



# Wildlife Offences in Kenya

## Points to Prove

A Rapid Reference Guide for the Investigation and  
Prosecution of Wildlife Related Offences

Including Standard Operating Procedures and Sample Charges



2<sup>nd</sup> Edition 2016





# A Rapid Reference Guide for the Investigation and Prosecution of Wildlife Related Offences

## Including Standard Operating Procedures and Sample Charges



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With support from:



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## ABBREVIATIONS

AG	Attorney General
ACECA	Anti-Corruption and Economic Crimes Act 2003
AML	Anti Money Laundering
ARA	Asset Recovery Agency
DPP	Director of Public Prosecutions
EACCM	East African Community Customs Management Act 2004
ODPP	Office of the Director of Public Prosecutions
FRC	Financial Reporting Centre
GSU	General Service Unit
IO	Investigating Officer
KCIA	Kenya Citizenship and Immigration Act 2011.
KDF	Kenya Defence Forces
KIS	Kenya Immigration Services
KRA	Kenya Revenue Authority
MLA	Mutual Legal Assistance
NEMA	National Environment Management Authority
NIS	National Intelligence Service
OCG	Organised Criminal Group
POCA	Prevention of Organised Crime Act 2010
POCAMALA	Proceeds of Crime and Anti-Money Laundering Act 2009
WCMA	Wildlife Conservation and Management Act 2013

## INTRODUCTION

Wildlife crime in Kenya and indeed across the world has become increasingly organized with criminal networks forging links across countries and continents. The transnational nature of such criminal activity has evolved and diversified with links that include human migrant exploitation, money laundering, arms and drug trafficking, amongst others. This in turn has led to the exploitation and undermining of financial systems affecting the world's economies and social-development.

THE ODPP instituted the 1<sup>st</sup> Interagency Forum on Wildlife Related Crimes in 2013 which brought together key agencies. Following on the forum in 2013, the ODPP, together with Kenya Wildlife Service, the National Police Service, the Kenya Revenue Authority, Department of Immigration Services, Attorney General's Office, and Judiciary worked together to develop this *Rapid Reference Guide To Wildlife Crime*. Encompassing all relevant offences under existing laws at the time of publication, this is intended to be a quick reference guide for investigators and prosecutors alike.

The guide lays out what is required to build an evidential case against those accused of wildlife and related crimes; it also sets out the ancillary powers available under each of the relevant statutes.

Finally, it includes the Standard Operating Procedures regarding inter-agency collaboration relating to the investigation and prosecution of such offences. It is geared towards fostering better cooperation and collaboration between all the agencies involved in the fight to preserve Kenya's heritage.

This reference will serve as a critical tool in the fight against wildlife related crime. It is applicable to all officers from key law enforcement agencies and is geared towards fostering better cooperation and collaboration amongst them. The guide is subject to review as and when circumstances deem necessary.

## ACKNOWLEDGEMENT

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3. Our stakeholder partners whose comments, critique and ideas helped shape this guide and indeed the standard operating procedures.
4. To the team-this effort was not in vain.

# STANDARD OPERATING PROCEDURE ON INVESTIGATION AND PROSECUTION OF WILDLIFE CRIMES

## SECTION A: PREAMBLE

1. **Article 157** of the Constitution of the Republic of Kenya provides for the establishment of the Office of the Director of Public Prosecution (ODPP). **Article 157(6)(a)** provides that the ODPP shall exercise State powers of prosecution and may institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed<sup>1</sup>.
2. **Article 243** of the Constitution of the Republic of Kenya provides for the establishment of the National Police Service. **Section 35** of the National Police Service Act provides for the functions of the Directorate of Criminal Investigations which include, among others, undertake investigations on serious crimes including terrorism, detection and prevention of crime, apprehension of offenders, and perform any other function conferred on it by any other written law.
3. **Section 107** of the Wildlife Conservation and Management Act 2013 ('the Act') provides for delegated powers of prosecution to be afforded to officers of the Kenya Wildlife Service. Part XIII of the same Act provides for powers of investigation, arrest and enforcement to authorised officers of the Kenya Wildlife Service.
4. In order to ensure efficiency of investigations and prosecution of wildlife crimes, there is need to have a close cooperation between the ODPP and other agencies involved in the detection, investigation and prosecution of such crime. This includes partners in the Kenya Revenue Authority and Immigration Services.
5. The objectives of this Standard Operating Procedure (S.O.P) are to ensure effective coordination between ODPP and other agencies in relation to specific wildlife crimes. This S.O.P was created in collaboration between the judiciary, the ODPP, Kenya Wildlife Service (KWS), Kenya Revenue Authority (KRA), National Police Service (NPS) and the Immigration Department.

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<sup>1</sup> Section 5(2)(a) the Office of the Director of Public Prosecutions Act.

6. The term ‘investigator’ refers to any officer employed by the National Police Service, the Immigration services, Kenya Wildlife Service, Kenya Revenue Authority or any other State Agency, who comes into contact, during the execution of their duty, with any suspected crime concerning any suspected wildlife offences as specified below.

## SECTION B: REFERRAL OF WILDLIFE CASES TO THE ODPP

7. In wildlife crimes in Kenya, for cases that satisfy the criteria in Part 8 below, the case shall be referred to the ODPP:
  - a) where the Investigating Officer (I.O.) is considering building an evidential case relating to a suspect against whom there is an intelligence picture or
  - b) In any case where an arrest is being contemplated;
  - c) In any case where it is clear that advice from the ODPP may be needed e.g. where a consignment related to an endangered or critically endangered species under the 6th Schedule of the Act, or where CITES listed species is discovered;
  - d) as soon as possible after an arrest.

### 8. Criteria For Cases To Be Referred To ODPP

- A: (i) **In any matter involving elephant, ivory or its derivative.**  
(ii) **In any matter involving any rhino, or rhino horn or its derivative.**
- B: For all other wildlife crime, such cases must be referred only if **any one** of the following criteria is also present:
- (i) Where the suspect is a foreign national or of unknown nationality;
  - (ii) Where the suspects are three or more in number and the I.O considers it may be an ‘organized crime’;
  - (iii) Where any of the suspect(s) are serving or retired state or public officer(s), including serving/ex members of the disciplined services and armed forces;
  - (iv) The wildlife related item is for export or import or transit or concerns a CITES listed item in the context of export/import or transit;
  - (v) Where there is use of any firearm in the commission of the crime.
  - (vi) In cases where poison is used, the use of that poison is of such scale or concern as to merit the involvement of the ODPP;
  - (vii) Where there is an intelligence profile concerning the suspect in relation to an endangered or critically endangered species under the Act.
  - (viii) Where the suspect is reasonably suspected to be a beneficiary of proceeds of wildlife crime or there is suspicion of money laundering linked to wildlife crime;

- (ix) Where in the course of investigations involving a wildlife crime, there is an incident of obstruction of justice.
- (x) Where the suspect is a repeat offender in the context of wildlife crime and related offences.
- (xi) Where the suspect is a public or influential figure in his/her community.
- (xii) Where the investigation and prosecution of the crime will involve transnational cooperation.
- (xiii) Where the offence involves foreign diplomatic missions, international bodies and/or multinational bodies.
- (xiv) Where the suspect, in committing the wildlife related offence has also committed other offences not chargeable under the Act.
- (xv) Any other offence that the agencies would wish to refer to the ODPP for advice.

## THE ODPP TO AUTHORISE CHARGE IN ALL OF THE ABOVE CASES

9. The ODPP shall be responsible for authorization of charge wherever any of the above criteria apply. Following authorization of charge, the ODPP may retain the conduct of the prosecution of that case or exercise delegated powers of authority to another relevant agency.
10. **Amendment/Discontinuance of Charges:** subsequent alteration or discontinuance of said charge by a delegated authority **must** be done in consultation with the ODPP.

## SECTION C: LIAISON BETWEEN AUTHORITIES

11. The ODPP will ensure that a liaison person is appointed in each County Office who will act as a point of contact for the agencies in those Counties. The I.O. will bear responsibility for ensuring contact is made with that liaison officer to arrange a face to face consultation, telephone conference or request for written advice depending on the circumstances of the case.
12. THE ODPP liaison officer in each county shall identify the appropriate contact point in Kenya Wildlife Service, Kenya Immigration Department and Kenya Revenue Authority, National Intelligence Service and the National Police Service.
13. In any case referred under this SOP that demands the involvement of any of those agencies, the liaison officer shall make contact through those contact points as soon as practicable and in the format agreed between the agencies.

## SECTION D: PRE-ARREST CONFERENCE BETWEEN ODPP AND INVESTIGATORS

14. Where an arrest is being contemplated under section B above, the ODPP and the I.O will ensure that a pre-arrest conference is held as soon as possible after notification from the I.O. to the ODPP. The Prosecutor will offer the required advice that may include:
- (i) Possible offences to charge
  - (ii) Lines of enquiry to take
  - (iii) Admissibility of evidence
  - (v) Potential need for expert evidence
  - (vi) Possible legal applications e.g. restraint of assets or applications for mobile phone data records.
  - (vii) Identification of issues and applications relevant to witness protection and public interest immunity.
  - (viii) How to obtain evidence from abroad (Mutual Legal Assistance)
  - (ix) How evidence should be presented in court
  - (x) Whether a parallel financial investigation is merited or the case may call for potential involvement of the Financial Reporting Centre (FRC) and/or Ethics and Anti-Corruption Commission (EACC) and/or Asset Recovery Agency (ARA). If so, the ODPP will, without delay, direct contact with those agencies in order to take forward the financial aspect of investigation.
  - (xii) Evidential and legal consequences of a proposed investigative technique.
  - (xii) Setting a timetable for disclosure of evidence and subsequent meetings to review.
  - (xiii) That the Prosecution Counsel and the I.O will ensure that they regularly conference for purpose of discussing progress of investigations
  - (xiv) Consideration of bail and or any other applications.

## SECTION E: POST-ARREST CONFERENCE

15. In cases where an arrest is made in the absence of any prior consultation with the ODPP in relation to an offence under this S.O.P. the following shall occur:
- a) At first appearance the charge shall be authorised by the ODPP or a further remand sought for further investigation;
  - b) Where no charge is laid at first appearance or where a not guilty plea is entered at that first appearance, a post arrest conference shall be held within five days between the I.O. the ODPP and any other interested agency concerned with the investigation.
16. Advice may include all matters listed in section D above.

## SECTION F: CONDUCT OF INVESTIGATIONS and BEST PRACTICE SECURING EXHIBITS

### 17. The Investigating Officer should:

- (a) Secure the exhibits
- (i) The first officer at the scene of crime shall recover and ensure safety of exhibits and must prepare an inventory and hand over to Investigating Officer who shall ensure the exhibit's chain of custody is maintained in the Chain of Custody Form and as per the KWS Procedure for Management of Wildlife Scenes of Crime.
- (ii) Investigating Officer shall ensure that the exhibits are properly labelled and kept in separate bags, kits, envelopes or containers to prevent contamination.
- (iii) The Investigating Officer shall ensure safe custody and proper recording of the exhibit in an Exhibit register.
- (iv) Where a firearm or ammunition is seized, the police shall be immediately informed so as to assist the investigation.
- (v) The Investigating Officer shall determine exhibits that require expert examination, complete the Exhibit Memo Form and forward them to the appropriate expert examining body without delay.
- (vi) The Investigating Officer shall collect the expert report together with the exhibit from the expert, and keep them in safe custody until their production in court.
- (vii) Where a suspect is in custody, the I.O. should inform the expert and request an early preliminary report.
- (viii) Where there is a documentary exhibit that does not require expert opinion, the Investigating Officer shall keep copies in the file and produce the originals in court.
- (ix) Perishable items must be preserved appropriately or photographs taken by the scenes of crime officer who must then provide a certificate of authenticity and ensure he is available for trial. <sup>2</sup>
- (x) Only a court may determine when an exhibit may be released to an interested party.
- (xi) Exhibit shall be stored wherever possible with KWS. The I.O. shall ensure he obtains a nominated point of contact at KWS who shall take responsibility for storage of those exhibits. Wherever that KWS officer hands over responsibility to another officer, he shall record the time, date and name of that handover in the occurrence book. That new officer shall bear the same responsibility and duty on any subsequent handover. The occurrence book shall be made available to the I.O.

<sup>2</sup> See later section on pre-trial conference.

- (xii) In any case where any exhibit is lost or misappropriated or altered or manipulated in any way or at any time, the ODPP shall direct a robust investigation with a view to identifying and charging the responsible party.
- (xiii) Where the exhibit lost in (xii) above concerns ivory or rhino horn, the ODPP shall prioritize the direction of that investigation.

## STATEMENTS FROM THE SUSPECT

- 18. (i) Should the suspect make any voluntary verbal statement before arrest the I.O. should record those statements in an I.O. report for the prosecutor.
- (ii) At the time of arrest, the I.O. should inform the suspect of his right to silence and caution him appropriately before inviting the suspect to consider making a formal statement.
- (iii) If any confession is to be relied upon, it must have been obtained in accordance with the Evidence Act (Confession Rules 2009).

## FINGERPRINTS

- 19. The I.O. shall ensure that fingerprints are taken for all suspects arrested in relation to wildlife related offences.

## WITNESS STATEMENTS

- 20. (i) The telephone number, residential or work address of witnesses shall NOT be recorded within the body of the statement unless relevant to the commission of the offence. This is to avoid inadvertent disclosure of the witness' whereabouts to the defendant or his accomplices.
- (ii) Contact details should be recorded only in the 'List of Witnesses' and must remain in the file.
- (iii) In taking a witness statement, the officer must address how the witness' evidence assists in establishing the offence against the accused with particular consideration of the 'points to prove' for individual offences.
- (iv) Whilst taking a statement, the officer shall enquire as to 'dates to avoid' for the witness availability for any future trial. These dates to avoid shall be clearly endorsed on the 'List of Witnesses'.

## BAIL (SEE ALSO SECTION I)

- 20. (i) The I.O. must give early consideration to the issue of bail.
- (ii) The I.O. must not assume that every case demands a remand in custody.
- (iii) The I.O. having regard to the factors set out below, must give consideration to issues of bond, security and conditions that may be attached to bail.

- (iv) The I.O. must set out his proposal on bail or remand in writing and attach to the file.
- (v) Where a remand in custody is sought, the I.O. must complete an affidavit in advance of plea.

21. **FACTORS TO CONSIDER IN RELATION TO BAIL** will include the following:

**(I) Likelihood that the accused will abscond**

- a) The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found to be guilty (consider quantity and value of any item seized);
- b) The strength of the prosecution case against the accused person/nature of evidence on which the suspect has been arrested.
- c) Community ties; if suspect is a foreign or unknown nationality (immigration to be notified and supporting evidence obtained); no confirmed place of residence, whether he/she as employment, children/family ties.
- d) Accused failure to surrender to bail on previous occasion (provide criminal case no. & court)

**(II) Likelihood that the accused will interfere with witnesses and/or the investigation**

- a) Likelihood of interference with prosecution witnesses e.g. proximity of address/community/relationship to any witness.
- b) The inquiries that have been made by the police in relation to the offence and any further inquiries proposed to be made (including whether information given by the accused has led to discovery of evidence or arrest of another person in relation to another offence).

