- Increase use of Plea Bargaining and Diversion tools by prosecutors.
- Establishment of Multi Agency Task teams to share intelligence, information and best practices at the border points and airports.



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Case Law

Nicholas Kipnetich & 2 others v Republic (Criminal Appeal 20 & 19 of 2019 and 140 of 2017) (Consolidated) [2021] KEHC 447 (KLR) HC Nyahururu:

The accused persons were convicted for being in illegal possession of wildlife trophies contrary to sec 95 of the Wildlife Conservation and Management Act, 2013. On appeal, J Charles Kariuki, upheld the court a quo's decision partially. He reduced their penal sentence from payment of fine Kes 24 million to Kes 5 million or in default to serve a 5 year imprisonment term instead of life imprisonment.

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Case Law Cont'd

Kerumpoti Leiyan v Republic Criminal Appeal No. 2 of 2015 eKLR [2016] at HC Kajiado:

The accused was convicted on all 3 counts: Killing of an elephant with intent to steal, illegal possession of wildlife trophy and failure to report of obtaining a wildlife trophy. On appeal the court upheld the lower court's decision of retaining the imprisonment sentence to 7 years as a measure of deterrence.

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Conclusion



- ❖ Environmental crime which has emerged to be transnational in nature poses a serious threat to not only Kenya or Africa, but globally.
- ❖ International collaboration and cooperation through signing of MoUs/Agreements.
- ❖ Advocate for policy reforms within our respective sovereign countries.
- ❖ Ratification of international and regional instruments by States.

"Protecting the global environment is directly related to securing peace... those of us who understand the complex concept of the environment have the burden to act."

***- Prof. Wangari Maathai,
Nobel Prize, Laureate.***

