

Kenya's New Wildlife Laws

Tougher Penalties for Offenders

Poachers and traffickers of endangered species will go straight to prison, facing minimum jail terms of between three and seven years as a result of changes to Kenya's already strict wildlife laws.

Fines are no longer an option for such crimes that apply to both trophies such as ivory and rhino horn, but also live animals such as birds, snakes and pangolins being trafficked alive to the Far East. The amendments now extend to tree species and so the weak forestry legislation in Kenya can now be circumvented if need be.



SHAMINI JAYANATHAN is Barrister-at-Law and Director of Wildlife Law & Justice at Space for Giants, an international conservation organisation dedicated to protecting the great wildlife landscapes of Africa.

The growing threat of hunting for bushmeat has also been targeted, with bushmeat traders now facing a minimum of three years imprisonment with no option of a fine. Even those who purchase bushmeat will face the law. These offences apply to all animals, thus including fish, reptiles and birds.

As for Kenya's ports and borders, agents, brokers and others who aid and abet the importation and exportation by 'turning a blind eye' may find themselves facing penalties of not less than 100 million Kenyan shillings (\$1,000,000) and/or a minimum of 20 years imprisonment. This provision signals a strong commitment to target those who would undermine Kenya's efforts in conservation by allowing the country's ports and borders to remain a conduit for wildlife products from Africa to the East.

With the Director of Public Prosecutions keen to develop better frameworks governing 'know your customer' rules for those involved in the import and export business, such amendments will undoubtedly complement those efforts.

The fresh changes to the law also provide incentives for the expansion of Kenya's protected areas for the benefit of conservation and afford greater protection of valuable natural resources such as the water towers held in Mount Kenya and other highland forests, vital to the lives of Kenyans.

The past laxity of laws and their enforcement led to a surge in illegal grazing across the country, including Tsavo National Park and private conservancies across Laikipia. For areas that were not national parks or reserves, the penalty was limited to

PHOTO BY: STOPIVORY.ORG





White rhino and calf

PHOTO BY: JAN VAN DUINEN

500 Kenyan shillings (\$5) under the Trespass Act. The damage to these areas cannot be under-estimated in terms of desertification and damage to fences and boundaries, but when prosecuted herders would have little to offer in terms of compensation.

Wealthy owners of trespassing cattle were relatively immune under the previous law. This has now changed. Under the amendments, the penalties for illegal grazing are no longer restricted to national parks and reserves. They now extend to all protected areas. Furthermore, employers of those herdsmen may be held liable to the tune of up to 10 million shillings (\$10,000) and five years imprisonment. The drafting of this particular provision is problematic, however, and so needs to be tested out in the courts.

Once again, Kenya shows itself to be at the forefront of strong legislation in

the field of conservation. Significant errors in the 2013 Act that limited its application in wildlife offences have been addressed in a constructive way. Prosecutors and investigators can now target with greater precision the different levels of offences in a criminal chain -- the poacher who pulls the trigger, all the way up to the trafficker, the manufacturer, and crucially, their employers.

WEAK ENFORCEMENT

However, all of this can be circumvented by weak enforcement. Lack of resources remains a huge problem -- for how can arrests be effected and trials attended when a lack of transport, for example, prevents dedicated officers from doing their job? What does an officer do when faced with a herdsman and his 300 head of cattle? Where is he to put them? How can seized bushmeat be properly stored when the only room for it lies in

an armoury? And will the courts play ball when other laws allow community service to be substituted for a term of imprisonment over three years?

For Kenya's dedicated law enforcement and prosecution services to give effect to parliament's intentions that clearly reflect a deeper understanding of the impact of such crimes and a strong desire to protect Kenya's natural heritage, it must be recognised that resources are required. Budgets for equipment and staff need to be enhanced and the capacity built -- and institutionalized - within the agencies to enforce these strong laws.

Kenya remains a beacon to other jurisdictions across the continent in its strong laws and efforts to tackle complex crimes. However, for Kenya to make that jump from a country that can pass strong laws to one that can consistently and properly apply them without fear or favour, much more is required than pen on paper.

Relevant government authorities will need to articulate their needs both to their own government and other development partners -- and do so loudly, continuously and consistently, until they are heard. ●

HOW CAN SEIZED BUSHMEAT BE PROPERLY STORED WHEN THE ONLY ROOM FOR IT LIES IN AN ARMOURY?