**(III) Likelihood that the accused will commit an offence while on release**

- a) The character and antecedents of the accused (e.g. criminal record and/or material yet to be recovered believed to be in possession of the accused); other pending prosecutions.

**(IV) That detention is necessary for the accused's own protection**

- a) Officer's view based on views in the community and/or other indicators of possible harm to the accused if released.

## 22. CHARGES

- a) The I.O. shall propose relevant charges and draft the charge sheet. This is not binding upon the ODPP.

## MINIMUM REQUIREMENTS OF A FILE

23. No charge shall be authorised without the approval of the ODPP. The police file submitted for a charging decision must contain, as a minimum the following:

PRE- CHARGE	PLEA STAGE
Date and Location Affidavit objecting to bail if there are reasons for the accused not to be released on bail	Bail considerations placed on the front of the file with a summary of evidence/enquiries conducted thus far. An affidavit where necessary.
Application supported by affidavit under the Evidence Act for deferring of plea.	Previous convictions/any record of the accused in previous proceedings, if any.
	Key witness statements.
	Proposed charges (unless authorised in advance by ODPP).
	Any expert report available at the time.
	Documentary exhibits including billing and other media downloads.
	List of witnesses.
	List of exhibits.
	Statement of accused (if any).
	Any discs (e.g. a CD-ROM) should be labelled with the operation name and sufficient detail to identify it and distinguish it from any material previously submitted.
	Any photographs should be labelled and submitted in a separate envelope or file within the file.

## SECTION F: CONDUCT OF THE CASE AT COURT

**ON BAIL** Where bail is granted and the prosecutor is dissatisfied, the prosecutor shall:

24. a) immediately notify the court of the intention to appeal  
b) seek a stay on release of the suspect pending appeal.
25. Where bail is not opposed, the prosecutor shall give further consideration to appropriate conditions that may be attached such as regular reporting. He/she will notify the I.O. of any conditions attached to bail.

## ON PRE-TRIAL CONFERENCE

26. Following a plea of ‘not guilty’, the prosecutor of the case shall request a pre-trial mention/conference with the court, with prosecution and defence to attend. This will be in order to:
- a) set a timetable for service of evidence and notify if any further evidence is to be obtained and served.
  - b) confirm witness availability,
  - c) inform the court of potential difficulties in proceeding on the anticipated trial date;
  - d) inform the court where a court visit is required to view an exhibit
  - e) inform the court that photographs will be used for bulky exhibits and ascertain any objection;
  - f) confirm the requirement for expert witnesses and seek admission/agreement if possible;
  - g) address any issues relating to legal representation of the defendant;
  - h) inform the court of issues relating to perishable items and consider acceptable method of production before the court
  - i) address the release of exhibits to their owners and clarify obligation of owners to return to the court with exhibit as and when required.
  - j) alert the court on issues regarding forfeiture applications and any other ancillary orders that may be sought post-conviction such as deportation, unclaimed assets and identification of appropriate agency to which forfeiture may be made.
27. The prosecution shall provide a copy of the evidence to be relied upon (only) to the judge presiding over the pre-trial mention/conference in advance of the hearing.

## ORDERS POST CONVICTION

28. Where forfeiture is sought, the prosecutor must stipulate the specific State agency to which any such asset is to be forfeited.
29. Upon sentence of a foreign national to a term of imprisonment, the prosecutor shall be responsible for informing the immigration point of contact as to the anticipated date of release. The immigration authorities shall bear responsibility for contact prison authorities to ensure that the suspect is deported from a place of custody without delay.

## SECTION G: DISPUTE RESOLUTION

30. In case of a dispute or disagreement between the allocated prosecutor and I.O. that cannot be resolved between the two of them, the matter should be referred to the head of the ODPP Wildlife Crimes Unit; and in relation to the I.O. his superior officer in the relevant agency.

# SECTION 1 – RELEVANT OFFENCES UNDER THE WILDLIFE CONSERVATION and MANAGEMENT ACT 2013 (WCMA)

S77(2) Killing of a problem animal in a protected area, or the use of any poison , pitfall or snare for the killing of such an animal.	
POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location and Identify of the accused</p> <p>That a species was killed</p> <p>That species was an ‘endangered species’ within the Act</p> <p>A: That death or injury was caused by a poison, pitfall or snare</p> <p>That the accused was responsible for administering the poison directly or indirectly, or had laid the pitfall or snare or caused it to be laid</p> <p>He did so intending to cause injury or death to any animal or was reckless as to whether such death or injury would be caused.</p> <p>OR</p> <p>B: The accused killed a species</p> <p>That killing took place in a ‘protected area’ OR</p> <p>He failed to report it within 48 hours (ie. For killings outside of a protected area)</p>	<p>Seizure, confiscation, inspection, production order s110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress s108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Govt. Chemist, Judiciary</p>	
<p>Evidence:</p> <p>Eyewitness evidence; civilian witnesses, arresting officer, I.O. photographs and a national museum report or government analyst report or expert report on the nature of poison used AND that it caused the death or injury. Scene of crimes photos – see Annex C on the issue of expert reports. It is not a requirement that only a government analyst can give expert evidence. Any expert may do so but must cite his qualifications, experience, methodology and basis for conclusions. Further he must satisfy the court as to the integrity of the exhibit and continuity in relation to receipt and return to and from the I.O. A ‘problem animal’ is defined as any wildlife which has caused or is causing damage to or harm to human life or property.</p> <p>The difference between A and B is that under A the prosecution may or may not accept that the animal was a ‘problem animal’, indeed, the defence may allege that it was but under s77(2), NOTHING can authorise the killing of an animal, problem or not, through use of poisoning, snare or pitfall. Under B, however, the criminality is that the killing takes place in a protected area and so might cater for the killing of a lion (for example) by spear which is not an offence under part A above but is an offence if committed in a protected area. The defence can therefore allege that it was a problem animal but if killed in a protected area, the prosecution may well accept it but legally, the location is what is relevant.</p>	

CHARGE COUNT ONE	POISONING OF AN ENDANGERED SPECIES OF WILDLIFE CONTRARY TO SECTION 77(2) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location-protected area)</b> , killed an endangered species, namely <b>(identify the species)</b> by poisoning/use of a snare/pitfall <b>(delete as appropriate)</b> .
CHARGE COUNT ONE	KILLING AN ANIMAL WITHIN A PROTECTED AREA CONTRARY TO SECTION 77(2) WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location-protected area)</b> , killed a species, namely <b>(identify the species)</b> by <b>(specify the means)</b> .

s84(1) WCMA – Offence Relating To Dealing In Wildlife Trophies Without A Dealers License and S92 WCMA Offences Relating To Endangered And Threatened Species. – Minimum 20 million Ksh and/or Imprisonment For Life.	
POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
Date and Location  Identify the species  Identity of the accused person(s) who were dealing  Absence of a dealer’s licence in relation to the item  'The suspect was conducting activities in relation to the trophy 'in the ordinary course of any business or trade i.e. in the 'ordinary course of any business or trade' (see definition in preamble)	Seizure, confiscation, inspection, productions 110  Forfeiture s105  Restraint order s108 (Environment and Land Court)
Agencies: KWS, NPS, ODPP, KFS, NEMA, Judiciary	
Notes: A dealer is defined as 'any person who, in the ordinary course of any business or trade carried on by him, whether on his own behalf or on behalf of another person, a) sells, purchases, barter or otherwise in any manner deals with a trophy or b) cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares any trophy or c) transports or conveys any trophy.  It is not vital to show that he made a financial gain as the Act allows for 'bartering' as well and under sub-section c), a suspect found with trophies in a vehicle could be charged under this section as well for straightforward possession.	

CHARGE COUNT ONE	DEALING IN WILDLIFE TROPHY CONTRARY TO SECTION 84 (1) AS READ WITH SECTION 92 AND SECTION 105 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> within <b>(insert)</b> county was found Dealing in Wildlife Trophies namely; <b>(identify the nature of the trophy)</b> , without a License.

CHARGE COUNT ONE	BEING IN POSSESSION OF/DEALING/MANUFACTURING (DELETE AS APPROPRIATE) A WILDLIFE TROPHY (TROPHIES) WITHOUT A PERMIT OR OTHER LAWFUL EXEMPTION, CONTRARY TO S 95 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> was found in possession or dealing with or manufacturing <b>(delete as appropriate)</b> a wildlife trophy namely <b>(identify the nature of the trophy)</b> without a permit or other lawful exemption granted under this Act.

**When charging offences in relation to Endangered or Threatened Species e.g. Ivory or Rhino Horn, have regard to recent decisions from the High Court on the operation of the relevant sections – consult with ODPP**

**FOR ENDANGERED OR THREATENED SPECIES, SEE SCHEDULE 6 OF WCMA at ANNEX D**

CHARGE COUNT ONE	BEING IN POSSESSION/DEALING/MANUFACTURING (DELETE AS APPROPRIATE) OF A WILDLIFE TROPHY (TROPHIES) RELATING TO AN ENDANGERED OR THREATENED SPECIES, WITHOUT A PERMIT OR OTHER LAWFUL EXEMPTION, CONTRARY TO S 95 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> was found in possession or dealing with or manufacturing <b>(delete as appropriate)</b> a wildlife trophy namely <b>(identify the nature of the trophy)</b> without a permit or other lawful exemption issued under this Act, and that trophy relates to an endangered or threatened species as specified within Schedule 6 of this Act.

s88 Breaching a Management Plan – possible application for illegal grazing outside national parks?

(2)(a) for national parks, national reserves and national sanctuaries – Minimum 500,000Ksh and/or Minimum 2 years.

(2)(b) for any other case, minimum 100,000Ksh fine.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>That there was a management plan in place governing the affected area, gazetted in accordance with section 44</p> <p>Identify the terms of the management order that are relevant to the breach</p> <p>Identify how the suspect has breached the terms of that management plan</p> <p>Proof that he did so “wilfully and without reasonable cause” or “fraudulently altered the approved management plan</p>	<p>Forfeiture s105</p> <p>Restraint order or other redress s108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary</p>	
<p>Evidence: Eyewitness evidence; arresting officer, proper exhibit of the management plan by a stakeholder involved/named therein would be ideal although if gazetted, the magistrate should be able to take judicial notice of it. Suspects knowledge that he was breaching the plan will have to be proved e.g. involvement of his community in development of the same, public notice (e.g. by gazette), evidence of previous warning etc.</p> <p>Notes: this offence may be used to counter the practice of illegal grazing on land that falls outside of national parks and national reserves/sanctuaries. The high minimum penalty in this act could act as more a deterrent than that under the Trespass Act (500Ksh).</p>	

CHARGE COUNT ONE	CONTRAVENING A MANAGEMENT PLAN, CONTRARY TO SECTION 88 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> wilfully and without reasonable cause contravened an approved management plan by <b>(specify the breach, e.g. allowing cattle to graze)</b> at <b>(location)</b> when by virtue of <b>(insert clause)</b> of the management plan, such conduct was prohibited.</p>

s89 WCMA – Offence Relating to Pollution of Wildlife Areas – Minimum 2 million Ksh and/ or Minimum 5 years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>Identify the hazardous substance, or pollutant OR</p> <p>Identify the ‘waste’ or ‘oil’</p> <p>That substance was discharged</p> <p>That the accused was responsible for the discharge</p> <p>The area into which it was discharged is a ‘wildlife conservation area’ i.e. protected by law (see definitions under the Act, Annex A)</p> <p>Effect on the wildlife conservation area</p>	<p>Accused can be ordered to pay the full cost of cleaning or to take responsibility for the clean up himself ‘to the satisfaction’ of KWS s89 (2)</p> <p>Court may direct accused to contribute to a wildlife conservation activity as compensation, restoration and restitution - s89(3)</p> <p>Seizure, confiscation, inspection, productions 110</p> <p>Forfeiture s 105</p> <p>Restraint order s 108 (Environment and Land Court)</p>

Agencies: KWS, NPS, ODPP, KFS, NEMA, Judiciary

Evidence:  
 Eyewitness evidence; arresting officer; government analyst OR expert evidence confirming the nature of the substance and its effect – see s77 and s48 of the Evidence Act and Annex C of this guide. The report does not HAVE to be government analyst, rather under s77 there is a presumption that a person purporting to be a government analyst has the necessary qualifications. Care must be taken then with any other expert under s48 to ensure the statement stipulates his qualifications, experience, methodology used and conclusions and basis for conclusions in a detailed way. I.O. re: interviews, photographs.

**CHARGE**  
**COUNT ONE**

**DISCHARGE OF A HAZARDOUS SUBSTANCE OR WASTE OR OIL CONTRARY TO SECTION 89(1)(A) AS READ WITH SECTION 89(1) (C) OF THE WCMA.**

**PARTICULARS OF OFFENCE**

**(Name of the accused)** on the **(date)** at **(location)** within **(insert)** county discharged a hazardous substance namely **(state)** or waste or oil **(delete as appropriate)** into **(location of discharge)**, a designated Wildlife Conservation Area.

s90 Failing/Refusing/Neglecting to Comply with a Wildlife Conservation Order or Easement– Minimum 500,000Ksh and/or Minimum 3 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The existence of a Wildlife Conservation Order or Easement issued under WCMA</p> <p>That the Accused was subject to it</p> <p>Accused failed to comply or neglected or refused to comply with the terms of that order</p>	<p>Seizure, confiscation, inspection, productions 110</p> <p>Forfeiture s 105</p> <p>Restraint order or other redress 108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, KFS, NEMA, Judiciary</p>	
<p>Evidence: Eyewitness evidence; arresting officer, I.O. re: interviews, certified copy or exhibit from issuing court regarding the order and/or easement issued, exhibited copy of the gazetted notice of the order/easement or proof of service of the same upon the accused.</p> <p>Notes:</p>	

CHARGE COUNT ONE	FAILING TO COMPLY WITH WILDLIFE CONSERVATION ORDER/ EASEMENT (SPECIFY) CONTRARY TO SECTION 90 (A) (FOR WILDLIFE CONSERVATION ORDER) OR SECTION 90(B) (FOR EASEMENT)(DELETE AS APPROPRIATE) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
<p>PARTICULARS OF OFFENCE</p>	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b>, failed, neglected or refused to comply <b>(delete as appropriate)</b> with a wildlife conservation order/easement <b>(delete as appropriate)</b> issued by an order dated <b>(insert date)</b> by <b>(state general particulars of the breach)</b>.</p>

s91 Offences Relating to Licences/Permits – Dishonesty and Breaches – Minimum 200,000Ksh and/or Minimum 1 Year Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>91 (a) The accused: made a statement or representation AND that statement was false AND he/she knew or was reckless as to whether the statement/representation as false; AND he did so for the purposes of receiving a permit or licence for himself or another</p> <p>91(b) The accused: furnished a document or information on another that document or information was false AND the accused knew was reckless as to whether the document or information he submitted was false AND he did so for the purposes of receiving a permit or licence for himself or another</p> <p>91(c) The accused: 'used' a licence or permit AND that licence or permit was false, OR was invalid or had been falsified OR that license/permit had been altered without authorisation AND the accused knew or was reckless as to whether that licence or permit was false or falsified/invalid/ altered</p> <p>The accused Had a valid licence or permit AND Contravened a condition or requirement of that licence or permit AND Knew he was so doing</p>	<p>Seizure, confiscation, inspection, production, revocation of permits 110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress 108 (Environment and Land Court)</p> <p>AGENCIES: KWS, NPS, ODPP, KFS, NEMA, Judiciary</p> <p>EVIDENCE Eyewitness evidence; exhibits officers, arresting officer, I.O, expert witness e.g. on handwriting. Evidence of authorisation or lack of from KWS</p> <p>Note: s91 (a) and (b) allow you to prosecute where the permit/license was obtained for a third party. What matters is that the suspect was acting dishonestly for the purposes of obtaining that permit/license</p> <p>For the other offences, the purpose is for anything in connection with this Act. Any offence relating to alteration/forgery or breach for purposes other than those connected with this Act can only be prosecuted under ordinary penal code offences or using other relevant legislation</p>

CHARGE COUNT ONE	OBTAINING A LICENCE OR PERMIT BY MAKING A FALSE STATEMENT OR FALSE REPRESENTATION, CONTRARY TO S 91(A) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> for the purpose of obtaining a licence/permit <b>(delete as appropriate)</b> for himself/ another <b>(delete as appropriate)</b>, knowingly or recklessly made a false statement/false representation <b>(delete as appropriate)</b>, namely <b>(give particulars of the statement/representation)</b> to an issuing authority namely Kenya Wildlife Service.</p>

CHARGE COUNT ONE	USING A FALSE/INVALID/ALTERED (DELETE AS APPROPRIATE) PERMIT/LICENSE (DELETE AS APPROPRIATE) WITHOUT AUTHORISATION, CONTRARY TO 91(C) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> , Option 1: knowingly or recklessly used a false/falsified/invalid <b>(delete as appropriate)</b> licence/permit <b>(delete as appropriate)</b> OR Option 2: knowingly or recklessly used a licence/permit <b>(delete as appropriate)</b> that had been altered without authorisation.

CHARGE COUNT ONE	CONTRAVENING A CONDITION OR REQUIREMENT OF A LICENSE OR PERMIT (DELETE AS APPROPRIATE), CONTRARY TO SECTION 91(D) OF THE WILDLIFE CONSERVATION OR MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> , knowingly contravened a condition or requirement of a license or permit that had been issued to him by Kenya Wildlife Service by <b>(give particulars of the breach)</b> .

CHARGE COUNT ONE	OBTAINING A LICENCE OR PERMIT BY FURNISHING A FALSE DOCUMENT OR FALSE INFORMATION (DELETE AS APPROPRIATE) CONTRARY TO S 91(B) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> for the purpose of obtaining a licence/permit <b>(delete as appropriate)</b> for himself/another <b>(delete as appropriate)</b> , knowingly or recklessly furnished a document or information <b>(delete as appropriate)</b> that was false, namely <b>(give particulars of the document/information in question)</b> to an issuing authority, namely Kenya Wildlife Service.

s93 (a) Knowingly Introducing an Invasive Species into a Wildlife Conservation Area  
 s93 (b) Failing to Comply with Measures Set by the Cabinet Secretary under this Act  
 Minimum 300,000Ksh and/or Minimum 1 Year Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>Identify the invasive species see Schedule 7, Annex D</p> <p>The accused had knowledge that that it was an invasive species</p> <p>The accused was responsible for introducing the invasive species into an area AND</p> <p>That area was a wildlife conservation area OR</p> <p>Identify measures issued by the Cabinet Secretary AND</p> <p>Evidence of failure of the Accused to comply with the same</p>	<p>Seizure, confiscation, inspection, productions 110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress 108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, KFS, NEMA, Judiciary</p>	
<p>Evidence:          Eyewitness evidence; arresting officer, I.O. re: interviews, gazette notice of CS measures.</p>	

CHARGE COUNT ONE	INTRODUCING AN INVASIVE SPECIES INTO A WILDLIFE CONSERVATION AREA, CONTRARY TO SECTION 93(A) OF THE WILDLIFE CONSERVATION OR MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b>, knowingly introduced an invasive species, namely <b>(identify the species)</b> into a wildlife conservation area, namely <b>(identify)</b>.</p>

CHARGE COUNT ONE	FAILURE TO COMPLY WITH MEASURES ISSUED BY THE CABINET SECRETARY, CONTRARY TO SECTION 93(B) OF THE WILDLIFE CONSERVATION OR MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b>, knowingly contravened measures that had been issued by the Cabinet Secretary on <b>(specify date)</b> in that he/she <b>(give particulars of breach)</b>.</p>

s95 Possession/Dealing/Manufacturing any Wildlife Trophy Without a Permit or Exemption  
Minimum 1 million Ksh and/or Minimum 5 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
Date and Location  Possession OR  Dealing OR  Manufacturing  AND absence of a licence/exemption in relation to that item	Seizure, confiscation, inspection, productions 110  Forfeiture s 105  Restraint order or other redress 108 (Environment and Land Court)
Agencies: KWS, NPS, ODPP, FRC, ARA, Judiciary, NIS. Mutual Legal Assistance may be necessary – ODPP and Kenya Central Authority	
<p>Evidence:                      Eyewitness evidence; arresting officer, I.O. photographs and a national museum report or government analyst report or expert report on the nature of the trophy – see Annex C on the issue of expert reports. It is not a requirement that only a government analyst can give expert evidence. Any expert may do so but must cite his qualifications, experience, methodology and basis for conclusions. Further he must satisfy the court as to the integrity of the exhibit and continuity in relation to receipt and return to and from the I.O.</p> <p>On possession:                      It is necessary to prove knowledge of possession of an article, not necessarily the nature of the article but the ODPP should advise on the legal aspect of this. Knowledge can be implied if not in physical possession but issues such as the degree of control over the item are important. E.g. If a suspect is caught in possession of a bag, he is deemed to be in possession of the contents of that bag. If an item is found in his car, he is deemed to be in possession of any item found in that car. Where you have more than one suspect in a car, evidence such as exactly where the item was found in the car will be vital – in the boot? The passenger or driver’s side foot-well? The driver’s door? The glove compartment? Fingerprint evidence may be necessary and continuity of exhibit handling will be vital.</p>	

CHARGE COUNT ONE	BEING IN POSSESSION OF/DEALING/MANUFACTURING (DELETE AS APPROPRIATE) A WILDLIFE TROPHY (TROPHIES) WITHOUT A PERMIT OR OTHER LAWFUL EXEMPTION, CONTRARY TO S 95 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> was found in possession or dealing with or manufacturing <b>(delete as appropriate)</b> a wildlife trophy namely <b>(identify the nature of the trophy)</b> without a permit or other lawful exemption granted under this Act.</p>

**WHEN CHARGING OFFENCES IN RELATION TO ENDANGERED OR THREATENED SPECIES E.G. IVORY OR RHINO HORN, HAVE REGARD TO RECENT DECISIONS FROM THE HIGH COURT ON THE OPERATION OF THE RELEVANT SECTIONS – CONSULT WITH ODP**

**FOR ENDANGERED OR THREATENED SPECIES, SEE SCHEDULE 6 OF WCMA at ANNEX D**

<p>CHARGE COUNT ONE</p>	<p>BEING IN POSSESSION/DEALING/MANUFACTURING (DELETE AS APPROPRIATE) OF A WILDLIFE TROPHY (TROPHIES) RELATING TO AN ENDANGERED OR THREATENED SPECIES, WITHOUT A PERMIT OR OTHER LAWFUL EXEMPTION, CONTRARY TO S 95 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.</p>
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> was found in possession or dealing with or manufacturing <b>(delete as appropriate)</b> a wildlife trophy namely <b>(identify the nature of the trophy)</b> without a permit or other lawful exemption issued under this Act, and that trophy relates to an endangered or threatened species as specified within Schedule 6 of this Act.</p>

s96 Sports Hunting – Penalties depend on nature of the animal as specified under Schedule 9 of the WCMA – see Annex D of this guide.

CATEGORY A: Black or White Rhino/African Elephant: Minimum 20 Million Shillings and/or Life Imprisonment.

CATEGORY B: All other endangered/vulnerable mammals set out in the Sixth Schedule or all birds/reptiles set out in the Fifth Schedule: up to 5 Million Shillings and/or Five Years Imprisonment.

CATEGORY C: All other mammals, birds or shellfish: up to 1 million shillings and/or Two Years Imprisonment.

NOTE: The fifth schedule in the Act relates to management plans. This needs amending so until then, take care in charging Cat B birds/reptiles under this provision.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
Date and Location	Seizure, confiscation, inspection, productions 110
The accused was in the process of 'hunting' or had hunted	Forfeiture s105
Identify the animal	Restraint order or other redress 108 (Environment and Land Court)
That hunting was for sport or recreational purposes	
Agencies: KWS, NPS, ODPP, Judiciary	
Evidence: Eyewitness evidence; arresting officer, I.O. expert witness evidence re: nature of the weapon for example. There are further problems with the way this offence is drafted (see wording in Annex D). The categories are not actually specified within this offence and so one might anticipate challenge from the defence in charging this section. Accordingly consider alternative suitable charges. If in relation to an endangered or threatened species, consult with the ODPP.	

CHARGE COUNT ONE	HUNTING A PROHIBITED ANIMAL FOR RECREATIONAL OR SPORTING PURPOSES, CONTRARY TO SECTION 96 AND SCHEDULE 9 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> hunted (or was hunting) an animal <b>(identify)</b> for recreational or sporting purposes, that animal being specified under Category A, B, C <b>(delete as appropriate)</b> under the Ninth Schedule of this Act.

s 97 Subsistence Hunting Minimum 30,000Ksh and/or Minimum 6 Months Imprisonment  
 BUT  
 Minimum 20 million Ksh and/or Life Imprisonment for ENDANGERED/THREATENED  
 SPECIES.

POINTS TO PROVE

Date and Location

The accused was in the process of 'hunting' or had hunted

If already in possession of hunted animal, identify the animal

That hunting was for sport or recreational purposes.

Where the hunting relates to an endangered or threatened species, this should be charged with reference to s92

Agencies: KWS, NPS, ODPP, Judiciary

Evidence:

Eyewitness evidence; arresting officer, I.O. expert witness,

The QUANTITY of the bush meat (if found) is highly relevant to establishing the purpose – whether for subsistence or for trade (see s98).

CHARGE  
 COUNT ONE

ENGAGING IN HUNTING FOR THE PURPOSES OF SUBSISTENCE,  
 CONTRARY TO SECTION 97 OF THE WILDLIFE CONSERVATION  
 AND MANAGEMENT ACT 2013.

PARTICULARS  
 OF OFFENCE  
 (See Second  
 Schedule of  
 C.P.C.)

**(Name of the accused)** on the **(date)** at **(location)** was engaged in hunting of an animal namely **(identify animal)** for the purposes of subsistence.

s 98 Engaging in Hunting/Possession/Dealing of any Meat of a Wildlife Species for Bushmeat Trade - Minimum 200,000 Ksh and/or Minimum 1 Year Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The accused was in the process of 'hunting' a 'wildlife species' OR</p> <p>Was dealing in meat OR</p> <p>Was in possession of meat AND</p> <p>The meat was that of a 'wildlife species' AND</p> <p>The hunting/possession or dealing of that animal or meat was for the purposes of trade</p>	<p>Seizure, confiscation, inspection, productions 110</p> <p>Forfeiture s 105</p> <p>Restraint order or other redress 108 (Environment and Land Court) e.g. an injunction</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary</p>	
<p>Evidence: Eyewitness evidence; arresting officer, I.O. expert evidence to identify the meat as that of a 'wildlife species' as opposed to a cow or goat; large quantities are indicative of trading as would be storage facilities (e.g. a cool-box/freezer); evidence of transportation MPESA records/presence of cash/notebooks of customers/money owed.</p>	

CHARGE COUNT ONE	ENGAGING IN HUNTING/POSSESSION/DEALING (DELETE AS APPROPRIATE) FOR THE PURPOSES OF TRADING IN BUSH MEAT, CONTRARY TO SECTION 98 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> was in possession of/dealing in/engaged in hunting of (delete as appropriate) an animal namely <b>(identify animal)</b> for the purposes of subsistence.</p>

s99 Import/Export/Introduction of a Wildlife Species Without a Permit: Category 'A' Animals: Minimum 10 million Ksh and/or Minimum 5 Years Imprisonment; Other Animals; Minimum 1 million Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 43
<p>Date and Location</p> <p>Identify the wildlife species in question.</p> <p>Identify the 'specimen' of that species</p> <p>The absence of an permit allowing any of the activity below AND</p>	<p>Seizure, confiscation, inspection, production of documents s110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress s108 (Environment and Land Court)</p>
<p>The accused knowingly</p> <p>a. Imported/introduced that species into or out of Kenya OR</p> <p>Exported or Re-Exported OR</p>	<p>Agencies: KWS, NPS, ODPP, Judiciary, KRA, KPA, KAA, AG, Ministry of Foreign Affairs and International Trade. Mutual Legal Assistance may be necessary (ODPP and Kenya Central Authority)</p>
<p>b. Took that species within Kenya OR upon Kenya's territorial waters or</p> <p>c. Took that species on to the high seas OR</p> <p>d. Was in possession of or was selling/delivering/carrying/transporting or shipping by any means any species that had been carried on high seas or within Kenya's territorial waters OR</p> <p>e. Had Delivered/received, carried transported or shipped that species within Kenya AND</p> <p>Was doing so for commercial purposes OR</p> <p>f. Was selling or offering that species for sale in a commercial transaction within or outside Kenya OR</p> <p>h. The Accused was acting in violation of the rules and regulations that govern that particular species</p>	<p>Evidence: Eyewitness evidence; arresting officer, I.O. expert witness as to the nature of the item. Evidence from KRA/Immigration regarding the rules/regulations and nature of any breach and/or manner of importation/exportation and absence or alteration or fraud relating to any documentation governing the import or export. Re: the commercial nature under subsections e) and f), evidence of bank transfers/MPESA/mobile phone downloads/SMS may be vital</p>

CHARGE COUNT ONE	IMPORTING/EXPORTING/RE-EXPORTING/INTRODUCING (DELETE AS APPROPRIATE) THE SPECIMEN OF A WILDLIFE SPECIES WITHOUT A PERMIT CONTRARY TO S99 (1) AS READ WITH S99(3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> was engaged in the importing/exporting/re-exporting/introducing <b>(delete as appropriate)</b> of a specimen of a wildlife species <b>(identify nature and quantity of species involved) animal</b> without a permit issued by the Kenya Wildlife Service.

CHARGE COUNT ONE	TAKING A SPECIMEN OF A WILDLIFE SPECIES WITHIN KENYA OR KENYA'S TERRITORIAL WATERS (DELETE AS APPROPRIATE) WITHOUT A PERMIT, CONTRARY TO 99(2) (B) AS READ WITH S99 (3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> took a wildlife specimen, namely <b>(identify nature and quantity of species involved)</b> to a place within Kenya <b>(state location)</b> OR within territorial waters of Kenya (give particulars) without a permit issued by the Kenya Wildlife Service.

CHARGE COUNT ONE	TAKING A SPECIMEN OF A WILDLIFE SPECIES UPON THE HIGH SEAS CONTRARY TO S 99(2) (C) AS READ WITH SECTION 99(3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> took a wildlife specimen, namely <b>(identify nature and quantity of species involved)</b> upon the high seas <b>(give particulars if possible e.g. grid references)</b> without a permit issued by the Kenya Wildlife Service.

CHARGE COUNT ONE	POSSESSING/SELLING/DELIVERING/CARRYING /TRANSPORTING/ SHIPPING (DELETE AS APPROPRIATE) A WILDLIFE SPECIES CONTRARY TO S 99(2) (D) AS READ WITH SECTION 99(3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> was in possession of/was engaged in selling/sold/delivering/carrying/ transporting/shipping (delete) a wildlife specimen, namely <b>(identify nature and quantity of species involved)</b> taken from within Kenya/taken from the territorial waters of Kenya/taken upon the high seas <b>(delete as appropriate)</b> without a permit issued by the Kenya Wildlife Service.

CHARGE COUNT ONE	ENGAGING IN COMMERCIAL ACTIVITY CONCERNING A WILDLIFE SPECIES WITHOUT A PERMIT, CONTRARY TO S 99(2) (E) AS READ WITH SECTION 99(3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> delivered/received/carrying/transported/shipped (delete as appropriate), by county commerce <b>(specify)</b> a wildlife specimen, namely <b>(identify nature and quantity of species involved)</b> for commercial purposes, without a permit issued by the Kenya Wildlife Service.

CHARGE COUNT ONE	SELLING/OFFERING FOR SALE <b>(DELETE AS APPROPRIATE)</b> A WILDLIFE SPECIES FOR COMMERCIAL PURPOSES, WITHIN OR OUTSIDE KENYA <b>(SPECIFY)</b> , CONTRARY TO S 99(2) (F) AS READ WITH SECTION 99(3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> , sold/offered to sell <b>(delete as appropriate)</b> , a wildlife specimen, namely <b>(identify nature and quantity of species involved)</b> to another for commercial purposes, without a permit issued by the Kenya Wildlife Service.

CHARGE COUNT ONE	VIOLATING RULES AND REGULATIONS PERTAINING TO A LISTED WILDLIFE SPECIES CONTRARY TO S 99(2)(H) AS READ WITH SECTION 99(3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> , knowingly violated rules and regulations pertaining to a listed wildlife species, namely <b>(identify nature and quantity of species involved)</b> by <b>(give particulars of the regulations breached)</b> .

**NOTE:** there are problems with the way the offences under this section are charged: The reference in s99(3) to ‘Category A’ animals doesn’t actually specify a Schedule to which one should refer. Accordingly, for Endangered or Threatened Species, it is better to draft this with the additional reference to section 92 unless and until the law is amended or precedent is set as to the operation of these provisions. See Offences under East African Community and Customs Management Act 2004.

§100 False Claims for Compensation: Minimum 100,000Ksh and/or Minimum 6 Months Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The accused made a claim for compensation re: wildlife damage OR</p> <p>The accused made a statement concerning wildlife damage</p> <p>That claim/statement was made to the Wildlife Conservation and Compensation Committee or Kenya Wildlife Service AND</p> <p>That statement/claim was false AND</p> <p>The Accused knew it was false.</p>	<p>Seizure, confiscation, inspection, production of documents s110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress 108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary</p>	
<p>Evidence: Eyewitness evidence; documentary evidence of the claim, correctly exhibited if in writing) arresting officer, I.O. It is possible an expert on handwriting evidence would be required but costs should be considered bearing in mind the size of the claim involved. If payment has been effected charge for obtaining money by false pretence and giving false information to a public officer under the relevant provisions of the penal code.</p>	

CHARGE COUNT ONE	MAKING A FALSE CLAIM OR FALSE STATEMENT IN RELATION TO COMPENSATION CONTRARY TO SECTION 100 OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
<p>PARTICULARS OF OFFENCE</p>	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> made a claim/ statement <b>(delete as appropriate)</b> to the Wildlife Conservation and Compensation Committee/Kenya Wildlife Service <b>(delete as appropriate)</b> in respect of wildlife damage claim for <b>(give brief particulars of the claim)</b> knowing or having reason to believe that the information was false.</p>

s101 Failing to Comply with a Reasonable Order issued by an Authorised Officer: Minimum 100,000Ksh and/or Minimum 6 Months Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>Proof that a requirement or demand was given to the accused</p> <p>Proof that the officer involved was an authorised officer and that his demand/requirement was lawful AND</p> <p>The accused failed to comply OR</p> <p>The accused obstructed a person AND</p> <p>That person was acting in the execution of his duties under this Act</p>	<p>Seizure, confiscation, inspection, productions 110</p> <p>Forfeiture s 105</p> <p>Restraint order or other redress 108 (Environment and Land Court)</p>
Agencies: KWS, NPS, ODPP, Judiciary, NEMA	
<p>Evidence: Eyewitness evidence; arresting officer, I.O. This offence is aimed primarily at those obstructing KWS who are going about their duties.</p>	

CHARGE COUNT ONE	FAILING TO COMPLY WITH A LAWFUL REQUIREMENT OR DEMAND CONTRARY TO SECTION S 101 (A) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013. OR OBSTRUCTING A PERSON IN THE EXECUTION OF HIS POWER OR DUTY CONTRARY TO S 101 (B) OF WCMA.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> having been issued with a lawful requirement or demand, namely <b>(identify the demand)</b> failed to comply with the said requirement or demand without reasonable excuse OR</p> <p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> wilfully obstructed <b>(name of the officer)</b> from executing his power or duties under this Act by <b>(specify act that constitutes obstruction)</b>.</p>

S102(a) Entering or Residing in a National Park or Reserve Without Permission. Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The area is a national park or national reserve – see Schedule 11 at annex D</p> <p>AND</p> <p>The accused entered or resided there AND</p> <p>He had no permit to so do OR</p> <p>If an authorised person or employed by the park or reserve, he was not acting in the course of his duty</p>	<p>Seizure, confiscation, inspection, production of documents s110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress s108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary, KMA, KFS, NEMA</p>	
<p>Evidence: Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area as a national park/reserve. Witnesses from relevant conservancies or/and county government, photographs. Answers on interview.</p> <p>This provision only applies to national parks or reserves as listed in the Eleventh Schedule. It may be used to prosecute those employed by the Service who enter into parks/reserves whilst off duty and without making appropriate payment/obtaining authority.</p>	

CHARGE COUNT ONE	ENTERING/RESIDING IN (DELETE AS APPROPRIATE) A NATIONAL PARK OR RESERVE WITHOUT A LICENCE OR PERMIT CONTRARY TO SECTION 102(1) (A) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b>, on the <b>(date)</b>, at (location) being a national park/reserve <b>(delete as appropriate)</b>, entered into/resided <b>(delete as appropriate)</b> therein without a permit.</p>

s102(b) Setting/Causing Fire to Vegetation in a Wildlife Protected Area. Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE

ANCILLARY POWERS  
Section 2 page 40

Date and Location

The area is a 'wildlife protected area'

AND

The accused either set fire to vegetation within

OR

The accused allowed a fire that he or his 'servant' set to enter a wildlife protected area

Seizure, confiscation, inspection, production of documents s110

Forfeiture s105

Restraint order or other redress s108 (Environment and Land Court)

Agencies: KWS, NPS, ODPP, Judiciary ,KMA, KFS, NEMA

Evidence:

Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area as a national park/reserve. Witnesses from relevant conservancies or/and county government, photographs. Answers on interview.

A protected area is defined as a 'clearly defined geographical space, recognised, dedicated and managed through legal or other effective means to achieve long term conservation of nature with associated ecosystem services and cultural values' (see definitions under the Act). Accordingly conservancies may fall within this even if regulations governing their status have not yet been finalised provided they represent an area managed through 'other effective means' under the above definition. The purpose of the area in question will be key in establishing it as one that falls within this provision.

CHARGE  
COUNT ONE

CAUSING FIRE WITHIN A WILDLIFE PROTECTED AREA, CONTRARY TO SECTION 102(B) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.

PARTICULARS  
OF OFFENCE

**(Name of the accused)** on the **(date)** at **(location)** being a wildlife protected area, set fire to vegetation within that area OR allowed a fire lighted by him/his servant (delete as appropriate) to enter that wildlife protected area.

s102(c) Carrying out logging in a National Park or Reserve. Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The area is a national park or reserve (see eleventh Schedule at annex D)</p> <p>AND</p> <p>The accused carried out 'logging' within</p>	<p>Seizure, confiscation, inspection, production of documents s110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress s108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary, KMA, KFS, NEMA</p>	
<p>Evidence:</p> <p>Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area as a national park/reserve. Witnesses from relevant conservancies or/and county government, photographs. Answers on interview.</p> <p>This only applies to National Parks or Reserves, not private conservancies or any other protected area. Accordingly offences of 'criminal damage' may have to suffice if this is conducted outside of a Schedule 11 area.</p>	

CHARGE COUNT ONE	CARRYING OUT LOGGING WITHIN A NATIONAL PARK/RESERVE (DELETE AS APPROPRIATE) CONTRARY TO SECTION 102(C) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> , on the <b>(date)</b> , at <b>(location)</b> being a National Park/Reserve, carried out logging within that area.

s102(d) Cultivating Land within a National Park or Reserve. Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The area is a national park or reserve (See eleventh Schedule, annex D)</p> <p>AND</p> <p>The accused cleared and cultivated land within</p>	<p>Seizure, confiscation, inspection, productions 110</p> <p>Forfeiture s 105</p> <p>Restraint order or other redress 108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary KMA, KFS, NEMA</p>	
<p>Evidence:</p> <p>Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area as a national park/reserve. Witnesses from relevant conservancies or/and county government, photographs. Answers on interview.</p> <p>This only applies to National Parks or Reserves, not private conservancies or any other protected area. Accordingly offences of 'criminal damage' may have to suffice if this is conducted outside of a schedule 11 area.</p>	

CHARGE COUNT ONE	CULTIVATING LAND WITHIN A NATIONAL PARK/RESERVE (DELETE AS APPROPRIATE) CONTRARY TO SECTION 102(D) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
<p>PARTICULARS OF OFFENCE</p>	<p><b>(Name of the accused)</b>, on the <b>(date)</b>, at <b>(location)</b> being a National Park/Reserve <b>(delete as appropriate)</b>, cleared and cultivated land within that area.</p>

s102(e) Wilful Damage/Removal of Objects within a Wildlife Protected Area. Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The area is a 'wildlife protected area' AND</p> <p>The accused wilfully damaged any object AND</p> <p>That object was of geological, prehistoric, archaeological, historic, marine or other scientific interest OR</p> <p>He removed or attempted to remove the same</p>	<p>Seizure, confiscation, inspection, productions 110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress 108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary, KMA, KFS, NEMA</p>	
<p>Evidence: Expert evidence as to the value/interest of the object in question is key. Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area as a wildlife-protected area is desirable. Witnesses from relevant conservancies or/and county government, photographs. Answers on interview.</p> <p>A protected area is defined as a 'clearly defined geographical space, recognised, dedicated and managed through legal or other effective means to achieve long term conservation of nature with associated ecosystem services and cultural values' (see definitions under the Act). Accordingly conservancies may fall within this even if regulations governing their status have not yet been finalised provided they represent an area managed through 'other effective means' under the above definition. The purpose of the area in question will be key in establishing it as one that falls within this provision.</p>	

CHARGE COUNT ONE	WILFUL DAMAGE/REMOVAL (DELETE AS APPROPRIATE) OF AN OBJECT WITHIN A WILDLIFE PROTECTED AREA, CONTRARY TO SECTION 102(E) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> being a wildlife protected area, wilfully damaged/removed/attempted to remove <b>(delete as appropriate)</b> an object of geological/prehistoric/archaeological/historic/marine/scientific <b>(delete as appropriate)</b> namely <b>(identify the object)</b> by <b>(give particulars of the act)</b>.</p>

s102(f) Conveying Weapons into a Protected Area. Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The area is a 'protected area' AND</p> <p>The Accused conveyed into that area OR was found in possession of:</p> <p>A firearm, ammunition, arrow, spear, snare, trap or similar device AND</p> <p>He had no authorisation to so do</p>	<p>Seizure, confiscation, inspection, s110 e.g. in relation to any vehicle used to convey; the weapon itself etc.</p> <p>Forfeiture s105</p> <p>Restraint order or other redress s108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary</p>	
<p>Evidence: Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area as a protected area is desirable. Witnesses from relevant conservancies or/and county government, photographs. Answers on interview. Expert evidence may be needed to identify the weapon.</p> <p>On possession, see page 20.</p> <p>As to meaning of protected area, see previous pages.</p> <p>If a Firearm or Ammunition, charge under Firearms Act or even under Prevention of Terrorism Act as amended by the Security Laws (Amendment) Act, depending on the nature of the firearm. The penalties are higher than allowed for under WCMA. Consult with ODPP.</p>	

CHARGE COUNT ONE	CONVEYING OF/POSSESSION OF A WEAPON INTO A PROTECTED AREA, CONTRARY TO SECTION 102(F) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b>, on the <b>(date)</b>, at <b>(location)</b> being a protected area, was found in possession of/conveyed into that protected area (delete as appropriate) a device, namely (identify) without authorization.</p>

s102(g) Undertaking Extractive Activity in a Marine Protected Area. Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The area is a 'marine protected area' (see Schedule 11) AND</p> <p>The Accused was conducting extractive activity within.</p> <p>Absence of any authorisation</p>	<p>Seizure, confiscation, inspection, production of documents s110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress such as injunctions s108 (Environment and Land Court)</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary, NEMA, telecoms, banking</p>	
<p>Evidence: Expert evidence, possibly from industry experts, may be necessary. Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area as a marine protected area and absence of authorisation is desirable. Photographs. Investigations in to the company (if there is one) may be vital. Answers on interview.</p>	

CHARGE COUNT ONE	UNDERTAKING EXTRACTIVE ACTIVITY IN A MARINE PROTECTED AREA, CONTRARY TO SECTION 102(G) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b>, on the <b>(date)</b>, at <b>(location)</b> carried out extractive activity in a marine protected area, namely <b>(identify)</b> without authorisation.</p>

s102(h) Undertaking Related Activity in a Wildlife Protected Area without Authorisation  
 Minimum fine 200,000Ksh and/or Minimum 2 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
Date and Location  The area is a 'wildlife-protected area' AND  The Accused was conducting activity related to any of the offences within s102  Absence of any authorisation	Seizure, confiscation, inspection, productions 110  Forfeiture s105  Restraint order or other redress such as an injunctions 108 (Environment and Land Court)
Agencies: KWS, NPS, ODPP, Judiciary, NEMA, Telecoms, banking	
Evidence: Expert evidence, possibly from industry experts, may be necessary. Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area and absence of authorisation. Photographs. Investigations in to the company (if there is one) may be vital. Answers on interview.	

CHARGE COUNT ONE	UNDERTAKING ACTIVITY WITHOUT AUTHORISATION IN A WILDLIFE PROTECTED AREA, CONTRARY TO SECTION 102(H) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> , on the <b>(date)</b> , at (location) carried out activity, namely <b>(identify activity)</b> in a wildlife protected area, namely <b>(identify)</b> without authorisation.

s102(2) as read with section s102 (3) Illegal Grazing/Entering a National Park with Livestock without Authorization: Maximum fine 100,000Ksh and/or Maximum 6 Months Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Date and Location</p> <p>The area is a national park (see Schedule 11) AND</p> <p>The Accused entered that park with livestock</p> <p>Absence of authorisation to so do</p>	<p>Seizure, confiscation, inspection, productions110</p> <p>Forfeiture s105</p> <p>Restraint order or other redress108 (Environment and Land Court)</p>
Agencies: KWS, NPS, ODPP, Judiciary, NEMA	
<p>Evidence: Eyewitness evidence; arresting officer, I.O. statement from KWS confirming the status of the area and the absence of authorisation. Photographs. Answers on interview.</p> <p>Note: this ONLY applies to national parks. Conservancies are not protected under this provision and accordingly illegal grazing on the same is not covered at all under this law.</p> <p>On charging, if you specify a precise number of livestock, this may be problematic at trial on the issue of proof. Photographs or agreement of the accused/answers on interview/witness statements addressing the number will be necessary.</p> <p>Notes:</p>	

CHARGE COUNT ONE	ENTERING A NATIONAL PARK WITH LIVESTOCK, CONTRARY TO SECTION 102(2) AS READ WITH S102 (3) OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> entered into a national park, namely <b>(identify)</b> with livestock namely <b>(identify nature and quantity of livestock)</b> without authorisation.

Section 103 Corporate liability for Offences Committed under this Act – CITE THIS PROVISION IN THE CHARGE AS FOLLOWS “as read with section 103 (1) (2) (3) or (4) of the Wildlife Conservation and Management Act 2013). Penalties as per the main offence under this Act.

See also s106 – Liability of Officer Acting on his own Account or as Agent or Employee.

POINTS TO PROVE	ANCILLARY POWERS Section 2 page 40
<p>Identify if a company, partnership, employer or principal AND</p> <p>If a Company, must show every director or officer of the body corporate knew or ought to have known of the commission of the offence AND did not exercise due diligence, efficiency and economy to ensure compliance with this Act</p> <p>If a Partnership, must show that every partner or officer of the partnership knew or ought to have known of the commission of the offence AND did not exercise due diligence, efficiency and economy to ensure compliance with this Act</p> <p>If an individual, must show it was committed on his own account OR he was acting as an agent or servant of another person</p> <p>If an employer or principal, he is liable for the actions of his employees/agents unless he can show he gave express/standing directions to the contrary</p>	<p>Seizure, confiscation under section 110</p> <p>Production and copying of relevant documents under s110 e.g. company accounts, correspondence, rules, regulations and SOPs</p> <p>Forfeiture under section 105</p> <p>Restraint order or other redress from the Environment and Lands Court under section 108</p>
<p>Agencies: KWS, NPS, ODP, Judiciary KMA, AG; Companies House, Telecoms, Banking</p>	
<p>Evidence: This will require details of the regulations within the company to establish a failure in due diligence/oversight and to firmly establish that the directors/partners etc. must or ought to have known of the offence e.g. emails/correspondence etc. This will require using ancillary powers to obtain disclosure of such records.</p>	

## SECTION 2 – ANCILLARY POWERS UNDER WCMA

### S105 (1) and s105 (2) – ORDERS FOR FORFEITURE

What is it?	Power to seek forfeiture of anything that was used in the commission of an offence.
Who?	Prosecution makes the application or court of its own motion.
How?	After conviction OR if court is satisfied that an offence has been committed even if no one has been convicted.  Must satisfy the court that the items are related to the offence.
Who benefits?	All items are forfeited to Kenya Wildlife Service.
Note: Court can also order that items be disposed of AND that the suspect must bear the cost of so doing.	

### S105 (3) CANCELLATION OF PERMIT/LICENSE OR AUTHORISATION

What is it?	Power to have any license, permit or authorisation issued under this Act cancelled.
Who?	Prosecutor makes the application or court of its own motion.
How?	After conviction OR if court is satisfied that an offence has been committed even if no one has been convicted.  Must satisfy the court that the license/permit is related to the offence.

## S110 (a) and (b) – POWER TO DEMAND PRODUCTION OF LICENSE OR PERMIT

What is it?	Power to have any license, permit or authorisation produced by any person in relation to a. any act in relation to wildlife resources or b. any person found in possession of a wildlife specimen regardless of whether they are in a wildlife conservation area.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.
How?	Can do this at the time of discovery of that person conducting an act related to wildlife resources or is found in possession.
Power of arrest?	Only in relation to non-production of a permit regarding the possession of a wildlife specimen.

Note: if an arrest is made, the accused may be detained in appropriate premises at the nearest KWS station only if impracticable to bring him/her to court or a police station within 24 hours. If so detained in a Service premise, he/she must be brought to court or the nearest police station within 48 hours.

Warning: the Constitution is very clear that 24 hours is all that one has to detain a person before presenting them at court. Whilst this provision perhaps caters for the distances involved sometimes, exercise of this extended power of detention should be exercised with great caution. Expect legal challenge.

## S110 (c) – POWER TO SEARCH A PERSON, ARREST, DETAIN AND SEIZURE OF ITEMS

What is it?	Power to search a person suspected of having committed an offence under this Act OR suspected of being in possession of any wildlife specimen in respect of which an offence has been committed.  Power to arrest that person, detain, and then seize any baggage, parcel or house being used to carry or hide the specimen.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.
How?	Inform him/her of reason for search. Record findings carefully.
Power of arrest?	Yes. Must take accused AND seizure to court within 24 hours.

## S110 (d) – POWER OF SEARCH AND SEIZURE RE: VEHICLES/ VESSELS

What is it?	Power to search any vehicle or vessel and seize and detain any wildlife specimens together with tools, equipment vessels or vehicles used in the commission of an offence under this Act.  Power to arrest that person, detain, and then seize any baggage, parcel or house being used to carry or hide the specimen.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.
How?	Inform him/her of reason for search. Document findings to ensure continuity.
Power of arrest?	Yes. Must take accused and seizure to court within 24 hours. In terms of larger items, proof of seizure will suffice - thorough statement, exhibit log and possibly photographs.
Note: An authorised officer above the rank of assistant warden can erect a temporary barrier to further this aim (s111). Failure to comply is an offence – minimum 50,000Ksh or minimum 6 months imprisonment.	

## S110 (e) – POWER OF CONFISCATION RE: ITEMS USED FOR CAPTURE, HUNTING OR KILLING

What is it?	Power to confiscate any equipment or receptacle used for capturing, hunting or killing wildlife animals.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.
How?	Inform him/her of reason for confiscation and record that this has been done. Document items seized. Ensure continuity.
Note: if any means of hunting cannot be practicably removed, the officer may render it 'inoperative' under s110(2)(b).	

**NOTE: WHEN SEIZING ANYTHING SUBJECT TO SPEEDY AND NATURAL DECAY AND WHERE IT IS NOT PRACTICABLE TO PRESERVE IT, THAT ITEM MAY BE DESTROYED OR DISPOSED OF WITHOUT ORDER OF THE COURT – S110 (2)(a). THIS MUST BE DOCUMENTED CAREFULLY TO COUNTER ANY CHALLENGE AT TRIAL.**

## **S110 (f)– POWER OF INVESTIGATION AND INTELLIGENCE GATHERING**

What is it?	Power to conduct investigations/intelligence gathering.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.
Where?	On land, any premises, vessels or vehicle.

## **S110 (3)(a) - POWER OF ENTRY**

What is it?	Power to enter any land, premises, vessel, vehicle, aircraft or trailer to assess condition of wildlife or perform any other function under this Act.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.

## **S110 (3)(b)– POWER TO REQUIRE PRODUCTION OF DOCUMENTS INCLUDING POWER TO MAKE COPIES**

What is it?	Power to require production of, to inspect, examine and copy any license, permit, management plan or any other document relating to this Act.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.

## S110 (3)(c)– POWER TO PREVENT COMMISSION OF AN OFFENCE

What is it?	Power to take 'all reasonable steps' to prevent commission of an offence under this Act.
Who?	An 'authorised officer' i.e. KWS, police, customs, fisheries, forestry, administrative officer or any person so designated.
Note: this is a 'catch all' provision that arguably covers covert operations.	

**s108 ANY PERSON** can petition the Environment and Land Court where an offence is being or is about to be committed, to seek redress e.g. Injunction. This may be a useful power to stop a company from carrying out extractive activity or where one knows that a 'sports hunt' is being arranged.

## SECTION 3 – RELEVANT OFFENCES UNDER THE PREVENTION OF ORGANISED CRIME ACT 2010

S3(c) Acting in Concert with Others in the Commission of a Serious Crime – fine up to 500,000Ksh and/or up to 15 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 4 page 48
<p>Date and Location</p> <p>Three or more people (don't have to identify each one)</p> <p>Accused did an act in concert with those others</p> <p>That act was to further the commission of a 'serious crime'</p> <p>For the purposes of obtaining a financial, material or other benefit or purpose.</p> <p>A serious crime is one that carries more than 6 months imprisonment e.g. importation of ivory</p>	<p>Property tracing s15</p> <p>Restraint Orders s16</p> <p>Seizure and detention of cash s17</p> <p>Forfeiture upon Conviction s18</p>
<p>Agencies: KWS, NPS, ODPP, Judiciary, FRC, AGO, Telecoms, Banking</p>	
<p>Evidence: Where a group is involved in poaching/trafficking, this offence may be appropriate. Eye witness evidence and telecoms/banking communications between the group may be evidence of association between the three or more individuals concerned. Video surveillance, covert evidence, digital and documentary evidence and potentially expert evidence regarding mobile phone/computer downloads.</p>	

CHARGE COUNT ONE	ACTING IN CONCERT WITH OTHERS IN THE COMMISSION OF A SERIOUS OFFENCE, CONTRARY TO SECTION 3(C) OF THE PREVENTION OF ORGANISED CRIME ACT 2010.
PARTICULARS OF OFFENCE	<p><b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b>, together with other persons unknown <b>(or name them)</b>, committed a serious offence, namely <b>(state the nature of the offence)</b> e.g. importation of ivory without a permit contrary to section ...) for the purpose of obtaining material or financial benefit or other purpose.</p>

S3(d) Directing another to commit a serious offence – fine up to 500,000Ksh and/or up to 15 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 4 page 48
<p>Date and Location</p> <p>Membership of an organised criminal group</p> <p>An act of direction or instruction to commit a serious crime (i.e. carries more than 6 months)</p> <p>Need to establish that the person is in a position of influence within that group</p> <p>Intention that his direction/instructions will be acted upon.</p>	<p>Property tracing s15</p> <p>Restraint Orders s16</p> <p>Seizure and detention of cash s17</p> <p>Forfeiture upon Conviction s18</p>

Agencies: KWS, NPS, ODPP, Judiciary, FRC, AGO, Telecoms, Banking

Evidence:  
s7 of POCA gives some guidance as to the type of evidence that might speak of membership:

- a. he admits to being a member of an organised criminal group;
- b. he is, upon reasonable ground, identified as member of an organised criminal group;
- c. he resides in or frequently visits a particular organized criminal group's area and adopts the name, colours, symbol, style of dress and grooming, use of hand signs, language, tattoos or other representation associated with the organized criminal group or otherwise knowingly associates with members of such group;
- d. he has been arrested more than once in the company of identified members of an organised criminal group for offences that are consistent with organised criminal group activity;
- e. he ascribes to the ideologies, values, practices, oathing, mannerisms and general conduct of the organised criminal members; or
- f. he knowingly receives any financial or material benefit from an organised criminal group.

The direction or instruction may come in many forms and may require interrogation of computers/email accounts/intercept/SMS records. Circumstantial evidence of association with known suspects and possession of material relating to organised criminal activity may be relevant to proving both membership and intention. See also offences of conspiracy.

CHARGE  
COUNT ONE

DIRECTING ANOTHER IN THE COMMISSION OF A SERIOUS OFFENCE, CONTRARY TO SECTION 3(D) OF THE PREVENTION OF ORGANISED CRIME ACT 2010.

PARTICULARS  
OF OFFENCE

**(Name of the accused)** on the **(date)** at **(location)**, being a member of an organised criminal group, knowingly directed another to commit a serious offence, namely **(identify the offence or type of offence)**.

S3(m) Entering into Arrangements regarding Criminal Group Funds – fine up to 500,000Ksh and/or up to 15 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS Section 4 page 48
Date and Location	Property tracing s15
Identify the funds in question	Restraint Orders s16
Establish they are 'criminal group funds' (see below)	Seizure and detention of cash s17
Entry into an arrangement to retain or control criminal group funds on behalf of a third party	Forfeiture upon Conviction s18
Did so knowing that they were criminal group funds	
Agencies: KWS, NPS, ODPP, Judiciary ,FRC, AGO, Telecoms, Banking	
<p>Evidence: s2 of POCA states that 'criminal group funds' are those funds that may be used for the commission of or in furtherance of or in connection with acts of an organised criminal group; or the proceeds of acts committed by that organised criminal group or the resources of such a group. This is therefore potentially problematic in seeking to establish the nature of the funds so it may be easier to consider offences under POCAMALA e.g. possession of proceeds of crime. It may be necessary to involve the FRC. There is no need to prove who the third party was, only that there was one.</p>	

CHARGE COUNT ONE	ENTERING INTO AN ARRANGEMENT CONCERNING CRIMINAL GROUP FUNDS, CONTRARY TO SECTION 3(M ) OF THE PREVENTION OF ORGANISED CRIME ACT 2010.
PARTICULARS OF OFFENCE	<b>(Name of the accused)</b> on the <b>(date)</b> at <b>(location)</b> , entered into an arrangement to facilitate the retention or control of criminal group funds, knowing that the funds were criminal group funds, namely <b>(identify the funds in question)</b> .

## SECTION 4 – ANCILLARY POWERS UNDER POCA

### PROPERTY TRACING - s15 POCA

What is it?	Power to compel any person to produce any document or record that identifies, locates, quantifies property or to require a bank or financial institution/trustee/cash dealer/custodian to produce all information/records etc. re: any business transaction by or on behalf of the person concerned.
Who?	AG application (read DPP now).
How?	Application on notice.
Where?	High Court.
Justification?	Reasonable grounds to suspect that an OCG has committed, is committing or is about to commit a crime or is in possession of property belonging to an OCG.

**NOTE: If that person obstructs the order, High Court can authorize the AG(DPP) or his officer to enter premises and take the documents/records – order will last 30 days unless High Court otherwise directs.**

### RESTRAINT ORDERS - s16POCA

What is it?	A temporary order to suspend dealings of a specified person or a person charged under POCA or 'any other specified person'.
Who?	AG (DPP).
How?	Ex Parte Application.
Where?	High Court.

**NOTE: This order lasts 30 days unless the Court directs otherwise.**

## SEIZURE AND DETENTION OF OCG CASH - s17 POCA

What is it?	Power to seize and hold cash that is imported or
Who?	Any authorized officer i.e. Police, AG, Commissioner of Customs & Excise, or any other Person whom written law vest functions of law and order.
How?	He can seize it immediately and then within 7 days must apply to the High Court.
Justification?	Reasonable grounds to suspect cash belongs to an OCG.
How long?	Lasts 60 days – renewable for further period of 30 days. Proceedings must be issued within 6 months or it will be released.

**NOTE: Any cash seized must be deposited in a reputable bank by the officer. Proceedings must be issued within 6 months or it will be released.**

## FORFEITURE OF PROPERTY UPON CONVICTION – s18 POCA

What is it?	Power to order forfeiture of property to the State.
Who?	ODPP.
How?	Upon conviction, application to the court.
Where?	Before the convicting court.
Justification?	Must show the property was used for or in connection with or received in payment for the commission of that offence.

# SECTION 5 – RELEVANT OFFENCES UNDER FIREARMS ACT CAP 114

s4 FIREARMS ACT – purchase, acquisition or possession of a firearm of ammunition without a certificate. Certificate in force at the time.

Penalty: between 7 years and 15 years or 5 years and 10 years depending on type of firearm.

POINTS TO PROVE	ANCILLARY POWERS
That the item is a firearm/ammunition within the definition of the Act	Forfeiture or disposal of firearm found in possession - Section 36 (1)(b)(i)
The suspect either purchased/somehow obtained a firearm/ammunition OR	Ban on future ownership of a weapon for a period not exceeding 10years, after release period. Section 36(1)(b)(ii)
The suspect was in possession of firearm/ammunition; AND	Agencies: National Police Service, Office of the Director of Public Prosecution, judiciary
Proof that there was no valid a firearms certificate in force at the time OR	Evidence: Eyewitness evidence (interviews/statements); government analyst (ballistic experts); exhibits (firearm or ammunition, expert opinions/certificates, photographs etc.), arresting officer, investigating officer
Suspect had possession of ammunition in the excess of authorized quantities (so specify the quantity and specify the authorised amount under any permit); OR	<p><b>Note: that if the offence is due to neglect failure to renew the certificate; fine is 500/= per day for every day or part thereof during which the default continues but fine should, in total, NOT be greater than the maximum fine provided under Section 4 (3) of the Act OR imprisonment for 2 years (maximum) in default.} – See s4(3)</b></p>
He has a firearms certificate but there is non-compliance with the conditions attached to the certificate (so identify which conditions and how he is in breach)	
Knowledge that he was purchasing/acquiring a firearm or ammunition depending on subsection selected for charge	

CHARGE COUNT ONE	BEING IN POSSESSION OF FIREARM/AMMUNITION WITHOUT A VALID FIREARM CERTIFICATE CONTRARY TO SECTION 4 (2)(A) AS READ WITH SECTION 4 (3) OF THE FIREARMS ACT CAP 114 OF THE LAWS OF KENYA.
PARTICULARS OF OFFENCE	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , was found in possession of <b>(description of arm or ammunition)</b> without a valid firearm certificate.

CHARGE COUNT TWO	ILLEGAL ACQUISITION OF FIREARM/AMMUNITION CONTRARY TO SECTION 4 (2)(A) AS READ WITH SECTION 4 (3) OF THE FIREARMS ACT CAP 114 OF THE LAWS OF KENYA.
PARTICULARS OF OFFENCE	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , acquired <b>(description of arm or ammunition)</b> without a valid firearm certificate.

CHARGE COUNT ONE	BEING IN POSSESSION OF A QUANTITY OF AMMUNITION IN EXCESS OF THAT AUTHORISED UNDER A VALID FIREARM CERTIFICATE CONTRARY TO SECTION 4 (2)(A) AS READ WITH SECTION 4 (3) OF THE FIREARMS ACT CAP 114 OF THE LAWS OF KENYA.
PARTICULARS OF OFFENCE	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , was found in possession of a quantity of ammunition, namely <b>(description of ammunition)</b> that was in excess of the quantity authorised under a valid firearm certificate.

CHARGE COUNT ONE	FAILING TO COMPLY WITH THE CONDITIONS OF A FIREARM CERTIFICATE, CONTRARY TO SECTION 4 (2)(B) AS READ WITH SECTION 4 (3) OF THE FIREARMS ACT CAP 114 OF THE LAWS OF KENYA.
PARTICULARS OF OFFENCE	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , whilst in possession of a valid firearm certificate <b>(give issuing number)</b> failed to comply with a condition (or conditions) of that certificate, namely <b>(give particulars of that conditions that were not complied with)</b> .

s4A FIREARMS ACT - for AK47, G3, MP5 - Possession of a specified firearm without a license OR if having a licence, unlawfully allowing another to take possession of it in order to advance the course of organised criminal activity.

Penalty: Life imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Possession of item Proof that the item was a weapon within the definition of this section e.g. an AK47</p> <p>The absence of license; OR</p> <p>If in possession of license that the suspect has given permission to another to possess it or use it for organized criminal activity AND</p> <p>Where hired/given to another, he knew or reasonably ought to have known that the person to whom it is given intends to use it for organized criminal activity</p> <p>'Organised criminal activity' under POCA = commission of serious crime (penalty over 6 months imprisonment) by an organized criminal group (3 or more – see POCA)</p>	<p>Forfeiture or disposal of firearm found in possession - Section 36 (1)(b)(i)</p> <p>Ban on future ownership of a weapon for a period not exceeding 10years, after release period. Section 36 (1)(b)(ii)</p> <p>Evidence: expert evidence may be required to prove the nature of the weapon. Do NOT need to prove the activity took place if proceeding under s4A(1)(b). In giving it to another for use, need to link the weapon to the owner. i.e. statement re: ownership of license. Fingerprint evidence on the weapon. Unless caught in the act, circumstantial evidence of association between owner and the user/possessor e.g. mobile phone evidence/M-Pesa payments etc. will be vital</p>

CHARGE COUNT ONE	ILLEGAL POSSESSION OF A SPECIFIED FIREARM CONTRARY TO SECTION 4A (1)(A) OF THE FIREARMS ACT CAP 114.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, was found in possession of <b>(description of the specified firearm)</b> without valid firearm certificate/permit/lawful justification.</p>

CHARGE COUNT ONE	HIRING OR PERMITTING ANOTHER TO POSSESS/USE A FIREARM/ AMMUNITION (DELETE) CONTRARY TO SECTION 4A (1)(B) OF THE FIREARMS ACT CAP 114.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, being licenced to (possess, hold, trade in, or have custody) of (description of ammunition or firearm), {hired it out, unlawfully permitted <b>(specify)</b> another, <b>(identify)</b> to <b>(take possession of or use)</b> that fire arm/ ammunition to advance the course of organized criminal activity.</p>

## SECTION 6 – RELEVANT OFFENCES UNDER THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT 2004

s202 Importation or exportation of restricted or prohibited goods in a concealed manner.

Penalty: Fine of 50% of value of good involved or imprisonment for 5 years (maximum)

**CONSIDER USE UNTIL WCMA IS AMENDED (see s99 WCMA).**

POINTS TO PROVE	ANCILLARY POWERS
Item prohibited or restricted (see schedule 2)	Forfeiture of the prohibited or restricted goods – s210
202 a) Actual concealment of the goods OR	Forfeiture of the vessel – s211
202 b) Packaged in a manner of packaging likely to deceive a customs officer; OR	Forfeiture of the package s212
202 c) The entry/declaration does not correspond with the goods (i.e. A false declaration)	
Agencies: Kenya Revenue Authority, National Police Service, Office of the Director of Public Prosecution, Judiciary	
Evidence: Eyewitness evidence (e.g. statements of customs officers etc.); government analyst or other expert regarding the item concealed; exhibits officer re: the packaging (could be the customs officer); statement from KRA that it is a prohibited/restricted item; packaging, vessel, photographs, documents etc. arresting officer, investigating officer.	

CHARGE COUNT ONE	EXPORT/IMPORT OF RESTRICTED OR PROHIBITED GOODS IN A CONCEALED MANNER CONTRARY TO SECTION 202 (SELECT TO USE SUB- SECTION A, B OR C DEPENDING ON THE FACTS OF THE CASE).
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , imported/exported goods, namely <b>(describe the goods)</b> which were concealed/packaged in a manner likely to deceive a customs officer/ did not correspond to the entry or application for shipment <b>(delete as appropriate depending on which sub-section selected)</b> .

**SECTION 203 (a) (b) or (c) - False declaration in relation to importation or exportation.**

**Penalty: Fine of 10,000USD (maximum) or imprisonment for 3 years (maximum).**

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location</p> <p>The matter relates to Customs</p> <p>The Accused either:</p> <p>203 a) made an entry which was false or incorrect</p> <p>203 b) made or caused to be made a declaration/certificate/application or any document that was false or incorrect</p> <p>203 c) refused to answer a question put to him under this Act or gave a false or incorrect reply</p> <p>For all three, that he knew his statement/declaration/document was false</p>	<p>Forfeiture of the prohibited or restricted goods – s210</p> <p>Forfeiture of the vessel – s211</p> <p>Forfeiture of the package s212</p>
<p>Agencies: Kenya Revenue Authority, National Police Service, Office of the Director of Public Prosecution, Judiciary</p>	
<p>Evidence: Eye witness evidence (e.g. statements of customs officers etc.); government analyst (national museums of Kenya); exhibits (prohibited/restricted item, packaging, vessel, photographs, documents etc.), arresting officer, investigating officer.</p> <p>Notes:</p>	

CHARGE COUNT ONE	MAKING A FALSE ENTRY CONTRARY TO SECTION 203 (A) OF EAST AFRICA COMMUNITY CUSTOMS MANAGEMENT ACT 2004.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, knowing that matter related to Customs, knowingly made a false entry in relation to that Customs matter, namely <b>(particulars)</b>.</p>

<p>CHARGE COUNT ONE</p>	<p>MAKING OR CAUSING TO BE MADE A FALSE DECLARATION, CERTIFICATE, APPLICATION OR DOCUMENT (SPECIFY WHICH) CONTRARY TO SECTION 203 (B) OF EAST AFRICA COMMUNITY CUSTOMS MANAGEMENT ACT 2004.</p>
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>Name of Accused(s)</b> on or about the <b>(date)</b>, at <b>(location)</b>, made/caused to be made a declaration/certificate/application/document <b>(delete as appropriate)</b> relating to a matter concerning Customs, knowing it to be false/incorrect <b>(delete as appropriate)</b>.</p>

<p>CHARGE COUNT ONE</p>	<p>MAKING A FALSE STATEMENT TO A CUSTOMS OFFICER, CONTRARY TO SECTION 203 (C) OF EAST AFRICA COMMUNITY CUSTOMS MANAGEMENT ACT 2004.</p>
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>Name of Accused(s)</b> on or about the <b>(date)</b>, at <b>(location)</b>, when required to answer a question put to him by an officer exercising his duties under this Act, made a statement, knowing that statement to be false, namely <b>(give particulars of the false statement)</b>.</p>

<p>CHARGE COUNT ONE</p>	<p>FAILURE TO GIVE INFORMATION TO A CUSTOMS OFFICER, CONTRARY TO SECTION 203 (C) OF EAST AFRICA COMMUNITY CUSTOMS MANAGEMENT ACT 2004.</p>
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>Name of Accused(s)</b> on or about the <b>(date)</b>, at <b>(location)</b>, when required to answer a question put to him by an officer exercising his duties under this Act, refused to answer.</p>

## SECTION 7 – RELEVANT CITIZENSHIP AND IMMIGRATION OFFENCES

*NOTE:* Charging offences under these sections should **NEVER** be used as ‘holding charges’ given the confusion it raises in relation to sentencing and bail considerations and the misleading signal it gives out to the judiciary and the public. A limited number of relevant offences are identified below under the **Kenya Citizenship and Immigration Act 2011**.

Careful exhibit handling is essential in relation to the documentary evidence required; the suspect’s answers under caution/in interview will be significant and should be carefully recorded. Close working with immigration authorities is vital to ensure timely production of evidence of forgery/confirmation of non-residency etc.

**Concerning repatriation, s 26A of the Penal Code refers to Section 8 of the now repealed immigration Act; this should be amended accordingly to refer to Section 43 of **The Kenyan Citizenship and Immigration Act 2011**.**

Offence	Points to Prove
s53(1)(b) Being found in Kenya while an order for removal is in force .  500,000Ksh fine and/or 3 years max  Repatriation s43 – below	Evidence that the suspect left or had been removed from Kenya under order  Evidence that suspect is found Kenya  Proof that there is still an order for removal of that person.
s53(1) (j) Unlawfully entering or being present in Kenya  500,000Ksh fine and/or 3 years max  Repatriation under s43 – see below	Evidence that the suspect is ‘in’ Kenya  Evidence of lack of residency/permit to reside/absence of lawful excuse

Offence	Points to Prove
<p>s53(1)(m) working without a permit/ lawful authority</p> <p>500,000Ksh fine and/or 3 years max</p> <p>s43 Repatriation – see below</p>	<p>Evidence that suspect is not a citizen</p> <p>Evidence that suspect has no permit or exemption under this Act allowing him to work</p> <p>Evidence that he is working, whether or not for profit or reward</p>
<p>s54 (1) (c) use or possession of a forged passport, work permit, residence permit, visa or registration or other forged or altered consent, endorsement or approval</p> <p>5 million Ksh or 5 years Max</p> <p>s43 Repatriation – see below</p>	<p>Evidence of use or possession</p> <p>The document is a passport, certificate of registration, visa, work permit, residence permit, pass, written authority, or other consent or approval</p> <p>The document is a forgery or has been altered/ issued without lawful authority</p> <p>AND</p> <p>The accused knew it was false/forged.</p>
<p>s54(g) Presenting a forged altered or false document in order to obtain passport/registration/visa/work permit/residence/pass or other written authority</p> <p>5 million Ksh or 5 years Max</p> <p>s43 Repatriation – see below</p>	<p>Act of ‘presentation’ - difficult if done by post. Evidence that the document has been forged/ altered</p> <p>Accused knew the document was forged and intended that the receiver be deceived by it</p> <p>AND</p> <p>Intention to obtain passport/registration/visa/ work permit/residence/pass or other written authority</p>
<p>s54 (1) (m) (s83SLAA) – using a passport, pass or authority that was issued to another person.</p> <p>5 million Ksh or 5 years Max</p> <p>s43 Repatriation – see below</p>	<p>‘Use’ of passport/pass/authority</p> <p>That document had been issued to another</p>

## SAMPLE CHARGES UNDER KCIA

CHARGE COUNT ONE	BEING UNLAWFULLY PRESENT IN KENYA CONTRARY TO SECTION 53(1) (B) AS READ WITH SECTION 53 (2) OF THE THE KENYAN CITIZENSHIP AND IMMIGRATION ACT 2011.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	(Name of Accused(s)) on or about the (date), at (location), being subject to an order for removal from Kenya under section 43 of The Kenyan Citizenship and Immigration Act 2011 was found in Kenya while that order was still in force.

CHARGE COUNT ONE	UNLAWFUL PRESENCE/ENTRY IN KENYA CONTRARY TO SECTION 53(1) (J) AS READ WITH SECTION 53 (2) OF THE KENYA CITIZENSHIP & IMMIGRATION ACT, 2011.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , being of (state the nationality of accused person) nationality, was present in Kenya without valid authority or lawful immigration status.

CHARGE COUNT ONE	UNLAWFULLY ENGAGING IN EMPLOYMENT CONTRARY TO SECTION 53(1)(M) AS READ WITH SECTION 53(2) OF THE KENYA CITIZENSHIP & IMMIGRATION ACT, 2011.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , being of <b>(specify the nationality)</b> nationality, was found engaging in employment/trade/occupation/ <b>profession (delete as appropriate)</b> namely <b>(state nature of that work)</b> without lawful authorisation or exemption.

CHARGE COUNT ONE	KNOWINGLY USING/BEING IN POSSESSION (DELETE) A FORGED/ ALTERED IMMIGRATION DOCUMENT, CONTRARY TO SECTION 54(1)(C)(2) OF THE KENYA CITIZENSHIP & IMMIGRATION ACT, 2011.
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	<b>(Name of Accused(s))</b> on or about the <b>(date)</b> , at <b>(location)</b> , used/was in possession of (delete as appropriate) a forged/ altered <b>(specify)</b> passport, work permit, residence permit, visa or registration or other forged or altered consent, endorsement or approval <b>(delete as appropriate) (if altered, specify “without lawful authority”)</b> .

<p>CHARGE COUNT ONE</p>	<p>PRESENTING A FORGED, ALTERED OR FALSE DOCUMENT IN ORDER TO OBTAIN PASSPORT/REGISTRATION/VISA/WORK PERMIT/RESIDENCE/PASS OR OTHER WRITTEN AUTHORITY (SPECIFY) CONTRARY TO SECTION 54(1)(G)(2) OF THE KENYA CITIZENSHIP &amp; IMMIGRATION ACT, 2011.</p>
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, knowingly presented a forged a forged, altered or false document in order to obtain passport/registration/visa/work permit/residence/pass or other written authority <b>(delete as appropriate)</b>.</p>

<p>CHARGE COUNT ONE</p>	<p>PRESENTING A FORGED, ALTERED OR FALSE DOCUMENT IN ORDER TO OBTAIN PASSPORT/REGISTRATION/VISA/WORK PERMIT/RESIDENCE/PASS OR OTHER WRITTEN AUTHORITY (SPECIFY) CONTRARY TO SECTION 54(1)(G)(2) OF THE KENYA CITIZENSHIP &amp; IMMIGRATION ACT, 2011.</p>
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, knowingly presented a forged a forged, altered or false document in order to obtain passport/registration/visa/work permit/residence/pass or other written authority <b>(delete as appropriate)</b>.</p>

<p>CHARGE COUNT ONE</p>	<p>USING A PASSPORT, PASS OR AUTHORITY THAT WAS ISSUED TO ANOTHER PERSON CONTRARY TO SECTION 54 (1) (M) (2) OF THE KENYA CITIZENSHIP &amp; IMMIGRATION ACT, 2011 AS AMENDED BY S83 OF THE SECURITY LAWS (AMENDMENT) ACT 2014.</p>
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, used a <b>(identify document)</b> that had been issued to another, namely <b>(state name)</b>.</p>

## SECTION 43 – ANCILLARY POWER OF REPATRIATION

What is it?	Power to remove a person unlawfully present in Kenya/prevent return.
How?	Court can recommend to – a) Commissioner of Police AND Prisons to remove either immediately or after completion of a sentence IF LESS THAN 12 MONTHS; or b) recommend to the Minister for Immigration for removal if sentence is MORE THAN 12 MONTHS.
Who?	Court of its own motion; Prosecution can invite.
Detention?	Yes – can keep him in custody until departure in police, custody, prison or immigration facility.

## SECTION 8 – RELEVANT OFFENCES UNDER PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT 2009

s4 Acquisition, Use or Possession of Proceeds of Crime; Penalty 5 Million Ksh (Max) or up to 14 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and Location</p> <p>Possession, Acquisition or 'Use'</p> <p>If acquisition, the arrangement /or agreement</p> <p>Identify the property</p> <p>That property is a proceed of crime (see below)</p>	<p>Confiscation Orders – s61 (upon conviction)</p> <p>Restraint Orders – s68</p> <p>Realisation of Property –s 75</p> <p>Civil Forfeiture</p> <p>These powers are beyond the scope of this guide; consult ODPP</p>

Agencies: Attorney General, Director of Criminal Investigations, Office of the Director of Public prosecutions, Kenya Wildlife Service, Interpol, National Intelligence

### Evidence:

Documentary evidence, i.e. employment letter, business registration docs, bank statements, electronic evidence, expert advice, witness statements, photographic evidence, suspects statements. Prosecutors are not required to prove that the property in question is the benefit of a particular or a specific act of criminal conduct, as such an interpretation would restrict the operation of the legislation. The prosecution must be in a position, as a minimum, to be able to produce sufficient circumstantial evidence or other evidence from which inferences can be drawn to the required criminal standard that the property in question has a criminal origin e.g. possession of a large quantity of elephant tusks. UK authority: R v Anwoir [2008] EWCA Crim 1354) (UK Criminal Division of Court of Appeal).

### CHARGE COUNT ONE

POSESSION/USE/ACQUISITION OF PROPERTY FROM PROCEEDS OF CRIME CONTRARY TO SECTION 4 AS READ WITH SECTION 16(1) OF THE POCAMLA ACT NO 9 OF 2009.

PARTICULARS  
OF OFFENCE  
(See Second  
Schedule of C.P.C.)

**(Name of Accused(s))** on or about the **(date)**, at (location) was in possession/used or knowingly acquired **(delete as appropriate)** a proceeds of crime namely **(identify the property)** e.g. 'ivory'.

s5 Wilful Failure to Report Suspicious Transactions –Penalty 5 Million Ksh (Max) or up to 14 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>That a transaction took place</p> <p>That the person was in a position to report that transaction</p> <p>That the transaction was ‘suspicious’ (see definition)</p> <p>That the accused knew that the transaction was suspicious</p> <p>That he failed to report it to the FRC within seven days of the transaction</p>	<p>Confiscation Orders – s61 (upon conviction)</p> <p>Restraint Orders – s68</p> <p>Realisation of Property –s 75</p> <p>Civil Forfeiture</p> <p>These powers are beyond the scope of this guide; consult ODPP</p>
<p>Agencies: EACC, ODPP, AG, Police, KWS, Judiciary, FRC, Relevant regulatory Authority</p>	
<p>Evidence: Documentary evidence, i.e. employment letter, business registration docs, bank statements, electronic evidence, expert advice, witness statements, photographic evidence, suspects statements.</p>	

CHARGE COUNT ONE	WILFUL FAILURE TO REPORT SUSPICIOUS TRANSACTIONS CONTRARY TO SECTION 5 AS READ WITH SECTION 16(2) OF POCAMLA.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, wilfully and knowingly failed to report a suspicious transaction <b>(define e.g deposit)</b> to financial institution <b>(identify)</b>.</p>

# SECTION 9 – RELEVANT OFFENCES UNDER THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT 2003

s39 Bribery: Fine up to 1 million Ksh and/or up to 10 Years Imprisonment.	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and Location</p> <p>Accused was a Public officer</p> <p>He/she solicited or received a benefit</p> <p>Did so 'corruptly' within the meaning of this Act i.e. section 2 e.g. abuse of office</p>	<p>Forfeiture of unexplained assets – s55</p> <p>Compensation s51</p> <p>Ancillary powers are outside the scope of this book. Consult EACC/ODPP</p>
Agencies: EACC, ODPP, AG, Police, KWS, Judiciary, Interpol, FRC	
<p>Evidence: Electronic Evidence, Treated money, Witness statements, MPESA, Telecoms.</p> <p>Note: Suitable for officers or others working as an agent who abuse their position and take bribes to assist offenders in evading detection/concealing their criminal activities e.g. at ports and borders.</p>	

CHARGE COUNT ONE	CORRUPTLY SOLICITING/RECEIVING A BENEFIT CONTRARY TO SECTION 39(3) (A) OR (B) (DELETE AS APPROPRIATE) OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT 2003.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, being a principal/agent namely <b>(describe principal/agent)</b> corruptly solicited/received or agreed to receive a benefit <b>(describe benefit)</b> from <b>(name of complainant or if unknown, state "from a person unknown")</b> in return for doing or not doing an act required of his public office, namely <b>(specify that act)</b>.</p>

s46 Abuse of Office: Fine up to 1 million Ksh and/or up to 10 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Accused is a Public officer</p> <p>He conferred a benefit to himself or another</p> <p>Roles and responsibilities and duties of that office</p> <p>That he breached those roles responsibilities and duties</p> <p>That he did so in order to receive or confer that benefit.</p>	<p>Forfeiture of unexplained assets – s55</p> <p>Compensation s51</p> <p>Ancillary powers are outside the scope of this book. Consult EACC/ODPP</p>
<p>Agencies: EACC, AG, Director of Criminal Investigations, ODPP, KWS, Judiciary, NIS</p>	
<p>Evidence: Documentary evidence of the nature of his office and his duties/roles/responsibilities, electronic evidence, witness statements. There are powers under this Act to obtain disclosure so any such investigation should be done in close working with the EACC or ODPP.</p>	

CHARGE COUNT ONE	ABUSE OF OFFICE, CONTRARY TO SECTION 46 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT 2003.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, employed as a public officer, namely <b>(describe public office)</b> used his office improperly to receive or confer a benefit to another(delete as appropriate) namely <b>(describe the benefit)</b>.</p>

s47 Dealing with suspected property: Fine: up to 1 million Ksh and/or up to 10 Years Imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and Location</p> <p>The accused is a Public Officer</p> <p>Identify the property</p> <p>The property was corruptly acquired</p> <p>He knew or had reasonable excuse to believe it had corruptly acquired.</p> <p>The accused was involved in either retaining, receiving, holding, concealing, entering into transactions or causing such transactions to be entered into or using the said property</p>	<p>Forfeiture of unexplained assets – s55</p> <p>Compensation s51</p> <p>Ancillary powers are outside the scope of this book. Consult EACC/ODPP</p>
<p>Agencies: EACC, ODPP, AG, Police, KWS, Judiciary, FRC, NIS</p>	
<p>Evidence: Documentary evidence, i.e. employment letter, business registration docs, bank statements, electronic evidence, expert advice, witness statements, photographic evidence, suspects statements.</p>	

CHARGE COUNT ONE	DEALING WITH PROPERTY CORRUPTLY ACQUIRED, CONTRARY TO SECTION 47 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT 2003, AS READ WITH SECTION 48 OF THE SAME.
<p>PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)</p>	<p><b>(Name of Accused(s))</b> on or about the <b>(date)</b>, at <b>(location)</b>, knowingly or having reasonable grounds to believe that property had corruptly acquired namely <b>(identify property)</b> concealed/held/received/entered into a transaction/used the said property <b>(delete as appropriate and give particulars)</b>.</p>

## ANNEX A – GUIDANCE ON BAIL AFFIDAVITS

GUIDELINE IN DRAFTING AFFIDAVIT IN OBJECTION TO GRANT OF BAIL – TO BE ATTACHED TO THE PROSECUTION FILE

SUMMARY OF THE CASE (BRIEF FACTS) (Attach a copy of cover report)

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.....  
.....  
.....

COMPELLING REASONS TO WITHHOLD BAIL

**Likelihood that the accused will fail to appear – factors to consider:**

- a) The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found to be guilty (Cite the relevant section(s); consider value of any item seized.

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.....  
.....

- b) The strength of the prosecution case against the accused person/nature of evidence on which the suspect has been arrested

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.....

- c) Community ties (foreign or unknown nationality (immigration to be notified and supporting evidence obtained); no confirmed place of residence, employment, children/family ties

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.....

- d) Accused failure to surrender to bail on previous occasion (provide criminal case no. & court)

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**Likelihood that the accused will interfere with witnesses and/or the investigation**

- e) Likelihood of Interference with prosecution witnesses e.g. proximity of address/ community/relationship to any witness.

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.....

- f) The inquiries that have been made by the police in relation to the offence and any further inquiries proposed to be made (including whether information given by the Accused has led to discovery of evidence or arrest of another person in relation to other offence).

*Note: detail may be kept to a minimum to preserve integrity of investigation.*

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.....

**Likelihood that the accused will commit an offence while on release**

- g) The character and antecedents of the accused (e.g. criminal record and/or material yet to be recovered believed to be in possession of the accused); other pending prosecutions.

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**That detention is necessary for the accused’s own protection**

- h) Officer’s view based on views in the community and/or other indicators of possible harm to the accused if released.

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- i) The security of the accused if released on bail (the views of the officer and/or community directly or indirectly affected).

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**NOTE: Annex a copy of a draft affidavit sworn by the Investigating Officer.**

**Previous convictions should accompany every file.**

## ANNEX B – REPORTING AND MONITORING FORM

### REPORTING FOR THE PURPOSES OF MONITORING WILDLIFE CRIME IN RELATION TO IVORY AND RHINO

The purpose of establishing a monitoring mechanism is to achieve, hitherto unknown, a clear picture of the prosecution of ivory and rhino related cases in Kenya. This is vital in order to identify ‘hotspots’, focus resources and, where reporting requirements are not complied with, further enquiries can be made, those stations identified and action taken to address any difficulties.

\*wildlife crimes to be reported are rhino horns, ivory, rhino poaching, elephant poaching and firearms used for wildlife crimes

Reports	To Whom	By Whom	Time Frame	Method of comms
Arrests of wildlife crimes*	ODPP	KWS	Weekly	Email
Arrests of wildlife crimes by Police	ODPP/KWS	Police	Weekly	Email
Arrests of wildlife crimes by KRA	KWS	KRA	Weekly	Email
Other arrests/ reports of incidents	ODPP/ KWS/NPS	Private rangers; county rangers, NGOs or any member of the public	As soon as possible	Any preferred method.
Progress on prosecution of wildlife crimes	ODPP	ODPP Chief County Prosecutors/KWS or any other police prosecutor	Monthly	Email
Quarterly wildlife crime report	All relevant Stakeholders	ODPP	Quarterly	Email

## ANNEX C – EXPERT AND DIGITAL EVIDENCE : GUIDANCE

### EXPERT EVIDENCE – RELEVANT PROVISIONS AND GUIDANCE ON EXPERT AND DIGITAL EVIDENCE

#### EVIDENCE ACT CAP 80 - EXPERTS

##### 77. Reports by Government analysts and geologists

- (1) In criminal proceedings any document purporting to be a report under the hand of a Government analyst, medical practitioner or of any ballistics expert, document examiner or geologist upon any person, matter or thing submitted to him for examination or analysis may be used in evidence.
- (2) The court may presume that the signature to any such document is genuine and that the person signing it held the office and qualifications which he professed to hold at the time when he signed it.

##### 48. Opinions of experts

- (1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of handwriting or fingerprint or other impressions.
- (2) Such persons are called experts.

**Note: It is NOT a requirement that all experts must be government analysts. Rather that a ‘government analyst’ enjoys a presumption as to his office and qualification that would be subject to proof in the case of a non-government expert. Accordingly statements by ANY expert MUST address:**

- a) Qualifications and experience
- b) Methodology used
- c) Basis for conclusion
- d) Address continuity and preservation of exhibits received by that expert.

#### SECURITY LAWS (AMENDMENT) ACT 2014 - DIGITAL EVIDENCE

31. The Evidence Act is amended by inserting the following new section immediately after section 78 -

- 78A. (1) In any legal proceedings, electronic messages and digital material shall be admissible as evidence.
- (2) The court shall not deny admissibility of evidence under subsection (1) only on the ground that it is not in its original form.
  - (3) In estimating the weight, if any, to be attached to electronic and digital

evidence, under subsection (1), regard shall be had to-

- (a) the reliability of the manner in which the electronic and digital evidence was generated, stored or communicated;
  - (b) the reliability of the manner in which the integrity of the electronic and digital evidence was maintained;
  - (c) the manner in which the originator of the electronic and digital evidence was identified; and
  - (d) any other relevant factor.
- (4) Electronic and digital evidence generated by a person in the ordinary course of business, or a copy or printout of or an extract from the electronic and digital evidence certified to be correct by a person in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organization or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

#### NOTE:

- **The SLAA opens the door to use of technology in criminal trials.**
- **Digital evidence may now be produced by any member of the public or company/institution provided the court is satisfied on the criteria set out above.**
- **Copies are admissible**
- **This would require care to be taken to include certain ingredients in every statement exhibiting digital evidence to ensure admissibility at trial:**

*For photos/videos taken by anyone (doesn't have to be a gazetted scene of crime officer), the statement must address:*

- Ownership of device;
- Make and particulars of the device;
- A statement that the device was in good condition at the time of recording the information whether by photo/video or other.
- Presence at the scene, time, date, place and that he used the device to capture the information
- The information was stored in that device and that device remained in good working order.
- The time and place when he revealed it to the I.O;
- What he/she did with the image/digital recording in between;
- At what point was the device handed over in its original form OR

- If he sent a digital copy to the I.O. to print or exhibit, confirmation that he observed the copy and confirms that it is the same as that contained in his device.
- If he shared the information he should state

This does NOT require that the owner to hand over his phone to the custody of the police until trial, IF the above requirements are adhered to.

*On business records e.g. telecoms printouts of call logs or banking statements, make sure the statement includes the following points:*

- He/she made regular use of the computer in the ordinary course of business of that organisation;
- At the time of recording the relevant information, the computer was operating properly and that if there was any defect, it would not have affected its accuracy.
- There was no interference between what was recorded by the computer/device and what is now being produced

If a copy, that copy is **certified** by the person producing it as accurate.

## ANNEX D – EXTRACTS OF WCMA 2013

### EXTRACTS OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT 2013

#### OFFENCES AND PENALTIES

S77 (1) Any authorised officer of the Service may, with the consent of the owner or occupier in respect of private land, where it is necessary for the purpose, go onto any land to destroy any animal which has been deemed a problem animal.

Provided that where the animal is a dangerous animal which has been previously wounded or otherwise injured so as to make it a potential source of danger to human life, the officer may follow such animal with the intention of killing it on any land notwithstanding that the prior consent of the owner or occupier of the land has not been obtained. The Service shall under such circumstances provide the owner or occupier a subsequent report of what occurred.

(2) Notwithstanding anything to the contrary in this Act, the owner or occupier of land or agent of such owner or occupier may, subject to the provisions of this Act destroy any animal which has been deemed a problem animal. Provided nothing in this section shall authorise the killing of a problem animal in a protected area, or the use of any poison, pitfall or snare for the killing of any such animal.

(3) Any person who kills an animal in the circumstances set out in sub-section (1) shall, as soon as possible and in any case not later than forty eight hours after the event, report the circumstances of such killing and deliver the trophies of such animal to the nearest wildlife office or police station.

S84 (1) No person shall operate as a trophy dealer without a license issued by the Service

(2) The Cabinet Secretary may grant a trophy dealers license in accordance with the provisions set out in the Eighth Schedule.

On another presentational point, I would suggest the headers for each offence be centralised and the key nature of the offence be made to ‘pop’ a bit more. The penalties are not as prominent for some reason. e.g. under s84 make the word ‘dealing’ stand out in bold. The penalties should also then be in bold. in s88 make the words ‘breaching a management plan’ and ‘illegal grazing’.

88. (1) Any person who-
- (a) willfully and without reasonable cause contravenes an approved management plan; or
  - (b) fraudulently alters the approved management plan under this Act, commits an offence.
- (2) Any person who commits an offence with respect to this section shall be liable upon conviction to-
- (a) a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than two years or both such fine and imprisonment, where the offence is committed with respect to a national park, national reserve or national sanctuary;
  - (b) a fine of not less than one hundred thousand shillings in any other case.
89. (1) Any person who-
- (a) discharges any hazardous substances or waste or oil into a designated wildlife area contrary to the provisions of this Act and any other written law;
  - (b) pollutes wildlife habitats and ecosystems;
  - (c) discharges any pollutant detrimental to wildlife into a designated wildlife conservation area contrary to the provisions of this Act or any other written law, commits an offence and shall be liable upon conviction to a fine of not less than two million shillings or to imprisonment of not less than five years or to both such fine and imprisonment.
- (2) In addition to any sentence that the court may impose upon a polluter under subsection (1) of this section, the court may direct that person to -
- (a) pay the full cost of cleaning up the polluted wildlife habitat and ecosystem and of removing the pollution; and
  - (b) clean up the polluted habitats and ecosystems and remove the effects of pollution to the satisfaction of the Service.
- (3) Without prejudice to the provisions of subsections (1) and (2) of this section, the court may direct the polluter to contribute to a wildlife conservation activity as compensation, restoration and restitution.
90. Any person who-
- (a) fails, neglects or refuses to comply with a wildlife conservation order made under this Act;
  - (b) fails, neglects or refuses to comply with an easement issued under this Act, commits an offence and shall be liable upon conviction to a fine of not less than five hundred thousand shillings or to imprisonment of not less than three years or to both such fine and imprisonment.

91. Any person who, for the purpose of obtaining, whether for himself or another, the issue of a license or permit –
- (a) knowingly or recklessly makes a statement or representation which is false in a material particular; or
  - (b) knowingly or recklessly furnishes a document or information which is false in a material particular; or
  - (c) for any purpose in connection with this Act, knowingly or recklessly uses or furnishes a false, falsified or invalid license or permit or one is altered without authorization; or
  - (d) knowingly contravenes any condition or requirement of a license or permit, commits an offence and shall be liable upon conviction, to a fine of not less than two hundred thousand shillings or to imprisonment of not less than one year or to both such fine and imprisonment.
92. Any person who commits an offence in respect of an endangered or threatened species or in respect of any trophy of that endangered or threatened species shall be liable upon conviction to a fine of not less than twenty million shillings or imprisonment for life or to both such fine and imprisonment.
93. Any person who –
- (a) knowingly introduces an invasive species into a wildlife conservation area
  - (b) fails to comply with the measures prescribed by the Cabinet Secretary set out under this Act, commits an offence and shall be liable upon conviction to a fine of not less than three hundred thousand shillings or to imprisonment of not less than one year or to both such fine and imprisonment.
95. Any person who keeps or is found in possession of a wildlife trophy or deals in a wildlife trophy, or manufactures any item from a trophy without a permit issued under this Act or exempted in accordance with any other provision of this Act, commits an offence and shall be liable upon conviction to a fine of not less than one million shillings or imprisonment for a term of not less than five years or to both such imprisonment and fine.
96. (1) A person who engages in sport hunting or any other recreational hunting commits an offence and shall be liable, on conviction, to–
- (a) a fine of not less than twenty million shillings or imprisonment for life;

- (b) a fine of five million shillings or imprisonment of five years or to both such fine and imprisonment;
    - (c) a fine of one million shillings or imprisonment of two years or to both such fine and imprisonment.
  - (2) The categories of wildlife referred to in subsection (1) shall be those set out in the Ninth Schedule.
97. A person who engages in hunting for the purposes of subsistence commits an offence and shall be liable on conviction to a fine of not less than thirty thousand or imprisonment for a term of not less than six months or to both such fine and imprisonment.
98. A person who engages in hunting for bush-meat trade, or is in possession of or is dealing in any meat of any wildlife species, commits an offence and shall be liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment for a term not less than one year or to both such fine and imprisonment.
99. (1) No person shall trade in, import, export, re-export or introduce any specimen of a wildlife species into or from Kenya without a permit issued by the Service under this Act.
- (2) Without prejudice to the generality of the foregoing, no person shall:
- (a) import any such species into, or export any such species from Kenya;
  - (b) take any such species within Kenya or Kenya's territorial waters;
  - (c) take any such species upon the high seas;
  - (d) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of paragraphs (b) and (c);
  - (e) deliver, receive, carry, transport, or ship in county commerce, by any means whatsoever and in the course of a commercial activity, any such species;
  - (f) sell or offer for sale in commercial transaction within or outside Kenya any such species;
  - (g) products of listed species; or
  - (h) violate any rules and regulations pertaining to such listed species.
- (3) Any person who contravenes any provisions of this section commits an offence and shall be liable upon conviction for category A wildlife to a fine of not less than ten million shillings or to imprisonment for not less than five years and for other wildlife categories to a fine of not less than one million shillings or to imprisonment of not less than two years or to both such imprisonment and fine.

100. Any person who makes a false claim or makes a false statement to the County Wildlife Conservation and Compensation Committee or the Service in respect of a wildlife damage claim shall be committing an offense and is liable upon conviction to a fine of not less than one hundred thousand shillings or to imprisonment for not less than six months or both such fine and imprisonment.

101. Any person who-

- (a) fails to comply with a lawful requirement or demand made or given by an authorized officer;
- (b) obstructs a person in the execution of his powers or duties under this Act. Commits an offence and is liable on conviction to a fine of not less than one hundred thousand shillings or to imprisonment of not less than six months or to both such fine and imprisonment.

102. (1) Any person who-

- (a) enters or resides in a national park or reserve otherwise than under license, permit or in the course of his duty as authorized officer or a person lawfully employed in the park or reserve, as the case may be;
- (b) sets fire to any vegetation in any wildlife protected area or allows any fire lighted by himself or his servants to enter a wildlife protected area;
- (c) carries out logging in a national park or reserve;
- (d) clears and cultivates any land in the national park or reserve;
- (e) willfully damages any object of geological, prehistoric, archaeological, historic, marine or other scientific interest within a wildlife protected area, or knowingly removes or attempts to remove any such object or any portion thereof in the course of his duty thereof from wildlife protected areas;
- (f) conveys into a protected area or is found within a protected area in possession of any firearm, ammunition, arrow, spear, snare, trap or similar device without authorization;
- (g) undertakes any extractive activity in marine protected areas; or,
- (h) undertakes any related activity in wildlife protected areas contrary to the provisions of this Act: commits an offence and is liable on conviction to a fine of not less than two hundred thousand shillings or to imprisonment of not less than two years or to both such fine and imprisonment.

- (2) No person shall enter into a national park with any livestock for any purpose without authorization.
  - (3) Any person who contravenes subsection (2) commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months.
  - (4) The Cabinet Secretary shall make guidelines in consultation with the Service with respect to accessing national parks for purposes of grazing and watering of livestock in times of drought and other natural disasters.
- 103.(1) When an offence against this Act, is committed by a body corporate, the body corporate and every director or officer of the body corporate who had knowledge or ought to have known of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.
- (2) Where an offence against this Act is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge or ought to have known of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.
  - (3) A person shall be personally liable for an offence against this Act, whether committed by him on his own account or as an agent or servant of another person.
  - (4) An employer or principal shall be liable for an offence committed by an employee or agent against this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.
104. Without prejudice to the generality of the forgoing, nothing in this Act shall stop the arrest, prosecution and conviction of an offender under the provisions of any other written law.
- 105.(1) The court before which a person is charged for an offence under this Act or any regulations made there-under may, in addition to any other order -
- (a) upon the conviction of the accused; or
  - (b) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of an offence, order that the wildlife trophy, motor vehicle, equipment and appliance, livestock or other thing by means whereof the offence concerned was committed or which was used in the commission of the offence be forfeited to the Service and be disposed of as the court may direct.

- (2) In making the order of forfeiture under subsection (1) the court may also order that the cost of disposing of the substance, motor vehicle, equipment, appliance, livestock or any other thing provided for in that subsection be borne by the person convicted there-under.
  - (3) The court may further order that any licence, permit or any authorization given under this Act, and to which the offence relates, be cancelled.
106. (1) An officer shall be personally liable for an offence committed by that officer against the provisions of this Act whether committed by that officer on their own account or as agent or employee: Provided that no offence will have been committed where such person was acting in a lawful manner was discharging their functions in the course of duty.
- (2) Any person who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for—
    - (a) a declaration that the provisions of this Act are being, have been, or are about to be contravened;
    - (b) an injunction restraining any specified person from carrying out the contravention;
    - (c) the writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or any remedy at law or equity for preventing or enforcing the provisions of this Act.
107. (1) The Director of Public Prosecutions may, in accordance with the Office of the Director of Public Prosecutions Act, 2013 and this section, designate special prosecutors to prosecute wildlife offences under this Part.
- (2) Notwithstanding the provisions of subsection (1), the Director of Public Prosecutions may, either on his or her own or on application of an authorised officer, delegate his or her prosecutorial powers to such authorised officer to prosecute offences under this Act.
108. (1) Any person who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the Environment and Land Court as established under the Environment and Land Court Act 2011, for appropriate redress.



